

20-7758

ORIGINAL

Supreme Court of The  
United States

Supreme Court, U.S.  
FILED  
FEB 03 2021  
OFFICE OF THE CLERK

Benjamin E. Vance

Petitioner

VS.

Case No. Awaiting

Warden Frank B Bishop, Jr.

The Attorney General Of The

State Of Maryland

Respondents

Petition For Writ Of Certiorari

Pursuant to Rule 11 of the Supreme Court, I, Benjamin Vance Doc #412-850, Petitioner proceeding Pro Se, Informa Pauperis, petitions this solon an honorable court for a Writ Of Certiorari to review the previous decision of The United States Court Of Appeals for the Fourth Circuit case no. 20-6970; also the decision of the United States District Court for the District of Maryland Case No. ELH-18-133, and the Court of Special Appeals of Maryland Case No. 448. Because the Trial Court for Prince George's County Maryland Case No. CT11112X and all the above courts have decided an important question of Federal law that conflicts with relevant decisions of this Court.

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United States

Bejamin E. Vance  
Petitioner

VS.

Case No. Pending

Warden Frank B. Bishop. Jr.,  
The Attorney General of the  
State of Maryland

Question Presented

Did the lower courts violate Petitioner's Constitutional rights under the 14<sup>th</sup> Amendment to Due Process, Equal Protection clause, and U.S. Amendment VI; when prosecutor used nine of his ten peremptory challenges against all African American Women, violating 'Batson' and its progeny?

Proceedings In Court

- State of Maryland v. Benjamin E. Vance Case No. CT111112X

Decided February 2, 2013

- Maryland Court of Special Appeals on February 12, 2014 also Vance v. State,

No. 448, Sept. Term 2013; Mandate issued on April 4, 2014

- The Maryland Court of Appeals denied certiorari on June 24, 2014;

see also Vance v. State, 438.741

- The United States District Court for the District of Maryland,

Dismissed the petition and declined to issue a Certificate of Appealability

on May 22, 2020, Civil Action ELH-18-133

- The United States Court of Appeal for the Forth Circuit, on Oct. 23, 2020

Case No. 20-6970, dismissed for lack of jurisdiction and

remanded to district court for consideration of the unresolved claim.

*Id* at 699; *Per Curiam* (Dismissed and Remanded);

\* Stay of Mandate Under fed. R. App. P. 41(d)(1) on Nov 5, 2020;

\* Order denying Petition For Rehearing and Rehearing enbanc. (No judge

requested a poll under fed. R. App. P. 35 on Petition for rehearing enbanc);

\* On Dec 2, 2020 formal Mandate of this court issued;

\* On Dec 1, 2020 United States District Court for District of Maryland, No. ELH-18-133

Memorandum

\* Motion to Reconsider sent to the United States Court of Appeals for Forth Circuit

on Dec 3, 2020, by Petitioner Benjamin E. Vance, case No. 20-6970

Citations

Vance v. State No. 448, Sept. Term 2013

Vance v. State, 438. 741 (2014)

Vance v. U.S. District Court of MD (1:18-cv-00133-ELH) May 22, 2020

Vance v. U.S. Court of Appeals No. 20-6970 (4<sup>th</sup> Circuit Dec, 2 2020)

Jurisdiction

Judgement and order sought to be reviewed was entered on Dec 2, 2020 in The United States Court of Appeal for the Forth Circuit case no. 20-6970; Order staying Mandate until court ruled on petition for rehearing or rehearing en banc or motion to stay was entered on Nov. 5, 2020 case No. 20-6970; Order denying rehearing and rehearing en banc Nov. 24, 2020 case no. 20-6970; Mandate ("The judgement of this court, entered 10/23/20, takes effect today") Dec 2, 2020 Case No. 20-6970.

Statutory Provisions

Batson v. Kentucky, 476 U.S 79 (1986)

JEB v. Alabama, 511 U.S. 127 (1994)

U.S Const. Amen 14

U.S Const. Amend.IV

Notifications required by Rule 29.4(b) have been made

Constitutional Provisions

- Under *Batson v. Kentucky*, 476 U.S. 79 (1986), a party may not use peremptory challenges to exclude potential jurors based on juror's age, race, or gender.
- In *JEB v. Alabama*, 511 U.S. 127 (1994), the Supreme Court held that peremptory strikes based on gender also violates Equal Protection clause;
- Depriving Petitioner of a fair and impartial jury guaranteed by U.S. Const. Amend VI; Due Process' clause standards of fundamental fairness.

Statement of Case

In a Criminal Trial in Prince Georges County, Maryland on Feb 2, 2013 a jury convicted Petitioner Benjamin Vance of Felony Murder, robbery, arm robbery and unlawful use of a handgun. Jury found Petitioner not guilty of premeditated murder; only murder charge which he was lawfully indicted on.

The issue before this Honorable Court stems from the State Court and United States Appeals court deciding an important federal precedent question in a way that conflicts with relevant decisions of this court.

Petitioner Vance's defense counsel at the beginning stages of Trial 'Jury Selection' (Voir Dire) made a 'Batson' challenge after twelve members of the jury had been selected. The trial court rejected ['erroneously'] that Petitioner had not established a 'Prima Facie' Case of intentional discrimination, and allowed Prosecutor Johnathan Church to engage in two of the unallowable violations which this Honorable Court forbade. Using nine out of ten peremptory strikes against African American Women; in violation of the U.S. Const. Amend. 14 Equal Protection, under Due Process, which caused a fundamental miscarriage of justice and deprived Petitioner of a fair and impartial jury as guaranteed by U.S. Const. Amend VI

### Argument

Petitioner's defense counsel made a 'Batson' challenge, which the trial court rejected on the ground that Vance had not established a Prima Facie case of intentional discrimination. (see Colloquy App. at 25 & 26)

Under Batson v. Kentucky, 476 U.S 79 (1986) a party may not use a peremptory challenge to exclude potential jurors on a juror's race, or gender.

The State's use of nine of its peremptory strikes against African Americans women demonstrated a 'Prima Facie' case of intentional discrimination. Based on this clear pattern of strikes the trial court denied the motion after noting simply, that the panel of twelve consisted of both African Americans, and women. The Judge also noted that the Venire as a whole was African American; however, that view is impossible seeing the entire Venire was well over 70 individuals; which Petitioner could visually see plenty of Caucasians and would debate that theory. Nonetheless, the important issue overlooked by each lower level court is 1st, they believe Petitioner's defense counsel abandoned its objection to jury, by accepting the panel. Is Petitioner to believe once a judge hands down their ruling "it is not final" or "it is" final until appealed? The latter being the case in our System of Justice, semantics are not necessary. Petitioner's defense counsel understood the United States precedence deeming unconstitutional race-based and gender-based peremptory challenges.

In Batson v. Kentucky, 476 U.S 79, 83(1986), the Supreme Court held that the Equal Protection Clause forbids the prosecutor to challenge jurors solely on the account of their race. In JEB v. Alabama, 511 U.S. 127 (1994), the Supreme Court held that peremptory strikes based on gender also violate Equal Protection Clause.

It may have been true, as the trial court noted, that other African Americans and females made the panel of twelve; however such a consideration is immaterial for purpose of determining whether a prima facie case exists. First of all, the number of African Americans and females generally on a panel is obviously not necessarily the same as the number of 'African American Females' on a panel; although there were eight females on the panel of twelve, five of them were already seated with the original twelve, a fact that

the State did not disclose in it's arguments on Direct Appeal<sup>11</sup>, nor did the U.S Appeals Court; which now allows Petitioner to correct these facts. The Prosecutor at this point began his Pattern of Discriminatory tactics. He struck 3 African American women from the original 12 that were seated, and then continued engaging in discriminatory strikes by striking 6 more African American females from the Venire. The fact that the Prosecutor chose not to strike any men is a Pattern in itself, Logically speaking, and shows purposeful discrimination against women. The fact that they were all African American only adds "Fuel to the fire."

A prima facie case existed. The trial court erred, but then the Court of Special Appeals for Maryland totally disregarded the 'gender' argument see (App. at 27); which<sup>12</sup> in turn, allowed the U.S. District Court for the District of MD to do the same<sup>13</sup>, (see app. at 18). This overlooked point prevented the United States Court of Appeals for the Fourth Circuit from Hearing and Ruling on the issue, causing them to Dismiss and Remand to lower court for consideration of the unresolved claim. see (App. at 3).

Whether or not these lower courts intentionally chose to disregard the fact that the Prosecutor engaged in gender-based Discriminatory Peremptory striking of African American Women is not for me to decide; however my life was taking from me for a crime I had no participation whatsoever.

The Prosecution and Appeals Court want to stand on Petitioner's Counsel abandoning his motion and objection based on Batson grounds, because he accepted the jury panel. Again I ask this Honorable court, what would you have a defense counsel do once they've objected to the panel by way of Batson challenge and a Trial Judge rejects the motion? Is counsel to be in contempt and say, ("Well I'm not going forward because I'm not satisfied with panel?") No they don't do that<sup>14</sup>, and if they are allowed to do such a thing<sup>15</sup>, I'd ask this Honorable court to state "trial counsel was ineffective for accepting the judge's decision."

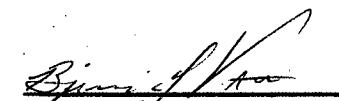
Additionally, the instant case is quite similar to *Stanely v. State*<sup>16</sup>, 313 Md. 50,542 A.2d 1267 (1988), where the State used eight of its ten strikes against African Americans. The court found a prima facie case (and ultimately, a Batson violation) in 'Stanely' even though (a) the defendant, the victim, and key state witness were all African American, and even though (b) African Americans sat on the jury. Id at 67-69. In finding a prima facie case, the court stressed that the burden of showing one is not "onerous".

If there was a prima facie case in 'Stanely' surely there was one in this case. Practically speaking, there will rarely be prima facie cases as strong as the one in the instant case, where the state used nine of its ten peremptory strikes against African American Women. Under Batson, JEB v. Alabama and its progeny; defense counsel presented a strong prima facie case of purposeful discrimination, and the Lower Courts violated the Equal Protection clause and Petitioner's procedural due process right under the 14<sup>th</sup> Amendment to U.S. Constitution; which deprived Petitioner of fair and impartial jury as guaranteed by U.S. Amend VI.

WHEREFORE, Petitioner prays that the Court grant him/her all relief to which he/she may be entitled in this action.

I declare under the penalties of perjury that the information above is true and correct.

SIGNED THIS 1st day of February, 2021.



Signature

Benjamin E. Vance doc#412-850

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