

No. **21-7302**

IN THE
SUPREME COURT OF THE UNITED STATES

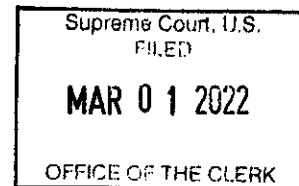
CHRISTIAN PETERSON

Petitioner,

VS.

STATE OF KANSAS

Respondent.



**On Petition for a Writ of Certiorari
to the Court of Appeals of Kansas**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Did the Kansas courts err in failing to recognize race discrimination under *Batson*.

LIST OF PARTIES

X All parties appear in the caption of the case on the cover page.

RELATED CASES

- State of Kansas v. Christian Peterson, Wyandotte County, Kansas Case Number 15 CR 641
- State of Kansas v. Christian Peterson Kansas Appellate Court Case No 16-116931-A
Judgement entered August 27th, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Christian Peterson (herein after Peterson) respectfully prays that a Writ of Certiorari be issued to review the judgement of the Kansas Court of Appeals.

OPINION BELOW

The opinion of the Kansas Court of Appeals is unpublished at *State v. Peterson*, 493 P.3d 311 (Kan. Ct. App. 2021) A copy of the opinion is attached as Appendix A

The Petition for Review was denied by the Kansas Supreme Court on December 6th, 2021.

A copy of the denial is attached as Appendix B.

JURISDICTION

The Kansas Supreme Courts decision to deny Peterson review was entered on December 6th, 2021. This petition is timely filed under U.S. Supreme Court Rule 13.1. This courts certiorari jurisdiction is invoked under 28 USC § 1257 (a)

CONSTITUTIONAL PROVISIONS INVOLVED

This court has recognized the the Fourteenth Amendment Section I, provides in part..."nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Mr. Peterson was accused, and convicted of aggravated indecent liberties with a child for sexually abusing a 10-year-old girl he had agreed to babysit. Prior to trial Petersons lawyer, during the jury selection process, asserted a *Batson* challenge to the prosecutor's use of peremptory challenges to remove five Black persons from the pool of potential jurors. Peterson is also Black.

The Kansas Court of Appeals (KCOA), after conviction, remanded the case back to the District Court for a *Batson* hearing. The District Court denied and the KCOA affirmed.

FACTS RELEVANT TO THE CASE

The record developed in the full *Batson* hearing on remand shows the prosecutor used 5 of the State's 12 allotted peremptory strikes to remove Blacks from the pool that would make up the jury. Two Blacks remained on the jury that heard the evidence and convicted Peterson. Three other potential jurors already passed for cause were designated as the pool from which one alternate would be selected. Each side had one peremptory challenge. The prosecutor struck a Black, and Peterson struck a Caucasian, leaving a Black as the alternate juror.

The State, then, used peremptory challenges to remove six of nine Blacks from the pool of potential jurors both sides had already passed for cause. The prosecutor struck two-thirds of the Black prospective jurors.

During the remand hearing, the prosecutor testified that she did not consider the case to have some sort of racial undercurrent to it, since Peterson and S.Y. are Black. The prosecutor said she typically prefers middle-aged jurors who are employed and have

children. She also looks for a stable work history. In this case, the prosecutor considered jurors with children to be especially desirable because they would tend to understand how youngsters behave generally and how they recall and explain events.

The prosecutor's first two peremptory strikes were of Caucasian men who were employed but had no children. One of them was 25 years old. The prosecutor next struck a 49-year-old Black woman with lengthy employment and children and an unemployed Black man who had no children. The prosecutor testified she removed the woman despite her background because of her statements during jury selection that she had a nephew who had been wrongly charged with a sex crime and that she didn't think she could be fair. The man fell outside the prosecutor's preferred criteria in all respects.

In the third set of strikes, the prosecutor removed a 67-year-old Black woman who had children but was not employed. The prosecutor testified she was concerned because the woman had a mild seizure disorder that might flare up and necessitate her removal from a deliberating jury and the woman had expressed some unease with sitting in judgment as a juror.

The prosecutor also struck Juror 39, a 20-year-old Black woman who was childless, unmarried, and had been working at a department store for about 18 months. During the *Batson* hearing, the prosecutor was briefly asked about Juror 39, Peterson points out the prosecutor did not remove Juror 13—a 20-year-old Caucasian woman with no children and a limited employment history.

During the jury selection process, the prosecutor did not individually speak with either Juror 39 or Juror 13. Peterson submits the two jurors were comparable—especially in the traits the prosecutor was looking for—except for their race, so the removal of Juror 39 and the retention of Juror 13 offers strong circumstantial evidence of racial animus or

purposeful discrimination.

The prosecutor's contemporaneous trial notes mistakenly indicate Juror 39 was unemployed. At the hearing, the prosecutor acknowledged the mistake. But she was not otherwise questioned about it. The prosecutor's notes contain similar errors about a couple of other potential jurors who are not pertinent to Peterson's *Batson* claim. When the prosecutor struck Juror 39, she apparently believed, incorrectly, that the woman offered none of the personal characteristics the prosecutor had identified as desirable, whereas Juror 13 was at least presently employed.

With her next strike, the prosecutor removed an unemployed, unmarried 46-year-old Black male with two children. He fell outside some of the prosecutor's preferred characteristics. The prosecutor paired that strike with one of an employed, married Hispanic man with three children. At the hearing, the prosecutor said she simply didn't have much information about that prospective juror.

The prosecutor exercised the State's remaining four peremptory strikes to remove three Caucasian men, none of whom had children, and a 34-year-old woman who was single, childless, and identified herself as white/Native American. The district court found the prosecutor had provided race-neutral reasons for peremptorily striking the Black prospective jurors. The district court undertook the final step of the *Batson* inquiry and concluded the prosecutor did not act with purposeful racial animus in removing the five Black prospective jurors.

REASONS FOR GRANTING THE PETITION

Issue I: Should A State Court Ignore Evidence of Racial Discrimination Eventhough it was Not Noted in State Appellate Brief

During Petersons jury selection process, the KCOA even noted that the prosecutor had struck off the only hispanic member of the jury as well as a woman who identified as a white/Native American. (Appendix A at 7) For the hispanic juror, the prosecutor declined to elicit "any additional information" from the selection process. *Id*

In *Norris v. Alabama*, 294 U.S. 587, 79 L. Ed. 1074, 55 S. Ct. 579 (1935), this court has stated its duty to "analyze the facts in order that the appropriate enforcement of the federal right may be assured," *id* at 590, or to "make independent inquiry and determination of the disputed facts," *Pierre v. Louisiana*, 306 U.S. 354, 358, 83 L. Ed. 757, 59 S. Ct. 536(1939). *Whitus v. Georgia*, 385 U.S. 545, 550, 17 L. Ed. 2d 599, 87 S. Ct. 643 (1967); *Avery v. Georgia*, 345 U.S. 559, 561, 97 L. Ed. 1244, 73 S. Ct. 891 (1953); *Patton v. Mississippi*, 332 U.S. 463, 466, 92 L. Ed. 76, 68 S. Ct. 184 (1947); *Smith v. Texas*, 311 U.S. 128, 130, 85 L. Ed. 84, 61 S. Ct. 164 (1940)

In *United States v. Mitchell*, 502 F.3d 931 (9th Cir. 2007) the Ninth Circuit has held that Native Americans constitute a "cognizable group for Batson purposes" *Id* at 957; *United States v. Prince*, 647 P.3d 1257, 1262 (10th Cir. 2011).

In the case at bar the State was able to sucessfully eliminate all but two black jurors (Appendix A at 7) the only hispanic and white Native American. *Id* As the KCOA pointed out the prosecutor testified she did not have "much" information about the hispanic, yet the trial transcript shows she did in fact not elicit any information about the juror. *Id*

Under *Norris* and *Pierre* this Court should review this case and conduct its own

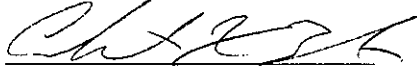
investigation on the disputed facts. Eventhough the issues raised on this writ of certiorari was not raised in the defense brief of Petitioners appeal, it should still be reviewed by this court.

This Court should grant the writ to deterime if the Kansas courts erred in its determination of racial discrimination or in the alternative, a remand to the State district court to hold another *Baston* hearing on the hispanic and white/native American jurors that the prosecutor struck off the jury.

CONCLUSION

For the foregoing reasons, petitioner, Christian Peterson, respectfully prays that a writ of certiorari be issued to review the judgement of the Kansas Court of Appeals.

Respectfully Submitted,



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