ORIGINAL

No. 23-7167

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IN THE

SUPREME COURT OF THE UNITED STATES

JOSEPH LOCHUCH EWPLAN — PETITIONER
(Your Name)

vs.

Edward Stemler — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF WASHINGTON
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOSEPH LOCHUCH EWPLAN
(Your Name)

WASHINGTON STATE PENITENTIARY
(Address)

WALLA WALLA, WA 99362
(City, State, Zip Code)

(509) 525-3610
(Phone Number)

Question's presented

This courts precedent in the united states v. Flowers v. Mississippi, 139 sct. (2019), Kentucky v. Batson, 476 U.S. 79,

Miller-elv.dretke, 545 U.S. 231

Esparza-Gomez, v. united states, 422f.3d897 (atlar 2005)...(1)

Whether the defendant has been denied the right to trial by an impartial jury. when racial discrimination in jury selection compromises the right of trial by impartial jury. which undermines public confidence in adjudication; U.S. supreme court consistently and repeatedly reaffirms that racial discrimination by the state in jury selection offends the equal protection clause; fourteenth amendment.

(2) Whether, the defendant, has established prima facie case of intentional discrimination under Batson with respect to (removal) of a single last black juror #21 racially cognizable, be a use states waiver of all allotted peremptory strikes that resulted in removal of known juror #21 without cause, and state failure to provide race-neutral explanation.

(3) Whether or not struck jury system, peremptory challenges. 13r07cea. Ferguson, Jr, Washington practice criminal procedure sect. 4002 at165(1997) was treated the same as exercises of peremptory strike, against a single last black juror 21 racially cognizable group.

Questions

Q1

Mr.Ewalan, asks the court which comprises of all nine justices. Whether or not the state can wave all its allotted peremptory strike challenges, but intentionally failed to provide race-neutral reason, when a single last black juror #21 racially cognizable is excluded without cause. violates equal protection, under the fourteenth amendment U.S. constitution and wash. art, 1. Section 21,22

Note: Washington state statue RCW 2.36.100 prohibits exclusion of black prospective jurors from venire without cause or hardship.

Q2

will an objective observer view race as a factor in the exclusion of a single last black juror 21 from venire without cause, which Washington state statue 2.36.100 prohibits removal without hardship.

Q3

If this is all above is true. Mr.Ewalan's established a prima facie case, of racial discrimination in jury selection. In regards to juror #21 racially cognizable group.

Q4

Does, Erickson and Jefferson constituted significant and material changes in the

law that requires retroactive application. Exception to one year time bar RCW 10.73.100 (6) where courts judicial precedent. Held: when determing whether a rule applies retroactively, Washington state courts apply the test articulated by the united states supreme court in under a new rule applies retroactively on collateral review only, if it is a new substantive rule of constitutional law or a water shed rule of criminal procedure. A rule is new for purposes of ateague analyst if it breaks new grounds or impose new obligation.

Q5

Did the trial court, court of appeals division 1 acting chief judge, and Washington supreme court acting chief commissioner abused its discretion for failure to intervene sua sponte?

Q6

Is the case of national importance, involving united states constitution. Equal protection, fourteenth amendment, why a single last black juror 21 was excluded from venire without cause.

Racial discrimination is huge in this country, and the rest of the world. People with practice get fired from positions of jobs, even criminally charged if physical harm results.

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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WASHINGTON CONSTITUTION

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[X] reported at MARCH 6, 2024; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the APPEALS DIVISION 1 court appears at Appendix B to the petition and is

[X] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was 12/15/2023. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied on the following date: 3/6/2024, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Equal protection clause of fourteenth amendment are violated by the state constitutional provision which uses peremptory challenges to remove racially cognizable group without cause.

Equal protection clause forbids prosecutor to peremptory challenge potential jurors solely on account of race or on the assumption that black jurors as a group will be unable to impartially consider the prosecution case against a black defendant. Batson v. Kentucky, 476 u.s. 79 (1986); A same-race limitation on the such defendants right to object would conform with neither (() The substantive guarantees of the equal protection clause of federal constitutions fourteenth amendment and the policies underlying a federal statuary provisions ("Originally enacted in the civil rights act 1875 pursuant to the fourteenth amendments enabling clause, and later codified at 18 u.s.c.s. 243") - which makes a criminal offense to exclude persons from jury service on account of the race-far, under state peremptory challenges to exclude otherwise qualified and unbiased persons from jury solely based on race.

The federal statuary prohibition against discrimination in jury selection. Civil rights act 1875, Later codified at 18 u.s.cs. 243 Makes race neutrality in jury selection a visible, and inevitable measure of the judicial system own commitment of the command of the constitution, The court are undetr affirmative duty to enforce the strong statuary and constitutional policies embodied in that prohibition.

IN THE

SUPREME COURT OF THE UNITED STATES

STATEMENT IN tHE CASE

In the "BATSON" the u.s. supreme court held that" states privileges to strike individual jurors through peremptory challenges, is subject to the commands of the equal protection clause. 476.u.s.at.89.

Here the state argues, having not exercised peremptory because waiver of allotted peremptory, is not a direct strike of a single last juror racially cognizable group. But states argument is contrary to the supreme court recently held that jury selection procedures may give rise to inference of discriminatory intent; even though the prosecutor is not actively striking potential jurors. In MILLER - ELV.DRETKE, 2332-33 (2005)

Other factors also corroborate, claim of racial discrimination (i) prosecutors racial misconduct in jury selection (2) Trial court abused of discretion. The allegations stem from 11/12/2015, incident during children exchange when Ms. Mwaniki, Grabbed Mr. Ewalaon licensed firearm; during struggle the gun discharged pointing to the ground. Fortunately no one injured.

The issue before the court is, a single claim of racial discrimination in jury selection.

The state presented no evidence to prove assault in the first degree assault domestic violence with firearm, the state does not dispute this fact, when the

STATEMENT OF THE CASE

jury returned a question regarding element in the first and second degree assault. See (EXHIBIT 1) vrp (JULY 11 2016) PG. 452 at 14-16. Prosecutor. Quote" I was trying to argue that definition is not enough for first degree assault see. Also PG 453 at 21-23. My argument was trying to point out that concern that finding he assaulted Ms. Mwaniki, was not sufficient for first degree assault.

Please note: Mr. Ewalan is not arguing in sufficiency of evidence. The evidence presented here as (EXHIBIT 1) Only points out the fact that prosecutors attempt to prove their case failed. and disparation led them to resort to one thing, a dirty, evil discrimination in jury selection; Here an objective observer will view race as a factor in the removal of a single last black juror # 21 racially cognizable.

Mr. Ewalan, claim is premised on racial discrimination in jury selection, under 8 u.s.c selection 1326 (a). Defendant establishes a prima race case of intentional discrimination under batson with respect to removal without cause of a black juror 21 racially cognizable, because prosecutors waiver of all allotted peremptory challenge resulted in the removal without cause of a black juror 21 known under struck jury system; so that a jury composed only of white persons was selected. This jury convicted Mr. Ewalan, and sentenced him to 18 years in prison see. A copy of judgement and sentence. (APPENDIXE) E

PROCEDURAL BACK GROUND ON NEW CLAIM

STATEMENT OF THE CASE

On April 19,2023, Mr. Ewalan filed motion based on (State v. Blake. 2020 wash. Lexis4)., Based on a single claim of racial discrimination in jury selection a new claim. The court clerk converted the motion to a successive personal restraint petition. Under rcw 10.73.140. and transferred the petition to court of appeals division 1. See. Court E-mail letter (EXHIBIT 2) Notifying Mr. Ewalan filing April 20, 2023. And April 26, 2023 (EXHIBIT 2) Appeals court letter on May 12, 2023. The court requested the prosecutor to respond, See (APPENDIXE A) Brief. Mr. Ewalan replied, then the court notified the parties the the petition has been submitted to acting cheif judge for final determination, See (EXHIBIT 4) July 21, 2023 E-mail letter.

On November 17, 2023. the acting cheif judge dismissed the petition, alleging the state did not directly struck a black juror 21. See. (APPENDIX B) Court opinion. Mr. Ewalan filed motion for reconsideration, the court converted. The motion for reconsideration, into motion for discretionary review. Forwarding the motion to Washington State Supreme Court, See (EXHIBIT 5) supreme court E-mail letter 11/30/2023.

On December 4, 2023. Mr. Ewalan, filed motion objecting court decision converting the motion for reconsideration to motion for discretionary review. See (EXHIBIT 6) Briefs, on December 4, 2023, the court clerk rejected Mr. Ewalans motion, see (EXHIBIT 6). Court E-mail, December 4, 2023.

On December 6, 2023. Mr. Ewalan. Filed official motion for discretionary review,

STATEMENT OF THE CASE

see (EXHIBIT 7) on December 13, 2023 Mr. Ewalan filed emergency motion, asking the court department to resolve a question; whether or not a defendant established a prima race case of intentional discrimination under Batson with respect to removal without cause of juror 21, because prosecutors waiving all his allotted peremptory challenge that resulted to removal of a single last black juror 21 racially cognizable, can be treated the same as exercises of peremptory strike of juror 21. Furthermore prosecutors failure to provide race-neutral explanation; Unfortunately the deputy acting court commissioner terminated review, and denied motion for emergency, before the departments decides emergency motion. however, asked Mr. Ewalan to filed motion to modify deputy acting commissioners rulings dismissing the review, see Court opinion (APPENDIX C) 12/15/2023. On December 27, 2023 Mr. Ewalan filed motion to modify commissioners, see (EXHIBIT 8) Court letter, December 28, 2023, He also filed supplemental motion, see (EXHIBIT 9), 1 and 2
on March 5, 2024. Supreme court issued an order denying motion to modify commissioners ruling, see (APPENDIX D)

IV. ARGUMENT.

Mr. Ewalan, argues, Washington state highest court opinion denying review is unreasonable, and contrary to this court precedent, Its also precedent, ninth circuit and u.s. circuit courts precedent- Which articulates, criminal defendant have the constitutional right to a fair and impartial jury. U.S. const.amend.xiv; wash const, selection 21,22.

STATEMENT OF THE CASE

U.s. supreme court has jurisdiction; It is perfectly consistent with u.s. supreme court, practice to review a lower court decision in order to ascertain whether a federal question may be implicated in an unreasoned summary order from a higher court where the state court opinion fails to yield precise answer as to the grounds decision, The court may be forced to turn to other parts of the record, such as pleadings, motion and trial court rulings to determine if a federal claim is so, central to the contrary as to preclude resting the judgement on independent and adequate grounds. (Roberts, ch.j, and kennedy, Ginsburg, Breyer, sotomayor-and kagan, jj), Foster v. chatman, 578 u-s 488 (2016), Arbough v. ho corp, 546 u.s.500, 514, 126 s-ct.1235, 163 L Ed.2d 1097 (2006).

This how, everything unfolded. The states drew up its jury list, pursuant to neutral procedures of all around jurors called for citizen civil duty, only one was black. But the state used waiver of allotted peremptory challenge to remove without cause the single last black juror 21 racially cognizable group; furthermore failed to provide race-neutral explanation; united states v. Esparza-Gonzalez, 422 F.3d 897 (9th cir 2005)

The United States constitution forbids striking even a single prospective juror for a discriminatory purpose. A state may not discriminate on the basis of race when exercising peremptory challenges against prospective jurors in a criminal trial, see. Flowers v. MISSISSIPPI, 139 s.ct.2228 (2019) (Kavanqugh,j, joined by Roberts, ch.j, and Ginsburg, Breyer, Alito, Sotomayor, and kagan, jj).

The state of Washington in Snohomish county superior court draw up its jury list

STATEMENT OF THE CASE

pursuant to race neutral procedures of about 85 in total only one (1) was black African American juror 21. The state used struck juror method of voir dire where prosecutors are assigned consecutive numbers. In the instant case it was 1-85, see. vrp (Juky 11, 2016) pg-10(2) The prosecutor interviews the jurors as a group for a period of time set by the trial court. Here the court categorized jurors in two distinct groups, those in the juror box, and those in the audience, vrp (July 11, 2016) pg 9-10. The court started off by questioning jurors going back and forth between those in jury box and those in audience. Before turning over to the prosecutor, vrp (July 11, 2016) pg 10 at 25., pg 11-18 Then the court continued questioning pg 18 at 18-25, Through pg 21-27. Defense counsel joined in the questioning jurors and excusing some; prosecutor excused none.

The trial court allowed both parties 20 minutes each to question jurors, see vrp (July 11, 2016) pg 41 at 10-13 and pg 42-60 at 3-4. The court went on a break pg 60-62. Then resumed. Defense counsel started her 20 minutes interviews, vrp (July 11, 2016) pg 62 at 1-25, and pg 63-76 at 9-16-22.

Then the court granted both parties 10 minutes additional, starting with a prosecutor; see vrp (July 11,2016) pg 76 at 16. Through pg 85 at 1-22: Then defense counsel started her 12 minutes, see-vrp (July 11, 2016) pg 85 at 23-25 and pg 86-93 at 22.

Mr. Ewalan, argues the defense counsel excused most of the jury for cause, on the other hand the prosecutor excused just two (2) juror 7 and 17, see, vrp (July 11, 2016) pg 94 at 1-14. Defense counsel continued to excused with cause, vrp (July 11, 2016) pg 94 at 16-25, and pg 95-96 at 1-3. The state continued to accept the

panel, in order to not change the jury box who are all white.

The court allotted each party seven (7) peremptory strike. Challenges, see vrp (July 11, 2016 pg 96 at 6-14. Starting with prosecutor in order to correct jury composition seated. The court asked juror 15 to take open seat. The state accepted the panel. The defense excused juror 12. The court asked juror 16 to take open seat. The state accepted the panel. The defense excused juror 16. The state continued to accept the panel. Defense excused juror 11. The court asked juror 19 to take open seat.

The court finally realized the prosecutor is not actively exercise peremptory challenge,, idly accepting the panel, but prosecutor, was not willing to exercise his allotted peremptory, despite being asked to at least exercise one, he literally begged the JUDGE to leave him alone; in order not to change the composition of the jury box with intentions to discriminate, see, vrp (July 11, 2016) pg 96 at 12-25, pg 97- at 1-23. Then the court asked defense counsel to exercise her fifth challenge. vrp (July 11, 2016) pg 99 at 2-3. Counsel accepted the panel, understanding prosecutors racial discrimination intent in jury selection. Accepting the panel; Because, if she exercises her two last allotted peremptory, the 12 juror composition will change, since juror 21 black last juror racially cognizable group will change the jury seated composition. Mr. Ewalan, argues, the court struck jury system allows parties who intentionally want to remove jurors for discriminatory reasons to camouflage these removals by unseating jurors through waivers of peremptory strikes, rather than resorting to direct removals by using peremptory strikes.

Mr. Ewalan, argues, The prosecutor waived all his allotted peremptories, with intent to discriminate juror 21 single last in venire, racially cognizable group. Its clear under the struck jury system, the waiver of peremptory challenges, just like the exercise of these strikes, allows those of " A mind to discriminate to do so, failing to provide protection against removal of identifiable jurors, when such removals is achieved by waiver, rather than exercise of peremptory strike, would frustrate the essential purpose of "Batson" to eliminate the race-based selection of jurors-and would violate the equal protection rights of both defendant and prospective jurors under struck juror system, waivers of peremptory strikes.

Mr. Ewalan, argues, as to specific Batson, challenges with the last challenged, juror 21 racially cognizable, establishes a prima facie case, Mr. Ewalan has shown (1) He is a member of cognizable group (2) The prosecutor use of waivers peremptory challenge removed member of such group. (3) Totally of the circumstances gives rise to inference that the prosecutor excluded juror based on race; United States v. Esparza, 422 F.3d 897 (9th cir 2005), Batson v. Kentucky, Fernandez v. Roe, 286 F.3d 1073,1077 (9th cir 2002),United States v. Chinchilla, 874 F.2d 695,698 (9th cir 1989).

Under struck jury system, both the exercise of a peremptory strike and the waiver of a strike remove a single, clearly identifiable juror. If a peremptory strike is used, the striking party directly removes an identifiable juror, and no new juror is seated. Similarly, if a party waives a peremptory strikes in the struck jury system, and identifiable juror (The one with the highest juror number,"In

this case juror 21) is removed and no new juror is seated, see. (Washington practice and procedure sec. 4002 at 165).

For this reason, the struck jury system has long been criticized for allowing the racial engineering of juries, see. United States v. Blouin, 666F.2d 796,798 (2d cir 1981). (Noting that the struck jury system might "Increase the opportunity to shape a jury a long racial group or other class lines. Its easier, however, to camouflage discrimination with the struck jury system, because the demographics of the entire panel will be know from the start, making easier ~~to pick~~ to pick and choose; Despite the power the struck jury system gives to parties to shape the composition of the jury.

Mr. Ewalan, argues, he has established a prima facie case, of racial discrimination in jury selection, when the state used waivers of peremptory challenges to removal the single last black juror 21 racially cognizable group.

But the state, and the highest court unreasonable and erroneously asserts, the state did not use any peremptory challenge, see. State respond brief (Appendix A) pg 16 of 17, see Also court of appeals acting chief judge opinion dismissing opinion (Appendix B) pg 3 paragraph 1, So is supreme court acting deputy commissioner (Appendix C) pg 2. And highest court department 2 (Appendix D) denying petition for re-hearing.

The state, further, asserts, it just happend that by juror 19, the court reached all of the necessary jurors for the case, see. (Appendix A) pg 13 last paragraph. This argument is contrary to the supreme court recently held that jury selection

procedures may give rise to an inference of discriminatory intent even though the prosecutor is not actively striking potential jurors. In Miller-El v. Dretke, 162 L .Ed.2d 196,125 s ct. 2317, 2332-23 (2005).

Its true the government is not required to exercise its peremptory challenges and its well within its rights to waive its all seven (7) peremptory challenge (Observing that "The right to challenge a given number of jurors without showing cause is one of the most important of the rights secured to the accused he may exercise that right without reason or for no reason, arbtrarily and capriciously, but even this capricious right is limited by equal protection requirements, and when a waiver of peremptory strike creates an inference of intentional discrimination, the party waiving waiving that strike must provide a race-neutral explanation for its decision to effectively remove a specific juror;

The court held; In United States v. Esparza, 422, F.3d 897, quote " Our holding simply requires the prosecution to provide race-neutral reasons for a waiver of peremptory strike under struck jury system. When defendant established a prima facie showing of intentional discrimination [xx19] Based on the challenged waiver. Mr. Ewalan, argues, the state didnt provide pace-neutral explanation, for all seven (7) allotted waivers of peremptory challenge.

Equal protection clause forbids a prosecutor to peremptorily challenge potential jurors soley on account of their race, or on the assumption that black jurors as a group will be unable to impartially consider the prosecution case against black defendants (Opinion by, powell, j, joined by brennan, White, Marshall, Blackmun, Stevens, and O'Connor,jj.

Furthermore Washington state, statute, RCW 2.36.100. Further restricts a trial court from excusing other wise qualified jurors "Except upon showing hardship, extreme inconvenience, public necessary, or other reason defense sufficient by court Mr. Ewalan, argues juror 21 black racially cognizable group was removed without excuse by the state, contrary to the state own constitution. RCW 2.36.100.

Juror 21 was excluded without cause from jury venire is sufficient to establish a prima facie case, of racial discrimination, in violation of the equal protection clause of federal constitutions, fourteenth amendment, under Batson v. Kentucky, 476 u.s79 (1986) (Stevens, j, joined by Rehnquist, ch, j, and O'conner, Sclla, Kennedy, Souter, Ginsburg, and Breyer, jj).

Furthermore Washington state highest court, held: in city of Seattle v. Erikson, 188 wn.2d 721 (2017)-That the states use of a peremptory challenges strike the last single black juror remaining venire member of cognizable racial group is sufficient to establish prima facie discrimination requiring a full Batson analyst (Batson v. Kentucky, 476 u.s. 76 (1986) And the holding in State v. Jefferson, 192 un.2d 225 (2018)-Which changed the third step of Washington "Batson" inquiry to ask whether an objective observer could view race, or ethnicity as a factor in the use of a peremptory challenge, instead of whether the state purposefully discriminated on the basis of race-apply retrocactively for purpose of the significant change in the law "Exception of rcw 10.73.100 (6) To one-year time bar of rcw 10.73.090 (1) on filing a personal restraint

petition.

Although the holdings of Erikson and Jefferson necessary announced rules with procedural component, they also constituted a new substantive rules of constitutional law by safe guarding the constitutional rights to an impartial jury trial, equal protection, and due process.

Furthermore, in city of Seattle v. Erickson, 188 wn.2d 721, The reviewing court adopted a bright-line rule that trial court must recognize a prima facie case of discriminatory purpose when the sole member of a racially cognizable group is peremptory struck from a jury, in which case the trial court must engage in a full Batson analysis. Further, in 2017, and in 2023, in re pers restraint of Rhone, 1 wn.3d 572 (2023) The court held that Rhones prp is not time barred because Erickson is a significant, material, and retroactive change in the law, and transfered the petition to the supreme court as successive. In re pers. Restraint of Rhone, 23 wn.App.2d 307, 313,319-22, 516p.3d 401 (2002) (Citing RCW 10.73.100 (6). We retain the matter for hearing. Later granting relief to Rhone. (May 11, 2023) Remaining for new trial. (Gonalez, c.j.,and Johnson, Madsen, Stephens, Gordan Mcloud, Yu, Montoya-Lewis, and Whither,jj.) concur.

Therefore, Mr. Ewalan, argues, Washington state highest court denying review. Is first contrary to its own precedent and this court precedent and other u.s. Courts circuits. Because, Ewalan has (1) Shown purposeful racial discrimination, (2) Establishing prima facie case, in racial discrimination. (3) Washington state changed the third step of Washington "Batson" Inquiry to ask whether an objective observer could view race as a factor in removal of juror 21 racially cognizable

in the use of waivers of allotted peremptory challenge, instead of whether the state purposefully discriminated on the basis of race-apply retroactively for purpose of the significant change in the law "Exception of Rcw 10.73.100 (6) To the one-year time bar of rcw 10.73.090 (1) On filing prp.

Therefore the state, argument, Mr. Ewalan, petition is time-bar, is unreasonable and erroneous, so is argument that Mr. Ewalan, failed to establish a prima facie case of racial discrimination; Which is contrary to Washington state highest court precedent. And this court precedent, in Batson v. Kentucky, 476 u.s. 79 (1986), Washington v Davis, Supra at 239-242, Alexander v. Louisiana, at 632, Jones v. Georgia, 389 u.s. 24,25 (1967). The state must demonstrate that permissive racially neutral selection criteria and procedures have produced the monochromatic results; Hernandez v. Texas, 347 u.s. 475 (1954), Swain v. Alabama, 34, 43-44, 309 p3.d 326 (2013), United states v. Esparza, 422 F.3d 897 (2005).

Washington state has this thing called clarkline-which encourages parties to cure jury-selection errors with their peremptory challenges. This ensures that peremptory challenges are properly used to promote a defendants right an "Impartial jury and a fair trial" In the first instance. State v. Lupastean, 200 wn.2d 26 ,48, 513 p.3d 781 (2022); Many states apply similar rules, there are good reasons to require parties to use their available peremptory challenges to cure jury-selection errors, and prevent unnecessary re-trials, Ross, 487 u.s. at 90. This helps to ensure that peremptory challenges are used to promote, rather than inhibit the exercise of fundamental constitutional rights. Lupastean, 200

w.n.2d at 52. 37 States require a defendant to use their peremptory challenges curatively. Georgia v. Mccollum, 505 u.s.42. Strauder, at 309; State v. Harrison, 26 w.n.App.2d 575) (2023.

U.S. Supreme court, held: In Johnson v. California, 545 u.s.162 (2005), Quote" A prima facie case of discrimination can be made out by offering a wide variety of evidence, so long as the sum of the proffered facts gives rise to an inference of discriminatory purpose, a defendant may establish a prima facie case of purposeful discrimination in jury selection of jury solely on evidence concerning the prosecutors exercise of peremptory challenges at the departments trial. This court is required to retain the case, review it, remand and reverse for new trial. (2) Prosecutors racial misconduct in jury selection. And (3) trial court abuse of its discretion; see. Batson v. Kentucky, 476 u.s. 79,90 L.Ed.2d 69, 106 s ct 1712 (1986). (Stevens, j, joined by Rehnquis ch.j and O'connor, Scalia, Kennedy, Souter, Ginsburg, and Breyer, jj).

(2) Prosecutors racial misconduct in jury selection Mr. Ewalan, argues, The prosecutor engaged in racial manipulation and profiling: As recently supreme court have decisions, have illustrated, undue attention on the subject of nationality, ethnicity or race can interject into a case and provide grounds for reversal, State v. Bagby, 200 w.n.2d 777.No-99793-4-,Slip.op. (Wash. January, 19, 2023)

The prosecutor, Edward Stemler, started off, by manipulation background and career Quote "Both the defendant and Ms. Mwaniki, are from Kenya. I want to know

if anyone has spent time in Kenya. After distinguishing Mr. Ewalan nationality, not an American,he proceeded to question a single last black juror 21. She answered. I have been to Africa, my family is from Egypt, and I grew up going back and forth a little bit, see. Jury voir dire, vrp (July 11, 2016) pg 79 at-25, pg 80 at 1-4. Prosecutor, continued, Quote "So what I want to ask, and this is hard to answer in the abstract, anybody have any particular difficulty understanding "People" Who speak with an accent? Dose anybody have hearing issues in away that would make it difficulty for them, harder than normal to hear someone with accent speak or understand what they are saying?

Anyone more familiar than other people probably would be with the Kenyan culture, when it comes to marriage or gender roles, male, female, anybody have specific knowledge about that? No.

Mr. Ewalan, argues, despite prosecutors lengthy barrage racist stereotype, nobody answered him; Furthermore right before he launch into racial stereotype, he knew what is about to come-out of his mouth is racist, That is why he warned white jurists, in advance, This is hard to answer,see. vrp (July 11, 2016) pg 80 at 5-15; As if the above is not enough , he launched into Mr. Ewalan prior career; Prosecutor, Quote "The defendant was a police officer in Kenya. pg 80 at 16-18. The prosecutor, continued to question juror 21. vrp (July 11, 2016) pg 83 at 9-25, pg 84 at. MR. Stemler: Quote "Juror 21 the juror summarized her answer, by stating, she was born here, so very Mericanized, but culturally my background is very different. The prosecutor, asked if she can fairly decide the case, when she responded, yes. Adding, She teaches her two kids sort of impartiality and

diplomacy, Because? some thing that was culturally accepted in this country are not culturally acceptable to us, so I have to teach them to navigate that a little bit- I am constantly balancing things out, see. pg 83-84.

Mr. Ewalan argues, the white jury understood the prosecutes was engaged in race, nationality, accent, people, culture, all of it was irrelevant to the case, rather. The prosecuter line of questioning was designed to distinguish, Mr. Ewalan skin of color, who was facing an all selected white jury telling them, Mr. Ewalan is from other "People" From another Nation, his culture is different from our's, and he has accent that is not for the whites.

Mr. Ewalan, argues, the studies have shown even the simplest racial cues can trigger implicit biases and affect the way jurors evaluate evidence and "Subtle" manipulation of defendants background, i-e. Nationality, race-ethnicity and culture, career such cues can affect jurors decision-making more so than explicit reference race; see, Prasad, Supra, at 310 1, by calling attention to Mr. Ewalan, Nationality, race, Ethnicity, culture and career, the prosecutor played openly, in an open court into stereotype that to be an American is to be white, and to be black is somehow... Especially to those with accent, somehow " Foreigner" coming here to change, blood and to bring diseases; and to commit crime. see. Claire Jean Kim, President Obama and Polymorphuos" Others in u.s. political discours, 18 Asian am L.J. 165,168,170 (2011)

Here, when the prosecutor, referred to Mr. Ewalan, nationality, ethnicity, race,

culture, gender rules, it primed the all white jury to pay attention to this racial difference, thereby activating any anti-black implicit biases, they may hold.

For example, juror 13, who was seated to deliberate Mr. Ewalan case, said this Quote "Hate to say the N-Word" A word associated with race stereotype "Beating, and hunting blacks". The court did not inquire nor defense counsel, as to what she ment, hate to say N_Word, see. vrp (July 11, 2016) pg 70 at 1.

Prosecutor, asking all white jurors, about Mr. Ewalan's nationality, ethnicity, race, "people" with accent, culture gender rale, is having to interpreted the white prosecutor, Mr. Edward Stemler. Questions as referring to Mr. Ewalan nationality, race, ethnicity, but also drew needless attention to the defendants culture, race, activating Anti-Black implicit biases, State v. Burch, 65 wn.App. 828.

As recently supreme court decisions have illustrated, undue attention on the subject of nationality, ethnicity, race, can inject prejudice into case and provide grounds for reversal, State v. Bagby, 200 wn.2d 777 (2023) Unnecessarlly emphasising the defendants race, constituted prosecuters misconduct, Henderson v. Thompson, 200 wn.2d 417, 421-22, 518 p.3d 1011 (2022). Court held (If race bias is a factor in the decision of a judge or jury, that decision does not achieve substantial just, and it must be reversed. Here Mr. Ewalan, has demonstrated one of the evidence to establish a prima facie case, of racial discrimination adding to prosecutors use of peremptory challenge to remove a single last black juror 21 from venire.

Finally, Mr. Ewalan, argues the trial judge abused its discretion, the threshold issue here is whether a trial court, as opposed to a party, may raise sua sponte, A Batson issue. The trial judge here correctly observed that the purpose of the "Batson" case and its progeny is to protect the rights of jurors to participate in our judicial system free from the taint of invidious discrimination.

The principle applies [A 765] with equal protection force to defendants in criminal cases and other litigants. State v. Evans, 100 wn.App. 757;, Flowers v. Mississippi, 139 s ct 2228 (2019), U.S. supreme court held: The job of enforcing the "Batson" rule rests first and foremost with trial judges. Americans trial judges operate at the front lines of American justice. In criminal trials, trial judges possess the primary responsibility to enforce "Batson" And prevent racial discrimination from seeping into the jury selection process (Kavanaough, j, joined by Roberts, ch.j and Ginsburg, Breyer, Alito, Sotomayor, and Kagan, jj) Other courts considering the question have recognized that a trial judge has a unique responsibility to ensure that these rights are protected in our judicial system.

In Lemley v. State [20] The Alabama court of appeals held that a trial judge is authorized [xxx13] To conduct a "Batson" hearing even in the absence of an objection by a party, The court stated its rationale as follows. Because racial discrimination in the selection of jurors cast doubt, on the integrity of judicial process; Rose v. Mitchell, 443 u.s. 545, 556, 99 s.ct 2993, 3000, 61 L.Ed.2d 739 (1991), The trial judge, as the presiding officer of the court,

should take the [xx379] necessary steps to ensure that discrimination will not mar the proceedings in his court room.

Quoting from Powers v. Ohio, 22, The court also said: Active discrimination, during the jury selection process condones violations of the United States constitution within the very, institution entrusted with its enforcement, and so invites cynicism respecting the jury neutrality and its obligation to adhere to the law.

The cynicism may be aggravated if race is implicated in the trial as with an alleged racial motivation of the defendants or a victim. Addressing the same issue in Maryland, the Maryland court of special appeals also held that a trial court may, in the exercise of discretion, raise a "Batsen" challenge, sug sponts. In the words of the court, a trial judge need not sit idly by when he or she observes what the perceived to be racial discrimination in the exercise of peremptory challenges. He is clearly to intervene; In People v. Whaley, one of the judges of appellate court in Illinois noted. The apparance of justice is not fulfilled if the trial court acquiesces in, condons or fails to preclude attempts by the prosecutor to exclude blacks from the jury soley because they are black. The trial court cannot sit idly by in such instances and become an accomplice to racial discrimination in the court room; rather, it must insure that justice prevails and that the appearance of justice is demonstrated in the trial that is taking place before those in attendance.

The observation of these two jurist and the statistical data suggest that the

allotted peremptory challenges, is just like the exercise of these strikes, allows those with "Mind to discriminate to do so, because, both the exercise of peremptory strikes and the waivers of alloted peremptory challenges remove a single, clearly identifiable juror, if a peremptory strike is used, the striking party directly removes an identifiable juror, and no new juror is seated: Similarly, if a party waivers a peremptory strikes, an identifiable juror (The one with the highest juror number "Juror 21") is removed and no new juror is seated this. This allows the racial engineering of jurors.

Mr. Ewalan, argues he has established a prima facie case, of racial discrimination in jury selection, therefore the petition is not time-barred: Washington highest court held, in Erickson, Jefferson, And Rhone, necessarily annonced rules with procedural components they also constituted a new substantive rules of constitutional law safe-guarding the conatitutional rights in 2017, and 2023 in Rhone, 1 wn.3d 527 (2023), holding. Rhone, "prp" is not time-bar because, Erickson is significant, material, and retroactively change in the law.
The u.s. supreme court also held: When a new substantive rule of constitutional law controls the out come of a case, the constitution requires state collateral review courts to give retroactive effect to that rule. Teagues, conclusion establishing the retroactively of new substantive rule is best, understood as resting upon constitutional premises, that constitutional command is like all federal law, binding on state courts (Kennedy, j joined by roberts, ch, j, and Ginsburg, Breyer, Sotomeyor and, Kagan, jj).
Mr. Ewalan successive "prp" is timely, because it falls under rcw 10.73.100 (6)-

problem that "Batson" was intended to address has not been eliminated. But whether or not one agrees with these observations, judges still have responsibility to ensure that the proceedings over which they preside are fair both in actuality and in perception. As the Alabama court said, to permit invidious discrimination during jury selection is to permit violation of one of the most basic laws, in the very institution entrusted to enforce the law. Accordingly when trial judge presides over a trial where the peremptory challenge is being used in an invidiously discriminatory way, that judge may, in his or her discretion, act in such situation runs the substantial risk of casting doubt on the fairness of judicial process.

Taking appropriate [xx380] actions in such situation promises respect for the law. And taking such action is consistent with courts considerable discretion in conducting judicial proceedings in [xxx17] away that is fair to all. In short, a judge need not sit idly by while the right to participate in our judicial system, free of biase, is infringed by the discriminatory use of peremptory challenges. "Batson" court held that a defendant can make out a prima facie of discriminatory jury selection by "the totality of the relevant facts': mr.Ewalan. has shown by (1) about a prosecutors conduct during the defendant own trial. 476 u.s. at 94, 90 L.ed.2d 69,106 s.ct. 1712. (2) Trial court abuse of its discretion → furthermore, the u.s. supreme court recently held that jury selection procedures may give rise to an inference of discriminatory intent, Even though the prosecutor is not actively striking potential jurors, see. Miller-El v. Dretke, 162 L.Ed.2d 196, 125 s.ct. 2317, 2332-33 (2005).

CONCLUSION

Mr. Ewalan, argues waivers of allotted peremptory challenges, is just like the exercise of these strikes, allows those with "Mind to discriminate to do so, because, both the exercise of peremptory strikes and the waivers of alloted peremptory challenges remove a single, clearly identifiable juror, if a peremptory strike is used, the striking party directly removes an identifiable juror, and no new juror is seated: Similarly, if a party waivers a peremptory strikes, an identifiable juror (The one with the highest juror number "Juror 21") is removed and no new juror is seated this. This allows the racial engineering of jurors.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Ginsburg, Breyer, Sotomeyor and, Kagan, jj).

Mr. Ewalan successive "prp" is timely, because it fails under rcw 10.73.100 (6)- Its based on a significant change in law announced in Erickson, Jefferson, and Rhone that retroactively, see. Montgomery v. Louisiana, 577 u.s. 90 (2016).

Its clear Mr, Ewalan was denied due process by the state of Washington, highest court, conclusion, conflicts with its own precedent, this court precedent, and other u.s. circuits, and the applicable laws cited above, because its the right do.

The petition for a writ of certiorari should be granted respectfully.

I, here by certify that above i9s correct and true, to the best of my knowledge, and declare under penalty of perjury under, federal laws.

x _____

(Affiant signature)

Subscribed and sworn before me this 23rd day of March 2024.

x Venetta E. Jackson

(Signiture)

Notary public in and for the state of Washington, residin, in WALLA WALLA, county

my commission expires, April 1, 2025

VENETTA E. JACKSON
COMMISSION EXPIRES
NOTARY
Comm No.
56214
PUBLIC
04/01/2025
STATE OF WASHINGTON

STATEMENT OF THE CASE

Reasons for granting the petition

Petitioner, respectively, ask the court to grant, certiorari for the following reasons: (1) The united states constitution forbids striking even a single prospective juror for discriminatory purpose. considered of national importance, resolved by implication by this court: racial discrimination in jury selection.
(2)The Washington state highest court opinion denying review is in conflict with this court precedent, ninth circuit and other U.S. circuits.
(3)Washington state highest court, err, by concluding the defendant failed to establish a prima facie case, of discriminatory intent, under Batson; when prosecutor waived all his allotted peremptory challenge, resulting to removal of a single black juror 21 without cause from Venire.
(4) This court, has jurisdiction to hear petition for a writ of certiorari under section 1257. Final judgements or decrees rendered by the highest court of the state in which a decision could be had, may reviewed by the U.S. supreme court by writ of certiorari, see, Hopfmann v. Connolly, 471 U.S. 459.
(5)Article iii of the constitution grants this court authority to adjudicate lagal disputes in the context of "cases" "controversies", and racial discrimination in jury selection harmed not only defendant, but also excluded juror without cause, and entire community; see, deposit guaranty Nat-Bank v. Roper, 445 U.S. 326, 332-336,. 100 s.ct. 1166, 63. l. td, 427 c1980