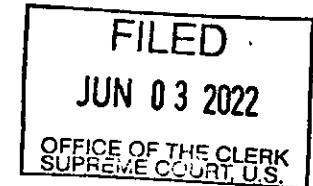


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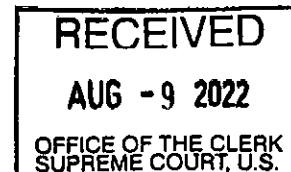
In the
Supreme Court of the United States

DANIEL MASON
Petitioner
v.
THE STATE OF COLORADO
Respondent

On Petition For Writ Of Certiorari
To The Colorado State Supreme Court

PETITION FOR WRIT OF CERTIORARI

Daniel Mason
Pro Se
175 Commander Drive
Erie, Colorado 80516



QUESTIONS PRESENTED

The Petitioner, Daniel Mason, preserved the issues raised in the lower court. Further, the Court of Appeals' ruling is contrary to this Court's precedent. The trial court used an erroneous basis to deny the defense's *Batson* challenge to the prosecution's peremptory strike of Mr. Rodriguez when it ruled that Mr. Mason could not raise a *Batson* challenge because Mr. Mason was white and the challenge juror was Hispanic or Latino.

The questions presented are:

1. Whether the Colorado Supreme erred in finding no Equal Protection violation when the prosecution impermissibly used race as a reason for the peremptory challenges on a males of Latino descent pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986)?
2. Was the Court in error when denying the Petitioner's request to challenge the selection of jurors under the Batson Challenge?
3. Does the Respondent have the right to dismiss potential jurors because of juror's criminal history and/or alleged level of intelligence?
4. Did the Petitioner receive a fair and impartial trial?

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the Colorado Supreme erred in finding no Equal Protection violation when the prosecution impermissibly used race as a reason for the peremptory challenges on a males of Latino descent pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986)?

OPINIONS FROM WHICH REVIEW IS SOUGHT

Review is sought from *People v. Daniel Mason*, 21SC773, when the Colorado State Supreme Court refused to grant certiorari on March 7, 2022, from an opinion in the Colorado Court of Appeals in *People v. Daniel Mason*, 19CA2169, which was an unpublished decision of the Colorado Court of Appeals issued on September 9, 2021.

JURISDICTION OF THE U.S. SUPREME COURT

The date on which the Colorado State Supreme Court denied certiorari was on March 7, 2022. A copy of the order denying certiorari is attached. Jurisdiction is invoked under 28 U.S.C. § 1257(a) for cases from state courts.

CONSTITUTIONAL AMENDMENTS INVOLVED

U.S. Const. amend. XIV § 1 provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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

During voir dire the prosecution exercised a peremptory challenge on Mr. Rodriguez, Juror No. 2, Juror Summons No. 6137, a Latino citizen. TR 04/09/19, pp 85:18-19. (hereafter referred to as Mr. Rodriguez). Defense Counsel objected to the challenge and stated, "Judge, I'm going to challenge that peremptory on Batson, Mr. Rodriguez. There's three Hispanics. I think Mr. Hale was Hispanic or Latino; the Prosecution kicked Mr. Hale off. The only other Hispanic is Mr. Cruz, so I'm asking the Court to reseat Mr. Rodriguez and not allow that peremptory." TR 04/09/19, pp 86:1-6. The trial court responded, "First of all, I don't know that Mr. Hale, Mason Isaac Hale is in fact Hispanic, but I will take at face value. Ms. Love, regarding –" TR pp 86:7-9.

The prosecution then stated, "Your Honor, I might not be understanding, but I believe the first finding under a Batson challenge is that I'm actually excusing potential jurors of the defendant's own race. I believe he's white." Nevertheless, the prosecution continued, "So in regards to Juror No. 2, [Mr. Rodriguez] the reason that I excused him is first he expressed a criminal history, which is concerning to the People. Also, when he was in chambers, he was not giving very articulate answers. He was kind of giving one-word answers, which in my mind indicated a level of intelligence that isn't going to be able to appreciate or grasp the technical evidence that this jury is going to hear." TR 04/09/19, pp 86:24-25, 87: 1-7. However, in chambers, the

prosecution declined to ask Mr. Rodriguez any questions. TR 04/08/19, pp 48:25, 49:1-2. Moreover, in the panel voir dire, the prosecution declined to ask Mr. Rodriguez any further questions. TR 04/09/19. Nevertheless, in chambers, the trial court asked Mr. Rodriguez a litany of questions regarding the burdens of proof, holding his experiences against the prosecution, and reasonable doubt. TR 04/08/19, pp 45:20-25, 46-48. Mr. Rodriguez never disclosed any problem understanding the trial court and neither did his answers. TR 04/08/19, pp 45:20-25, 46-48. Further, defense counsel asked Mr. Rodriguez about holding it against the defendant for going to trial when Mr. Rodriguez pled guilty in two separate matters. TR 04/08/19, pp 49:4-23. Mr. Rodriguez responded with a complete understanding of reasonable doubt and the burden of proof, "Well, because it's not proven." TR 04/08/19, pp 49:21. Further, Mr. Rodriguez neither expressed nor exhibited any cognitive issues in the panel voir dire the next day. TR 04/09/19.

The Court did not allow the defense to re-but the prosecution's argument on a race neutral basis for its peremptory strike of Mr. Rodriguez. TR 04/09/19, pp 87. Instead, the trial court immediately ruled, "At this time I do find the record made by the People, one, to be supported by the evidence but also to be sufficient, and so I will deny the request to reseat Mr. Rodriguez." TR 04/09/19, pp 87:8-11. Further, at a hearing on the defense's for motion new trial (CF, p. 523-526) the Court again denied the Batson challenge raised by the defense in voir dire with respect to Mr. Rodriguez.

TR 04/29/19, pp 3, 4:1-4. The trial court ruled, "First of all, regarding the Batson challenge, the Court does find specifically, the order on Batson factually applied to, as it indicates a black man, where prosecutors then used peremptory challenges to strike all four black persons who were part of the jury panel. Ultimately, the Supreme Court ruled that that was impermissible, finding ultimately that it is illegal if you are in a class, which could be racially targeted, for the prosecutor to strike members of your racial class. Clearly, that's not even what's alleged by Mr. Sims. What's alleged by Mr. Sims, on behalf of Mr. Mason, is not that Mr. Mason is a member of some protective class, but that the People struck two Hispanic jurors. Assuming that it's correct that both jurors were Hispanic, although certainly surnames wouldn't necessarily indicate that, nor did the Court find at the time or find now that specifically the high school student was likely Hispanic. Even if the People struck two Hispanic members, there's no allegation by the Defense that Mr. Mason is himself Hispanic. In any event, the Court can find no constitutional challenge based upon the People's exercise of peremptory challenges."

REASON FOR GRANTING THE PETITION

The Petitioner preserved the issues raised in the lower court. Further, the Court of Appeals' ruling is contrary to this Court's precedent. The trial court used an erroneous basis to deny the defense's Batson challenge to the prosecution's peremptory strike of Mr. Rodriguez when it ruled that Mr. Mason could not raise a Batson challenge because Mr. Mason was white and the challenge juror was Hispanic or Latino.

Argument

Taking the third step under Batson, *supra* first, in its ruling on April 9, 2019, the trial court did not make any findings that supported the prosecution's race-neutral use of the peremptory strike on Mr. Rodriguez. The trial court simply stated, "At this time I do find the record made by the People, one, to be supported by the evidence but also to be sufficient, and so I will deny the request to reseat Mr. Rodriguez." TR 04/09/19, pp 87:8-11. Further, when the trial court re-addressed the issue during a hearing on the defense's motion for a new trial, the trial court used an erroneous basis to deny the Batson challenge as it related to the peremptory strike the prosecution used on Mr. Rodriguez. The trial court ruled that because Mr. Mason, who is white, is not of the same race as the challenged jurors, the Batson challenge fails. TR 04/09/19, pp 3:8-25, 4:1-4. 3

The trial court stated, "First of all, regarding the Batson challenge, the Court does find specifically, the order on Batson factually applied to, as it indicates a black

jury prior to the exercise of any peremptory challenges. TR 04/29/19. Further, the trial court assumed the facts as defense counsel stated regarding the make-up of the jury prior to the use of peremptory challenges. TR 04/29/19, pp 3:17-25, pp 4:1-4. Thus, the defense met the *prima facie* burden of showing racial discrimination in the use of the prosecution's peremptory challenge.

The prosecutor's reasons for striking Mr. Rodriguez amount to a pretext to conceal racial discrimination.

The prosecution's alleged reasons for striking Mr. Rodriguez with a peremptory challenge amount to a pretext. Most troubling, the prosecution claimed, "Also, when he [Mr. Rodriguez] was in chambers, he was not giving very articulate answers. He was kind of giving one-word answers, which in my mind indicated a level of intelligence that isn't going to be able to appreciate or grasp the technical evidence that this jury is going to hear." TR 04/09/19, pp 86:24-25, 87: 1-7. However, despite the prosecutor's attempts to make the trial sound intellectually challenging, the trial concerned whether the defendant possessed child pornography. At trial, the jurors simply view pictures and listen to evidence. Thus, the prosecution offered such reasons as a pretext.

Furthermore, review of the in chambers voir dire transcript, illustrates that Mr. Rodriguez suffers no cognitive issues of which the prosecution claimed. TR 04/08/19, pp 45:20-25, 46-48. The Court asked very direct and sometimes leading questions. In response, Mr. Rodriguez gave very direct answers. In fact, the trial court explored a number of issues with Mr. Rodriguez that law students struggle to comprehend – bias,

burdens of proof, presumption of innocence, reasonable doubt, etc., and Mr. Rodriguez never failed to understand. TR 04/08/19, pp 45:20-25, 46-48. The full colloquy between the Court and Mr. Rodriguez from in chambers voir dire evinces no cognitive issues on the part of Mr. Rodriguez (TR 04/08/19, pp 45:20-25, pp 46-48):

THE COURT: And so we are on the record with Jesus Rodriguez, summons 6137. You had indicated that previously you were involved in a domestic violence and I wasn't sure what else.

JUROR 6137: Traffic hit-and-run.

THE COURT: Okay, traffic hit-and-run. Were you a victim or were you charged or can you tell us little bit about your experience?

JUROR 6137: On which one?

THE COURT: We'll start with the domestic violence.

JUROR 6137: I was charged.

THE COURT: How long ago was that?

JUROR 6137: I would say it's been about six, seven years.

THE COURT: What county was that?

JUROR 6137: That was in -- it happened in Thornton.

THE COURT: Did it go to -- JUROR
6137: Adams County.

THE COURT: Adams County, okay. Did it go to trial or was it --

JUROR 6137: I took a plea.

THE COURT: You took a plea?

JUROR 6137: Yes.

THE COURT: How did you feel you were treated?

JUROR 6137: Regarding what?

THE COURT: Regarding the domestic violence case. Did you feel that you were treated fairly, not fairly, fairly by some, not fairly --

JUROR 6137: I look back on it and I just take responsibility for it.

THE COURT: So it sounds like you don't have any specific concerns with, I guess we'll start with law enforcement, how law enforcement handled it?

JUROR 6137: No.

THE COURT: And how about how the district attorney handled it?

JUROR 6137: No.

THE COURT: And the judge?

JUROR 6137: No.

THE COURT: Did you have an attorney?

JUROR 6137: A DA -- no, public defender.

THE COURT: Any concerns with how your public defender handled it?

JUROR 6137: No.

THE COURT: And then the traffic hit-and-run, were you charged or were you the victim of that?

JUROR 6137: I was charged, and then I took responsibility for that as well, paid restitution. That was five, six years ago.

THE COURT: Which jurisdiction was that in?

JUROR 6137: Broomfield.

THE COURT: And again, how do you feel that you were treated?

JUROR 6137: Like I say, I take accountability for my own actions. You know, I put myself in that situation. I can't say that they treated me bad or anybody did anything to me but myself.

THE COURT: Now, here Mr. Mason has been charged, and as the questionnaire said a charge is not evidence.

JUROR 6137: Right.

THE COURT: Does that make sense to you?

JUROR 6137: Yes.

THE COURT: And as he sits here he is presumed not guilty, and that presumption is to remain with him unless after hearing all of the evidence you are convinced that he is guilty beyond a reasonable doubt. If you are not convinced that he's guilty beyond a reasonable doubt, then you would be required to render a verdict of not guilty. Does that make sense?

JUROR 6137: Yes.

THE COURT: Do you have any concerns with being able to follow the law in that regard?

JUROR 6137: No.

The prosecution never sought to clarify Mr. Rodriguez's answers, never sought to clarify Mr. Rodriguez's intellectual capabilities, never explored any alleged bias on account of his own run-ins with the law. TR 04/08/19, pp 48:25, pp 49:1-2. The prosecution simply refused to ask Mr. Rodriguez any questions. TR 04/08/19, pp 48:25, pp 49:1-2.

However, defense counsel sought to clarify Mr. Rodriguez's feelings about his client going to trial when Mr. Rodriguez pled guilty in both of his cases. Mr. Rodriguez, during the colloquy with defense counsel, offered up a complete understanding of the burden of proof and presumption of innocence. TR 04/08/19, pp 49:4-23. Clearly, Mr. Rodriguez suffered no intellectual defect as the colloquy between defense counsel and Mr. Rodriguez illustrates (TR 04/08/19, pp 49:4-23):

MR. SIMS: Yeah. You said you took accountability for your actions?

JUROR 6137: Right.

MR. SIMS: And you pled in both cases?

JUROR 6137: Right.

MR. SIMS: When a person doesn't plead does that -- like in this case, pled not guilty, challenging, I'm just wondering when people say sometimes they take accountability for their own actions, I wonder if they're holding that against my client for going to trial. Do you see what I'm driving at?

JUROR 6137: Like blaming him for pursuing his --

MR. SIMS: Well, saying he's not taking accountability for his actions.

JUROR 6137: Well, because it's not proven.

Moreover, concurring in Batson, Justice Thurgood Marshall, the first African American appointed to the United States Supreme Court, remarked on the long history in the United States of using intelligence or the lack thereof as a pretext for racial discrimination. Batson, 476 U.S. at 102-08 (Marshall, J., concurring). Throughout history, prosecutors frequently used a lack of intelligence as a pretext for race-based discrimination. Id. Thus, the prosecution's proffered reasons in this case regarding Mr. Rodriguez's intellectual capability to understand the case, procedure and law amounts to nothing more than a pretext for racial discrimination.

Further, the prosecution claimed the other race-neutral reason for striking Mr. Rodriguez was because of some alleged concern about Mr. Rodriguez's criminal history. However, the prosecution did not raise similar concerns with Mr. Pedersen, a pediatrician, who also had a run-in with the law in Denver. Unlike the transcript passages above with Mr. Rodriguez, Mr. Pedersen did not take responsibility for breaking the law, and blamed law enforcement. TR 04/08/19, pp 129:16-25, pp 130:15. Further, unlike Mr. Rodriguez, the prosecution asked Mr. Pedersen questions regarding his experience with law enforcement. TR 04/08/19, pp 48:25, 49:1-2.

The prosecution asked Mr. Pedersen: "I want to talk a little bit just about your comments about your own case in Denver. So you said you weren't happy with the way evidence was handled by law enforcement. Are you able to just tell me a little bit more about that? And I hope you know I wouldn't be doing my job if I didn't ask you those questions." TR 04/08/19, pp 129:9-15.

Mr. Pedersen responded: "Oh, no, sure. I mean I had gone down for a baseball game and had some beers to drink. I felt that I had stopped drinking in plenty of time and I don't think my breathalyzer, the numbers were accurate, and then during the trial the -- I mean the police officer even said like as they were going through the training of the machine that he didn't bother to read the book, and in the documentation of it there were numbers and things missing on certain readings, so I just didn't feel it was accurate. And then afterwards, after I had been arrested and gone through all that, then when I did another breathalyzer, it was low enough that they were able to send me home, so that's where I felt the accuracy was off." TR 04/08/19, pp 129:16-25, pp 130:1-5.

In contrast, Mr. Rodriguez exhibited no uneasiness or bias against the prosecution or law enforcement as colloquy between Mr. Rodriguez and the Court illustrates (TR 04/08/19, pp 46:20-25, pp 47-48:1-6):

THE COURT: How did you feel you were treated?

JUROR 6137: Regarding what?

THE COURT: Regarding the domestic violence case. Did you feel that you were treated fairly, not fairly, fairly by some, not fairly --

JUROR 6137: I look back on it and I just take responsibility for it.

THE COURT: So it sounds like you don't have any specific concerns with, I guess we'll start with law enforcement, how law enforcement handled it?

JUROR 6137: No.

THE COURT: And how about how the district attorney handled it?

JUROR 6137: No.

THE COURT: And the judge?

JUROR 6137: No.

THE COURT: Did you have an attorney?

JUROR 6137: A DA -- no, public defender.

THE COURT: Any concerns with how your public
defender handled it?

JUROR 6137: No.

THE COURT: And then the traffic hit-and-run, were you charged or were you
the victim of that?

JUROR 6137: I was charged, and then I took responsibility for that as well, paid
restitution. That was five, six years ago.

THE COURT: Which jurisdiction was that in?

JUROR 6137: Broomfield.

THE COURT: And again, how do you feel that you were treated?

JUROR 6137: Like I say, I take accountability for my own actions. You know, I
put myself in that situation. I can't say that they treated me bad or anybody did
anything to me but myself.

Further, in contrast to Mr. Rodriguez, Mr. Pedersen responded equivocally about his
experiences during his run-in with the law in the following colloquy (TR 04/08/19, pp
126:10-20):

THE COURT: How was the case resolved; in other words, was there a plea, did it go to trial?

JUROR 6375: It went to trial. I was found guilty.

THE COURT: How did you think you were treated throughout that process?

JUROR 6375: I mean I think I was treated fine. I mean I went to trial just because I didn't agree with kind of the way the evidence was picked up by the police or how it was handled.

THE COURT: So it sounds like you feel that you were treated fine, weren't completely satisfied with :-

JUROR 6375: I didn't agree with it, no, but –

In People v. Rodriguez, 351 P.3d 423 (Colo. 2015), this Court explained what will not pass muster with regards to step-two, the prosecution's burden to offer a race neutral explanation, "It is at this stage that implausible or fantastic [step-two] justifications may (and probably will) be found to be pretexts for purposeful discrimination." Rodriguez, 351 P.3d at 429. Here, in Mr. Mason's case, the prosecution only offered 'fantastic' and 'implausible' explanations because none can be supported by the record. Further, none of the prosecution's alleged race neutral reasons were not supported by the evidence when the trial court had an opportunity to reseat Mr. Rodriguez as a juror.

Conclusion:

Under a Batson analysis the defense in this case met its *prima facie* burden by objecting to the peremptory strike of Mr. Rodriguez, who was the second of three Hispanic or Latino jurors the prosecution struck using a peremptory challenge. The prosecution failed to state a sufficient race neutral reason for striking Mr. Rodriguez under step two of the Batson analysis. Finally, the trial court in step three of the Batson analysis, used an erroneous basis, that the defendant must be the same race as the juror, to deny the Batson challenge to Mr. Rodriguez. Therefore, this Court must accept the petition for certiorari to correct an injustice to the juror, the Petitioner, and to assure all potential jurors that none will be discriminated based upon the color of their skin.



/s/ Daniel Mason

303-880-7189

175 Commander Drive
Erie, CO 80516