No. 24-

IN THE

Supreme Court of the United States

MANINDER SINGH, *et al.*,

Petitioners,

v.

NISSAN MOTOR COMPANY, LTD.;
AND NISSAN NORTH AMERICA, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

During voir dire, the trial court granted the defendant's peremptory challenge against Dinyal Khan, a man born in Pakistan, after expressing concern that he might "align" with Petitioners, persons of Indian ancestry who practice Sikhism, because they were members of "the same or similar type of race." The trial court described its concern that Mr. Khan "happens to be a different race that could be aligned with the Sikh race" as its "biggest problem." It speculated that the defendant's witnesses would probably be "Asian or white," and questioned whether Mr. Khan might "be absolutely against those individual[s] because they're Asian and white, and they're not his race and that [Petitioners] gain favor with him because they're same or similar type of race?"

The Supreme Court of Nevada denied Petitioners' *Batson v. Kentucky*, 476 U.S. 79 (1986), claim on appeal without considering its merits. Following the majority position of a split that has divided lower courts for nearly forty years, it held that any government-sanctioned discrimination was harmless because Mr. Khan was only slotted to be an alternate and would not have deliberated, meaning his absence did not change the trial's outcome. The question presented is whether government-sanctioned discrimination against a potential alternate juror requires reversal without a showing of prejudice, or whether courts can review such claims for harmless error.

PARTIES TO THE PROCEEDING

Petitioners Maninder Singh, Gurdev Singh, Surjit Kaur, Lakhvir Hans, and Sheryl Bell are individuals and were plaintiffs-appellants below. Respondent Nissan Motor Company, LTD, and Nissan North America, Inc., were defendants-respondents.

RELATED PROCEEDINGS

Singh vs. Nissan Motor Company, Ltd.,
No. A751024
Eighth Judicial Court, Clark County
Judgment—May 22, 2022

Singh vs. Nissan Motor Company, Ltd.,
Docket No. 85869
The Supreme Court of Nevada
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PETITION FOR WRIT OF CERTIORARI

For nearly 150 years, this Court has recognized that the central goal of the Equal Protection Clause is to end governmental discrimination based on race. *Strauder v. W. Va.*, 100 U.S. 303, 306 (1879); *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 221 (2023). This Court has also recognized that the government participates in racial discrimination when a trial court allows a discriminatory peremptory challenge. *Flowers v. Mississippi*, 588 U.S. 284, 297 (2019). Since the inception of its equal protection jurisprudence, this Court has held that reversal is the antidote necessary to purge the poison that infects a proceeding—and the justice system as a whole—when the judiciary becomes a tool of invidious discrimination. *Rose v. Mitchell*, 443 U.S. 545, 555 (1979).

Despite this precedent, lower courts have been divided for decades over whether the Constitution requires reversal when a party discriminates against a prospective juror who would only have been an alternate. The Sixth Circuit Court of Appeals and the Supreme Court of Mississippi continue to apply this Court's automatic reversal rule, reasoning that the reasons the Constitution demands reversal in cases involving discriminatory jury selection procedures apply in equal force. On the other side of the divide, the Fourth and Ninth Circuit courts of appeal, several state appellate courts—and now the Supreme Court of Nevada—require the appellant to demonstrate actual prejudice, reasoning that this Court only requires reversal if an error tainted the verdict, and racial discrimination cannot taint a verdict if the potential alternate would not have deliberated.

Only this Court can resolve this division, which has persisted for nearly 40 years. This case demonstrates why this Court should resolve it in the Singhs' favor. The harm that government-sanctioned racial discrimination causes is real, and it creates ripple effects which extend far beyond a courtroom's walls. The injury that a trial court's implicit or explicit endorsement of racism inflicts on the excluded veniremember, the nonmoving party, and the judiciary as a whole, does not disappear just because the person who suffered that discrimination would not have deliberated. This Court should grant the petition or summarily reverse.

OPINION BELOW

The trial court's oral pronouncement denying the Singhs' *Batson* objection, Pet. App. 18a, is unpublished. The Supreme Court of Nevada's decision affirming the judgment, Pet. App. 1a-8a, and denying rehearing, Pet. App. 19a-20a, are both unpublished.

JURISIDCTION

The Supreme Court of Nevada issued an order affirming in part, reversing in part (on costs), and remanding on September 12, 2024. Pet. App. 1a. It denied Petitioner's timely filed petition for en banc reconsideration on January 13, 2024. Pet. App. 19a. This Court granted one request for an extension until May 13, 2025. This Court has jurisdiction pursuant to 28 USC § 1257(a).

CONSTITITIONAL PROVISION

Section 1 of the Fourteenth Amendment of the U.S. Constitution provides that: "No State shall ... deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This case involves a defective Nissan Xterra, which tragically killed multiple members of the Singh family. The Singhs are Sikh Indians who wear turbans and other traditional garb. During voir dire, Nissan used a peremptory strike on Mr. Khan, (No. 515), who had stated in his jury questionnaire that he was born in Pakistan. The Singhs objected under *Batson*, asserting that Nissan was striking Mr. Khan because of his race. Pet. App. 12a.

Nissan proffered two reasons for the strike. First, Nissan explained that Mr. Khan made it "a little worried" because he asked whether the jury would have the opportunity to issue a recall. *Id.* at 11a. Second, Nissan explained that Mr. Khan had said his sister had been a victim of a hate crime "or something like that," which made Nissan "afraid that he's going to be identifying more with the Singh family because of that." *Id.*

The Singhs pointed out that Nissan "just stated that they're striking [Mr. Khan] because he might align with the Plaintiff based on their race. And they're striking the only–" *Id.* at 12a. The trial court cut the Singhs off, but did not dispute that Nissan grounded its rationale upon race. Instead, it explained that it was fair for Nissan to assume that Mr. Khan would align with the Singhs because of

their race, and it was reasonable to assume he might even discriminate against other races:

> THE COURT: [W]e don't want people here to align themselves because of an individual race. Doesn't that make [Mr. Khan] a pro that []he should be stricken because of that, he might align himself with and do just the opposite. He may discriminate against other people who are not of similar races.

Id.

The Singhs pointed out that Mr. Khan had made no statement which suggested that he would align with the Singhs or "discriminate against people who are other races," necessarily showing that Nissan grounded its strike upon unfair prejudice. *Id.* The trial court asked, however, how Nissan could be confident that Mr. Khan would not align with those of the "same or similar type of race," and discriminate against those who were "not his race," such as "Nissan's people," whom the district court speculated were all "either Asian or white":

> THE COURT: But the biggest problem I have is how that does not make him a candidate that would basically one that could be stricken for cause due to the fact that he believes because he happens to be a different race that could be aligned with the Sikh race, that he believes those people are going to be prejudiced against?
>
> I would imagine Nissan's people are all going to be Asian or white. So how do we not say he's

> going to be absolutely against those individual because they're Asian and white, and they're not his race and that your clients gain favor with him because they're same or similar type of race?

Id. at 13a.

The Singhs reiterated that Mr. Khan had not said anything which suggested that he would take race into account. *Id*. The district court acknowledged this, but explained that Nissan was justified in assuming he might do so based on his and the Singhs' "similar" racial background:

> [THE SINGHS]: That's what defense said. They're fearing that he aligns with the Plaintiff based on his race.
>
> THE COURT: Which would be a valid basis to strike for cause.
>
> [THE SINGHS]: That would be based on race.
>
> THE COURT: Oh, Counsel, if you say you align with someone just because of their race?
>
> [THE SINGHS]: Well, I don't think he said–
>
> THE COURT: That's absolutely a basis to strike someone.
>
> [THE SINGHS] They're fearing he will align. He never said that he aligned.

> [NISSAN]: He never said that.
>
> THE COURT: No. But I'm saying, if they are articulate, then they believe that's a reason.

Id. at 16a-17a.

The parties proceeded to discuss Nissan's concern regarding Mr. Khan's statements relating to the recall. *Id.* Ultimately, the trial court denied the *Batson* objection, and the jury ruled in Nissan's favor.

On appeal, the Supreme Court of Nevada affirmed. *Id.* at 8a. Pointing to a prior decision adopting harmless error review, *Dixon v. State*, 485 P.3d 1254, 1258 (Nev. 2021), the court explained that the Singhs did not have a right to have any alternate jurors, nor did Mr. Khan have a right to be an alternate juror. *Id.* at 4a. It further explained that any error was undoubtedly harmless because, although another alternate juror went on to serve, the record showed that Mr. Khan would not have been that alternate. *Id.* This petition for a writ of certiorari followed.

REASONS FOR GRANTING THE PETITION

In *Batson* and its progeny, this Court recognized that trial courts participate in unconstitutional racial discrimination when they grant peremptory challenges grounded in racial prejudice or stereotypes. *See Flowers,* 588 U.S. at 297. In the decades since it announced *Batson*, this Court has refused to scale the decision back. *Id.* Instead, it has expanded the decision into other contexts, including into civil cases. *See Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 628 (1991).

As this Court explained, expanding *Batson* to preclude government-sanctioned discrimination in all its forms is necessary because of the profound harms which result when a judge participates in unconstitutional racism. *J.E.B. v. Ala. ex rel. T.B.*, 511 U.S. 127, 140-41 (1994). Putting the government's imprimatur on racial discrimination demeans the excluded juror and the nonmoving party, undermines a trial's fairness, and erodes public confidence in the judiciary as a neutral arbiter of justice. *Id.* Such government-sanctioned racial discrimination "can only cause continued hurt and injury." *Students for Fair Admissions, Inc.*, 600 U.S. at 221 (cleaned up).

To alleviate these harms, and to demonstrate that the judiciary is committed to ending racial discrimination rather than perpetuating it, this Court has consistently held that the Constitution requires courts to reverse any case tainted by government-sanctioned racial discrimination, regardless of whether the party raising the issue can demonstrate that the result of trial would have been different. *See, e.g., Rose*, 443 U.S. at 555-56 ("Since the beginning" of its equal protection jurisprudence, this Court required reversal in cases of discrimination during jury selection "without regard to prejudice"). Yet some lower courts have refused to follow this rule, carving out an exception for cases where the potential juror who suffered that discrimination would only have been an alternate.

I. Lower courts have been divided on whether to apply harmless error review in cases involving alternates for nearly forty years.

Shortly after this Court decided *Batson*, the Ninth Circuit indicated that government-sanctioned discrimination in jury selection is harmless as a matter of law if the person who was discriminated against would only have been an alternate and no alternate served. *Nevius v. Sumner*, 852 F.2d 463, 468 (9th Cir. 1988). In the next four decades, other courts followed the Ninth Circuit's lead and held that harmless error review applies in *Batson* cases involving government-sanctioned racial discrimination against an alternate, including the Fourth Circuit, the Supreme Court of California, and intermediate appellate courts in Ohio, South Carolina, and Missouri. *United States v. Lane*, 866 F.2d 103, 106 n.3 (4th Cir. 1989); *People v. Turner*, 878 P.2d 521, 539 (Cal. 1994); *State v. Carver*, 2008 WL 4183982 (Ohio Ct. App. 2008); *State v. Ford*, 513 S.E.2d 385, 387 (S.C. App. 1999); *State v. Carter*, 889 S.W.2d 106, 109 (Mo. Ct. App. 1994).

Although none of these courts offer much analysis, they tend to apply harmless error review after concluding that the reason this Court requires reversal in *Batson* cases is due to a concern that the verdict might have been different had the potential juror remained on the jury, and a potential alternate's absence could not have affected the verdict if she never would have deliberated. *See*, *e.g.*, *Carver*, 2008 WL 4183982 at *26 ("[W]hile discrimination in the jury selection process is wrong, that discrimination must have *some* effect on the defendant's trial in order to constitute structural error.").[1]

1. Although lower courts usually refer to *Batson* violations as structural error, this Court has not done the same. *Weaver v.*

The Sixth Circuit Court of Appeals and the Supreme Court of Mississippi, however, refuse to review for harmless error. *United States v. Harris*, 192 F.3d 580, 587-588 (6th Cir. 1999); *Manning v. State*, 765 So. 2d 516, 521 (Miss. 2000). While those courts similarly offer little analysis, they primarily rely on this Court's language that a racially discriminatory peremptory challenge injures the nonmoving party—not because the result of the trial might have been different—but because it renders the proceeding fundamentally unfair from start to finish. *Id*. They also point to this Court's repeated explanation that reversal is necessary to remedy the loss of dignity that government-sanctioned discrimination inflicts on the excluded juror and the nonmoving party, as well as the harm to "the integrity of the judicial system as a whole." *Harris*, 192 F.3d at 587, quoting *Batson*, 476 U.S. at 87-88. These principles are "equally applicable to the selection of alternate jurors." *Id.*

The Seventh and Eighth Circuit Courts of Appeal acknowledged this division. Although both courts ultimately declined to address the issue, they suggested in dicta that this Court's more recent *Batson* jurisprudence undermined the majority position that courts can (or should) review claims of discrimination against an alternate for harmless error. *Carter v. Kemna*, 255 F.3d 589, 592 (8th Cir. 2001) ("If presented with the question on direct appeal, we might disagree with the state court's decision and hold a conviction should be reversed

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Massachusetts, 582 U.S. 286, 301 (2017) ("This Court, in addition, has granted automatic relief to defendants who prevailed on claims alleging race or gender discrimination in the selection of the petit jury, though the Court has yet to label those errors structural in express terms." (internal citations omitted)).

because of a *Batson* violation in removing a potential alternate juror, even though no alternate deliberates on the verdict."); *United States v. Canoy*, 38 F.3d 893, 899 n.6 (7th Cir. 1994) ("We need not take a position today, however, as we decide below that the government did not engage in purposeful race discrimination in any event. But we note that a harmless error rule may conflict with the Supreme Court's recent pronouncements in this area.").

The Supreme Court of Nevada surveyed this landscape in *Dixon* and summarized the different approaches:

> "The Supreme Court has not said whether or not *Batson* requires automatic reversal when a prosecutor wrongly excludes an alternate juror, but no alternate joins deliberations." *Carter v. Kemna*, 255 F.3d 589, 591 (8th Cir. 2001). Other courts are split on the issue. Those courts that have rejected harmless-error review in that circumstance have done so for reasons similar to our reasoning in *Conner*—that the potential harm caused by discriminatory jury selection goes beyond the defendant and the prospective alternate juror. *See, e.g., United States v. Harris*, 192 F.3d 580, 587-88 (6th Cir. 1999) (finding harmless-error review inappropriate because "the harm inherent in a discriminatorily chosen jury inures not only to the defendant, but also to the jurors not selected because of their race, and to the integrity of the judicial system as a whole and "[b]ecause the process of jury selection—even the selection of alternate jurors—is one that affects the entire conduct of the trial"). However, a number of

> courts have applied harmless-error review where the challenged veniremember was a prospective alternate, concluding that there is no possible prejudice to the defendant where the alternate does not deliberate. (collecting cases).

Dixon, 485 P.3d at 1258.

After considering the two approaches, the Supreme Court of Nevada joined courts which review claims of court-sanctioned discrimination against an alternate for harmless error, requiring a showing of actual prejudice. *Id*. It later applied the harmless-error rule to the Singhs, denying their *Batson* claim without considering its merits after explaining that any government-sanctioned discrimination or equal protection violation was harmless as a matter of law because Mr. Khan would not have deliberated, and therefore any discrimination against him did not affect the trial's outcome. Pet. App. 5a.

The Supreme Court of Nevada's misguided decision adds another wedge to the division that has split state and federal courts for nearly forty years. This Court should resolve this division now, and it should resolve it in the Singhs' favor.

II. The Issue Presented is Critically Important, and the Supreme Court of Nevada Misapplied this Court's Precedent.

This Court should grant this petition and reiterate that the Constitution does not allow government-sanctioned discrimination in the nation's courtrooms. In so doing, it should adopt the position advanced by the

Sixth Circuit and the Supreme Court of Mississippi and hold that the Constitution mandates reversal when a party demonstrates that government-sanctioned discrimination in violation of *Batson* occurred during jury selection.

The Supreme Court of Nevada decided to apply harmless error review after interpreting this Court's precedent to require reversal in cases involving discrimination during jury selection only where the excluded juror's absence might have affected the verdict. Pet. at 4a-5a. This specious theory lacks jurisprudential support. Although this Court has observed that removing a potential juror can affect a trial's outcome, it has never grounded its *Batson* jurisprudence in this observation. In fact, it has expressly explained that presuming the excluded juror's absence would have changed the result essentially requires courts to assume he would have automatically favored the nonmoving party, thus crediting the discriminatory reason the moving party sought to exclude him:

> The discriminatory use of peremptory challenges by the prosecution causes a criminal defendant cognizable injury, and the defendant has a concrete interest in challenging the practice. This is not because the individual jurors dismissed by the prosecution may have been predisposed to favor the defendant; if that were true, the jurors might have been excused for cause. Rather, it is because racial discrimination in the selection of jurors casts doubt on the integrity of the judicial process and places the fairness of a criminal proceeding in doubt.

Powers v. Ohio, 499 U.S. 400, 411 (1991). This Court emphasized that government-sanctioned racial discrimination which takes place in open court undermines a trial's fairness because it sends a message to the jury, the witnesses, and the parties that it is acceptable to ignore the law and be guided by their personal prejudices. *Id.* at 412-13. ("The overt wrong, often apparent to the entire jury panel, casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial of the cause." (internal quotations omitted)).

Moreover, this Court has explained that it decided *Batson* for multiple reasons, "only one of which was to protect individual defendants from discrimination in the selection of jurors," including the need to remedy the harm done to the "dignity of persons" and the "integrity of the courts." *Georgia v. McCollum*, 505 U.S. 42, 48 (1992) (internal quotations omitted).

A trial court's participation in racial discrimination puts the government's full force behind the harmful belief that one's value is based on her race and that some races are unworthy of standing in judgment of those in the majority. This is not merely an issue of hurt feelings or public embarrassment. Rather, it is the devastation that comes from realizing that one will never share the full panoply of rights as her white counterparts and that her own government—which ostensibly exists to protect her—can instead be used as a weapon to subjugate her. A party who watches a judge grant a discriminatory peremptory challenge might decide the deck was stacked against her from the start, leading her to question all the court's rulings. *J.E.B.*, 511 U.S. at 142. And when members of the

public learn that the judge knew a party was engaging in racial discrimination and did not stop it—or worse, *participated* in it—they might lose confidence in the justice system as a neutral arbiter of justice, questioning how a system which allows racial discrimination can possibly produce a fair result. *Edmonson*, 500 U.S. at 628. All of this is exacerbated in minority communities, which may already be suspicious of a justice system that was used against them for so long. *Students for Fair Admissions, Inc.*, 600 U.S. at 183.

These profound harms exist in equal measure regardless of whether the excluded veniremember would have gone on to deliberate. After all, no one can know whether any alternates will deliberate until deliberations begin, which is long after the world observed the trial court's participation in racial discrimination. It is intellectually bankrupt to suggest that an excluded veniremember and nonmoving party suffering government-sanctioned discrimination experience no blow to their dignity, and the justice system experiences no blow to its credibility, unless the parties can conclusively confirm that the person who suffered discrimination would have deliberated.

This case powerfully demonstrates why the Singhs' position is the right one, both legally and morally. In granting Nissan's discriminatory peremptory challenge, the trial court put the government's imprimatur on racial stereotypes and became a participant in the exact evil that the Equal Protection Clause was designed to eliminate. *Edmonson*, 500 U.S. at 624 ("By enforcing a discriminatory peremptory challenge, the court has not only made itself a party to the biased act, but has elected to place its power, property and prestige behind the alleged

discrimination." (cleaned up). Notably, the trial court's stereotyping only ran in one direction—the judge insisted that Mr. Khan might align with the Singhs because they were of the same or "similar" race, but did not express concern that "Asian[s] and white[s]" would automatically favor Nissan, even though the trial court speculated that Nissan's witnesses would be of those races. Pet. App. 13a. The trial court's suggestion that persons who looked like Mr. Khan and the Singhs were inherently suspicious marked them with a badge of inferiority and implied to jurors that they should be looked at with special scrutiny. *See Powers v. Ohio*, 499 U.S. 400, 412 ("The cynicism may be aggravated if race is implicated in the trial, either in a direct way . . . or in some more subtle manner as by casting doubt upon the credibility or dignity of a witness, or even upon the standing or due regard of an attorney who appears in the cause.").

Anyone who learns about these facts will immediately understand that the Singhs question whether the trial court grounded its rulings in its suspicion toward persons of their race rather than a neutral application of the law. *See J.E.B.*, 511 U.S. at 142 ("Discriminatory use of peremptory challenges may create the impression that . . . that the 'deck has been stacked' in favor of one side."). And since any witnesses or jurors who heard the district court's comments might have decided that they too were free to ignore the law and allow themselves to be guided by personal preferences or prejudices, *see id. at* 140 ("The litigants are harmed by the risk that the prejudice that motivated the discriminatory selection of the jury will infect the entire proceedings."), he or she will also understand that the Singhs lack confidence in their trial's outcome, *see Powers*, 499 U.S. at 413 ("The verdict will

not be accepted or understood in these terms if the jury is chosen by unlawful means at the outset.").

Moreover, it is no secret that public confidence in the judiciary is waning. The trial court's decision to openly exclude a person from serving as an alternate juror because of his race will only exacerbate this issue. And by doing nothing about the trial court's actions, the Supreme Court of Nevada tacitly endorsed them. Anyone who already believed that the system was stacked against minorities will see the trial court's decision and the Supreme Court of Nevada's lack of action as just more proof that United States courtrooms are only meant for those who look a certain way.

The notion that the harms which flow from government-sanctioned discrimination evaporate if that discrimination is directed towards an alternate cannot be defended. This case cries out for this Court's intervention.

III. The Question Presented is Important, and this Case is an Excellent Vehicle to Resolve it.

This case presents a prime opportunity for this Court to make clear, once again, that the Constitution does not tolerate government-sanctioned discrimination in any form. *See, e.g., Students for Fair Admissions, Inc.*, 600 U.S. at 221. Racial discrimination in government processes, especially in open courtrooms, is undoubtedly an important issue. *Powers*, 499 U.S. at 415 ("The Fourteenth Amendment's mandate that race discrimination be eliminated from all official acts and proceedings of the State is most compelling in the judicial system."). This case is also an ideal vehicle for addressing this issue: the

Supreme Court of Nevada did not rule on the underlying question of whether the trial court violated *Batson* and denied relief solely upon its application of the harmless error rule. Pet. App. 5a. As such, this Court can address the threshold question of whether the Constitution requires automatic reversal without getting bogged down in any extraneous issues. This Court frequently issues writs of certiorari when lower courts apply the incorrect framework to the asserted constitutional violation and remands with instructions for the court to consider the correct framework. *See*, *e.g.*, *Rippo v. Baker*, 580 U.S. 285 (2017). It could easily do so here.

CONCLUSION

If this Court declines to intervene, jurisdictions which apply harmless error review will continue to ignore and thus endorse government-sanctioned racial discrimination, which will continue to erode public confidence in the judiciary at a time when such confidence is already waning. This Court should grant this petition and order merits briefing or summarily reverse.

Respectfully submitted,

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APPENDIX A — ORDER OF THE SUPREME COURT OF THE STATE OF NEVADA, FILED SEPTEMBER 12, 2024

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 85869

MANINDER SINGH, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF JASVIR KAUR, KEWAL SINGH, AND NIRBHAI SINGH; GURDEV SINGH, AS HEIR OF THE ESTATE OF JASVIR KAUR, KEWAL SINGH, AND NIRBHAI SINGH; SURJIT KAUR, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF KEWAL SINGH; LAKHVIR HANS, AS HEIR OF THE ESTATE OF KEWAL SINGH; AND SHERYL BELL, ADMINISTRATOR OF THE ESTATES OF KEWAL SINGH, AND JASVIR KAUR AND NIRBHAI SINGH,

Appellants,

vs.

NISSAN MOTOR COMPANY, LTD.; AND NISSAN NORTH AMERICA, INC,

Respondents.

Filed September 12, 2024

Appendix A

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal from a district court judgment following a jury verdict and a post-judgment order awarding costs in a negligence and product liability matter. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Three members of the Singh family died in a car accident. Appellants, surviving members of the Singh family, sued Respondents Nissan Motor Company, Ltd., and Nissan North America, Inc. (collectively Nissan). The Singhs were unsuccessful at trial, and the district court awarded costs in favor of Nissan. The Singhs raise two issues on appeal: first, that the district court judge improperly denied a Batson challenge for an alternate juror; second, that the district court judge improperly awarded costs to Nissan when Nissan failed to provide sufficient documentation. Because the second alternate juror was never seated, we conclude any error was harmless and affirm the judgment based on the jury verdict. Additionally, we conclude the district court erred in awarding costs based on insufficient supporting documentation. We reverse the award of costs and remand for the district court to recalculate the costs consistent with this order.

Appendix A

Striking Khan was harmless because the second alternate did not deliberate with the jury

During jury selection, Nissan exercised one of its peremptory challenges on alternate prospective juror Dinyal Khan. The Singhs objected that the peremptory strike was based on race under *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). *See also Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 111 S. Ct. 2077, 114 L. Ed. 2d 660 (1991) (holding the Equal Protection Clause of the U.S. Constitution prohibits race-based exclusion of jurors in civil cases). The district court denied the *Batson* challenge and allowed the strike. Following the strike, a different juror replaced Khan as the second alternate at trial. During the trial, the first alternate was seated on the jury; however, the second alternate was never seated as a regular member of the jury and did not deliberate. After deliberations, the jury found in favor of Nissan and awarded no damages to the Singhs.

The Singhs moved for a new trial, arguing that the district court erred in denying their *Batson* challenge. The district court denied the new trial motion, reasoning that Nissan provided at least one race-neutral reason for striking Khan. During the hearing, the district court acknowledged that without this alternative reason, striking Khan "would have been *Batson* all day long."

Discriminatory jury selection in violation of *Batson* "generally constitutes structural error that mandates reversal." *Diomampo v. State*, 124 Nev. 414, 423 185

P.3d 1031, 1037 (2008). Yet, "where a discriminatory peremptory challenge was made against a prospective alternate juror and no alternate was called upon to deliberate," harmless-error review applies. *Dixon v. State*, 137 Nev. 217, 222, 485 P.3d 1254, 1259 (2021). Under a harmless error review, reversal is only warranted when an error affects a party's substantial rights such that "a different result might reasonably have been reached" but for the error. *See McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 495-96 (2016) (internal quotation marks omitted). Addressing this standard, the Singhs argue that *Dixon*'s harmless-error review applies only when no alternate deliberates on the jury, and here, a first alternate was seated and deliberated with the jury.

In *Dixon*, we held that "[t]here is no constitutional right to alternate jurors, nor is there a right to be an alternate juror." 137 Nev. at 222, 485 P.3d at 1259. Despite acknowledging the district court erred in denying the *Batson* challenge, we found the error to be harmless because no alternate deliberated with the jury. *Id.* at 223, 45 P.3d at 1259. The same rationale applies here.

Although the first alternate juror was seated and deliberated, the second alternate was ultimately excused without participating in deliberations. Even if the district court had granted the Singhs' *Batson* challenge, Khan, who had been slotted as a second alternate, would not have deliberated on the jury. As a result, any error in the district court's denial of the Singhs' *Batson* challenge to Nissan's use of a peremptory challenge to remove a prospective second alternate juror based on race can only amount to

harmless error. *See McClendon v. Collins*, 132 Nev. at 333, 372 P.3d at 195-96. Stated another way, Khan's ability to serve as an alternate had no effect on the outcome of the trial and was therefore harmless because the second alternate who replaced Khan did not deliberate with the jury anyway. To the extent the Singhs argue *Dixon* should be overturned, that argument fails as they do not present a compelling argument that *Dixon* is unworkable or badly reasoned. *Cf. State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013) (recognizing that while stare decisis plays a critical role in our jurisprudence, governing decisions that are unworkable or badly reasoned should be overruled).[1]

Nissan failed to provide sufficient documentation to support its request for costs

After prevailing at trial, Nissan moved for costs. In its initial memorandum of costs Nissan requested $940,517.41. The Singhs filed a motion to retax, arguing that Nissan failed to include sufficient documentation. Nissan then filed a supplement to the memorandum of costs without leave of the court. In the supplement, Nissan requested $148,444.28 in costs, decreasing its requested expert fees to the statutory limit at that time. *See* NRS 18.005(5) (2007); 2007 Nev. Stat., ch. 440 § 7, at 2191 (allowing costs awards to include "[r]easonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, unless the court allows a larger fee after

1. To the extent the Singhs urge us to adopt a new *Batson* test addressing when both a discriminatory reason and a neutral reason have been provided for a peremptory strike, we decline to do so here.

determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee"). Nissan attached an itemized list of expenses and several receipts and invoices to its supplement. The district court granted the motion to retax and awarded Nissan $144,936.99 in costs, seemingly consistent with the Singhs' argument that $3,507.29 of the claimed costs were not recoverable under NRS 18.005.

We review an award of costs to the prevailing party for an abuse of discretion. NRS 18.020 and NRS 18.050 give the district court wide discretion in awarding costs to the prevailing party, but these "costs must be reasonable, necessary, and actually incurred." *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). A review of the record reveals that Nissan failed to provide documentation substantiating each cost. Indeed, it failed to provide documentation to support most of its copies and postage costs, some of its deposition and transcript costs, some of its translation costs, and most of its service of process costs. The lack of documentation for these requested costs falls short of what is required under Nevada law. *See Village Builders 96*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005) (concluding a party requesting costs must provide documentation for each copy made to ensure that the costs awarded are only those costs actually incurred); *see also Cadle Co.*, 131 Nev. at 121, 345 P.3d at 1054 (concluding an affidavit providing only the date and cost of each copy failed to demonstrate the costs were "necessary to and incurred in the present action" (quoting *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998))).

While Nissan failed to provide documentation to support its requested court fees and expert fees, the district court had sufficient information to determine these fees were incurred in this action, namely independent knowledge about standard court fees and testimony from Nissan's experts that their fees far exceeded the requested amount. Because the district court had a sufficient basis to award these costs, we affirm with respect to the award for court fees and expert witness fees.

With respect to the costs for copies, postage, depositions, transcripts, translations, and service of process, the district court abused its discretion in awarding costs in an amount that was not supported by the documentation provided by Nissan. *Hyatt v. Franchise Tax Bd. of the State of Cal.*, No. 84707, 2023 WL 4362562, at *2 (Nev. Jul. 5, 2023) (Order Affirming in Part, Reversing in Part and Remanding) (recognizing that without justifying documentation a district court may not award costs). We remand for the district court to recalculate the cost award.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART as to the cost award only, AND REMANDED to the district court for proceedings consistent with this order.[2]

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2. To the extent the parties raise arguments on appeal that we did not specifically address, we are not persuaded that those arguments warrant reversal.

Appendix A

/s/ Herndon, J.
Herndon

/s/ Lee, J.
Lee

/s/ Bell, J.
Bell

APPENDIX B — EXCERPTS OF TRANSCRIPT OF THE DISTRICT COURT, CLARK COUNTY, NEVADA, DATED MARCH 25, 2022

DISTRICT COURT
CLARK COUNTY, NEVADA

CASE NO. A-17-751024-C
DEPT. NO. XXIX

MANINDER SINGH, INDIVIDUALLY AS HEIR OF THE ESTATE OF JASVIR KAUR AND KEWAL SINGH AND NIRBHAI SINGH; GURDEV SINGH, AS HEIR OF THE ESTATE OF JASVIR KAUR AND KEWAL SINGH AND NIRBHAI SINGH; SURJIT KAUR, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF KEWAL SINGH; LAKHVIR HANS, AS HEIR OF THE ESTATE OF KEWAL SINGH; AND SHERYL BELL, ADMINISTRATOR OF THE ESTATES OF KEWAL SINGH AND JASVIR KAUR AND NIRBHAI SINGH,

Plaintiffs,

vs.

NISSAN MOTOR COMPANY LTD.; NISSAN NORTH AMERICA, INC.; ADVANTAGE OPCO, LLC D/B/A ADVANTAGE RENT-A-CAR; CLIFFORD H. BUSCH; DOES 1 THROUGH X, INCLUSIVE, AND ROE CORPORATION 1 THROUGH X, INCLUSIVE,

Defendants.

Appendix B

BEFORE THE HONORABLE DAVID M. JONES,
DISTRICT COURT JUDGE

FRIDAY, MARCH 25, 2022

RECORDER'S TRANSCRIPT OF JURY TRIAL

JURY VOIR DIRE

[2]RECORDED BY: ANGELICA MICHAUX, DISTRICT COURT

TRANSCRIBED BY: MICHELE VALLIERE, AAERT CERT #1355

* * *

[154]that issue.

THE COURT: So you believe that based upon that, they're only going to strike her because she's of Hawaiian decent or she's female?

MS. MORRIS: Potentially.

THE COURT: You're making that with a straight face.

MS. MORRIS: Well, no. I was smiling when I did.

THE COURT: Denied.

Now Khan.

MR. KLEIN: So Khan is the one that asked the question, hey, is there an opportunity for us to order a recall. I got a little worried.

THE COURT: You got me actually considering a strike that for that one.

MR. KLEIN: (Indiscernible) she is the victim of a hate crime (indiscernible) or something like that. I'm afraid that he's going to be identifying more with the Singh family because of that.

That's going to be something clearly weighing on him, clearly upset him. I was talking about it yesterday. But the primary is the, hey, are we going to be able to order a recall? He's already thinking about can we do something like that without hearing any evidence.

THE COURT: The recall concerned me. The other [155]lends towards that Edmondson challenge that basically he—are we getting rid of him just because the fact is that he may be in line with another individual who might be discriminated against? And you actually brought that multiple times in your examination of the fact.

I don't think it was fleshed out, Counsel. I think if you're going to make that type of Edmonson challenge, you needed to lay out, basically, that he feels that there's some type of discrimination against individuals of just that kind of decent.

How am I going to basically say just because he happens to be of a certain race that he's somehow being prejudiced against other than the fact that the recall one is quite high?

MS. MORRIS: Well, I mean, I think that counsel himself just stated that they're striking him because he might align with the Plaintiff based on their race. And they're striking the only—

THE COURT: And isn't it the opposite of Edmonson that we don't want people here to align themselves because of an individual race. Doesn't that make him a pro that she should be stricken because of that, the he might align himself with and do just the opposite. He may discriminate against other people who are not of similar races.

MS. MORRIS: Well, I don't think he made any [156] indication that he would discriminate against people who are other races. That's their concern, which shows that they are striking him based on race. He didn't make any statements about that.

MR. KLEIN: The primary concern is he volunteered (indiscernible).

THE COURT: Yeah. But he was—he was made well aware that's not something that he's being asked to do.

MR. KLEIN: Yeah. But it's something clearly that he's thinking. It came out of—out of nowhere out of his head.

THE COURT: This one—this one does concern me. This is an area, and I don't—and, Counsel, any time I have a (indiscernible) evidence in a civil matter, I—I take them very seriously.

The—the fact that he was one of the considerations that the Defendants said was that their fear of that.

But the biggest problem I have is how that does not make him a candidate that would basically one that could be stricken for cause due to the fact that he believes because he happens to be a different race that could be aligned with the Sikh race, that he believes those people are going to be prejudiced against?

I would imagine Nissan's people are all going to be [157]either Asian or white. So how do we not say he's going to be absolutely against those individual because they're Asian and white, and they're not his race and that your clients gain favor with him because they're same or similar type of race?

MS. MORRIS: So, I mean, if he had made any kind of statement like that, I could see that being an issue. But he made no statement of it. Defense counsel said that—

THE COURT: But you're—you have the burden—

MS. MORRIS:—that's their concern.

THE COURT:—in an Edmonson challenge to prove to me that they don't have any reasonable basis for striking them.

And the fact that their reasonable basis is that he asked for a recall or can we try to do that? Which would be a punishment (indiscernible). To recall vehicles would be, I think anybody would say is the punitive nature. The cost to Nissan would be extraordinary to recall that many vehicles.

MS. MORRIS: And so my notes from him is not that he asked can we do a recall. He was saying, is that something that is an option when we're talking about these punitive damages. Is that something that benefits the community? And he was told no.

He wasn't saying that he wanted it. He was just questioning if this is the mechanisms in which those things [158]occur. So he didn't actually say I want a recall. He was just questioning is this what occurs when something like this happens.

And so I don't think that there is any promotion by him that I'm demanding a recall. I hope to do this and get a recall.

He simply asked the question, which I think is a fair question when you hear about a car defect, and we've been talking about recalls to say, is this something that can occur in this case? Of which he was told no and then talked about punitive damages and not economic damages.

So he didn't in any way say anything that would be, like, this is what he is here for. He simply asked the question. And I think it's a fair question. Doesn't show any kind of bias in any way. So—

THE COURT: What does Edmondson establish a reasonable basis for the other side to say we don't want him as a juror. It's not that he can be stricken for cause, but that he we don't want him on the jury because he's thinking already is there way that I can basically send a message to this manufacturer?

MS. MORRIS: Absolutely not.

THE COURT: Outside of the law?

MS. MORRIS: No. Because everyone was talking about [159]how many recalls they had had on their car. Everyone's hand went up. Everyone knows recalls are a normal thing that occur. Everyone's had them happen to his car.

So he's not an outlier saying I want to demand this. What he was talking about was—is—does this instigate a recall? I think that was a totally reasonable question.

THE COURT: No, well, he's a (indiscernible) can we make that as part of the verdict. He was stating basically, can I do that as part of a jury? Can I basically request a recall he asked. He was trying to do an affirmative step saying is that part of the ability we have as a jury—

MS. MORRIS: Correct.

THE COURT:—to order a recall?

MS. MORRIS: Yes. He did ask the question. But he did not affirmatively state that's what I would like here. He simply asked the question. And I think it was a fair question.

THE COURT: So why would you ask it if that's not something you would like?

MS. MORRIS: Because when something's wrong with a car, recalls occur. We're alleging something's wrong with a car. So he's asking, does this instigate a recall because that's what occurs.

I don't think that was an unfair promotional question on [160]his part. I think it was reasonable based on the conversation that the jury was having.

THE COURT: Okay. So what do I do with the other individuals that clearly have other ethnic races? Are we saying just because he is of Middle Eastern decent, that's why we're doing it?

MS. MORRIS: That's what defense said. They're fearing that he aligns with the Plaintiff based on his race.

THE COURT: Which would be a valid basis to strike for cause.

MS. MORRIS: That would be based on race.

THE COURT: Oh, Counsel, if you say you align with someone just because of their race?

MS. MORRIS: Well, I don't think he said—

THE COURT: That's absolutely a basis to strike someone.

MS. MORRIS: They're fearing he will align. He never said that he aligned.

MR. KLEIN: He never said that.

THE COURT: No. But I'm saying, if they are articulate, then they believe that's a reason. I'm saying in defense of an Edmonson challenge, the law only requires an articulable, reasonable basis to strike. And their concern that he is trying to basically, what do you call it, [161]legislate, or mandate, or want to do something beyond the law, is an articulable reason.

Now, you may disagree with it.

MS. MORRIS: Yeah.

THE COURT: But that's not your position. Your position is—

MS. MORRIS: I don't think he's—

THE COURT:—can they articulate a reasonable basis for why they struck him.

Forgetting even the other (indiscernible), is that not a valid basis to say, look,, we think this person is proactive

and wants to do something beyond what is required of them?

MS. MORRIS: I think he asked the question. I don't think he made any affirmative statement that he wants to. And I think it was a fair question based on the conversation that was occurring.

THE COURT: Denied. Thank you.

MS. MORRIS: Okay. Thank you.

THE COURT: All right, ladies and gentlemen, we have a jury. The following individuals, and I'm going to do it this way, so please make sure you listen to me. The following individuals will be staying. Those are the individuals who will be staying as part of our jury.

Juror No. 2, Ryan Tokunaga, you will be staying with us.

* * * *

APPENDIX C — ORDER OF THE SUPREME COURT OF THE STATE OF NEVADA, FILED JANUARY 13, 2025

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 85869

MANINDER SINGH, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF JASVIR KAUR, KEWAL SINGH, AND NIRBHAI SINGH; GURDEV SINGH, AS HEIR OF THE ESTATE OF JASVIR KAUR, KEWAL SINGH, AND NIRBHAI SINGH; SURJIT KAUR, INDIVIDUALLY AND AS HEIR OF THE ESTATE OF KEWAL SINGH; LAKHVIR HANS, AS HEIR OF THE ESTATE OF KEWAL SINGH; AND SHERYL BELL, ADMINISTRATOR OF THE ESTATES OF KEWAL SINGH, AND JASVIR KAUR AND NIRBHAI SINGH,

Appellants,

vs.

NISSAN MOTOR COMPANY, LTD.; AND NISSAN NORTH AMERICA, INC,

Respondents.

Filed January 13, 2025

Appendix C

ORDER DENYING EN BANC RECONSIDERATION

En banc reconsideration denied. NRAP 40A(a), (g).

It is so ORDERED.

/s/ Herndon, C.J.
Herndon

/s/ Parraguirre, J.
Parraguirre

/s/ L Bell, J.
Bell

/s/ Stiglich, J.
Stiglich

/s/ Cadish, J.
Cadish

/s/ Lee, J.
Lee

Pickering, J., dissenting:

I would order an answer and therefore respectfully dissent.

/s/ Pickering, J.
Pickering