

SUPREME COURT OF MONTANA

State v. Ford

306 Mont. 517 (Mont. 2001) · No. No. 00-337 · Decided November 20, 2001

SUMMARY

The Supreme Court of Montana held that the defendant waived his Batson challenge alleging gender discrimination in the State's exercise of peremptory jury strikes. Because the challenge was raised only after the jury was sworn and the venire dismissed, the court affirmed the conviction and sentence without reaching the merits.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Patricia O. Cotter; Karla M. Gray; Terry N. Trieweiler; James C. Nelson; W. William Leaphart; Jim Regnier; Jim Rice
JURISDICTION	Montana
DECIDED	November 20, 2001
DOCKET	No. 00-337
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ford appealed his deliberate-homicide conviction and life sentence without parole, challenging the denial of his motion for a new jury based on the State's allegedly discriminatory use of peremptory challenges to exclude women.
STANDARD OF REVIEW	For a Batson challenge, appellate courts defer to the trial court's factual findings unless clearly erroneous and review the trial court's application of law de novo. The Court also applied waiver principles to the timeliness of the challenge.
PRECEDENTIAL VALUE	published Montana Supreme Court opinion
PARTIES	Eugene Ford v. State of Montana

TOPICS

- jury selection
- equal protection
- fourteenth amendment
- preservation of error
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Ford's objection to the State's gender-based use of peremptory challenges constituted a Batson challenge.
2. Whether Ford's Batson challenge was timely when made after the jury was impaneled and sworn and the venire was dismissed.
3. Whether the District Court properly denied Ford's motion for a new jury pool.

HOLDINGS

1. A Batson challenge to allegedly discriminatory peremptory strikes must be raised before the jury is sworn and the venire is dismissed; a challenge raised afterward is untimely and waived.
2. Ford waived his Batson challenge because he waited until after the jury was impaneled and sworn and the venire was dismissed to object to the State's peremptory strikes.

KEY QUOTATIONS

"We conclude that because Ford's counsel waited until after the jury was impaneled and sworn and the venire dismissed to raise his Batson challenge, his motion was untimely and was therefore waived." (39 P.3d at 112-113)

"Accordingly, we will not address the merits of his claim." (39 P.3d at 113)

FACTUAL BACKGROUND

Ford was tried for the deliberate homicide of his roommate, Michael Paul. The venire was approximately evenly divided by gender, and after challenges for cause the prospective panel consisted of fourteen women and ten men. The State exercised all six of its peremptory challenges against women, while Ford exercised four challenges against women and two against men; the final jury consisted of eight men and four women, with a female alternate. Ford objected only after the jury had been sworn and the remaining venire dismissed.

PROCEDURAL HISTORY

Ford was charged in the Eighth Judicial District Court, Cascade County, with deliberate homicide. After the State used all six of its peremptory challenges against women, Ford moved for a new jury pool after the jury had been sworn and the venire dismissed. The District Court overruled the objection without explanation, the jury convicted Ford, and the Montana Supreme Court affirmed, holding that the Batson challenge was untimely and waived.

DISPOSITION

affirmed

CASES CITED

- *Strauder v. West Virginia*, 100 U.S. 303 (1880)
- *Neal v. Delaware*, 103 U.S. 370 (1881)
- *Pointer v. United States*, 151 U.S. 396, 408 (1894)
- *Lewis v. United States*, 146 U.S. 370, 376 (1892)
- *Holland v. Illinois*, 493 U.S. 474, 484 (1990)
- *Batson v. Kentucky*, 476 U.S. 79, 85-86, 89, 96-98 (1986)
- *Tolbert v. Page*, 182 F.3d 677, 684 (9th Cir. 1999)
- *Brewer v. Marshall*, 119 F.3d 993 (1st Cir. 1997)
- *United States v. Diaz*, 26 F.3d 1533 (11th Cir. 1994)
- *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 128 (1994)
- *Powers v. Ohio*, 499 U.S. 400, 409 (1991)
- *Georgia v. McCollum*, 505 U.S. 42 (1992)
- *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991)
- *State v. Wilson*, 117 N.M. 11, 868 P.2d 656 (1993)
- *United States v. Cashwell*, 950 F.2d 699, 704 (11th Cir. 1992)
- *United States v. Dobynes*, 905 F.2d 1192, 1196 (8th Cir. 1990)
- *United States v. Biaggi*, 909 F.2d 662, 679 (2d Cir. 1990)
- *Government of Virgin Islands v. Forte*, 806 F.2d 73, 76 (3d Cir. 1986)
- *Morning v. Zapata Protein (USA), Inc.*, 128 F.3d 213, 216 (4th Cir. 1997)
- *United States v. Abou-Kassem*, 78 F.3d 161, 167 (5th Cir. 1996)
- *United States v. Rodriguez*, 917 F.2d 1286, 1288 (11th Cir. 1990)
- *State v. Cummings*, 838 S.W.2d 4, 6 (Mo. Ct. App. 1992)
- *Sorensen v. State*, 6 P.3d 657, 662 (Wyo. 2000)
- *State v. Harris*, 157 Ariz. 35, 36, 754 P.2d 1139, 1140 (1988)
- *Allen v. State*, 726 S.W.2d 636 (Tex. Ct. App. 1987)
- *United States v. Erwin*, 793 F.2d 656 (5th Cir. 1986)
- *State v. Tucker*, 2000 MT 255, 301 Mont. 466, 10 P.3d 832
- *State v. Clausell*, 2001 MT 62, 305 Mont. 1, 22 P.3d 1111
- *State v. Finley*, 276 Mont. 126, 915 P.2d 208 (1996)
- *State v. Gallagher*, 2001 MT 39, 304 Mont. 215, 19 P.3d 817
- *State v. Weinberger*, 204 Mont. 278, 665 P.2d 202 (1983)

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