

IN THE SUPREME COURT OF IOWA  
NO. 24-1975  
(Linn County No. FECR152750)

STATE OF IOWA, )  
 )  
 Plaintiff-Appellee, )  
 )  
 vs. )  
 )  
 JAMES D. SMITH, )  
 )  
 Defendant-Appellant. )

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR LINN COUNTY  
THE HONORABLE VALERIE L. CLAY, DISTRICT JUDGE  
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DEFENDANT/APPELLANT JAMES D. SMITH'S  
BRIEF

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## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. WHETHER MR. SMITH'S *BATSON* CHALLENGE TO THE STATE'S EXERCISE OF A PEREMPTORY STRIKE TO REMOVE A BLACK JUROR WAS IMPROPERLY DENIED SIMPLY BECAUSE COUNSEL FOR THE STATE HAD DIFFICULTY UNDERSTANDING THE JUROR WAS PRETEXTUAL, WHEN THERE WAS NO INDICATION THAT THE JUROR HAD ANY DIFFICULTY UNDERSTANDING ENGLISH OR WOULD OTHERWISE BE UNABLE TO PERFORM THE REQUIRED DUTIES OF A JUROR?

## ROUTING STATEMENT

This matter should be retained by the Supreme Court of Iowa.

The *Batson* issue presented in this appeal is one of first impression in Iowa and there is limited case law in other jurisdictions. That issue is under what circumstances a peremptory strike by the State is proper when the prospective juror may have some difficulty speaking English due to their accent, but when there is no evidence that the juror is unable to understand English or unable to effectively act as a juror. Courts must be careful in allowing peremptory strikes of jurors whose first language is not English as that can be a proxy for improperly striking jurors based on race or national origin.

Thus, this case presents a substantial issue of first impression. *See Iowa R. App. P. 6.1101(2)(c)*. This case should be retained and decided by the Supreme Court of Iowa.

### NATURE OF THE CASE

Defendant/Appellant James D. Smith was charged with Domestic Abuse Assault, Strangulation with Bodily Injury, in violation of Iowa Code §§ 708.2A(1) and 708.2A(5) (Count 1); and Domestic Abuse Assault, 1<sup>st</sup> Offense, Causing Bodily Injury, in violation of Iowa Code §§ 708.2A(1) and 708.2A(2)(b) (Count 2). D0008, Trial Information, 1/30/24, as amended D0047, Amended Trial Information, 9/18/24.<sup>1</sup> The general allegation was that Mr. Smith had assaulted Nicole Copeland, the mother of his child, on December 21, 2023. *Id.*

Mr. Smith proceeded to a jury trial. The jury convicted Mr. Smith of the lesser included offense of Domestic Abuse Assault with respect to

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<sup>1</sup>The purpose of the amendment was to allege that the victim, Nicole Copeland, was the “mother of his minor child” as opposed to his “live-in girlfriend” to conform to the facts as introduced at trial. D0048, Motion Amend Trial Information, 9/18/24.

Count 1 and the charged offense of Domestic Abuse Assault Causing Bodily Injury with respect to Count 2. D0070, Verdict Form, 9/20/24.

After denying Mr. Smith's Motion in Arrest of Judgment and Motion for New Trial, the District Court sentenced Mr. Smith to 10 days jail on Count 1 and 30 days jail on Count 2, concurrent, and other consequences. D0080, Judgment and Sentence, 11/22/24.

Mr. Smith filed a timely Notice of Appeal. D0087, Notice of Appeal, 12/11/24.

### **STATEMENT OF THE FACTS**

The primary witnesses at trial were Nicole Copeland and Defendant James Smith. Also testifying were Trent Stotler and Benoit Leroy, the two Marion, Iowa, police officers who responded to the incident.

Appellant will first review the general testimony introduced at trial regarding the incident at issue. Then the specific facts relating to the issue on appeal, the denial of Mr. Smith's *Batson* challenge to the

State's exercise of a peremptory strike of a minority juror, will be set forth in detail.

Nicole Copeland testified that in December of 2023 she was living in Marion, Iowa, with her two children, with Mr. Smith being the father of one of the children. D0102, Transcript Trial Day 2, at 29:11-22. Mr. Smith did not live with them. *Id.*, at 29:23 to 30:5. Mr. Smith was at her house on December 21, 2023. *Id.*, at 31:3-5. The children were not there. *Id.*, at 31:15-17. Both she and Mr. Smith were drinking. *Id.*, at 32:1-22.

Ms. Copeland did not recall everything because she had been drinking. D0102, at 33:3. Ms. Copeland was upset that Mr. Smith was talking to another woman on the phone. *Id.*, at 33:17 to 34:14. She took the phone from him. *Id.*, at 34:15-19; 59:6-8. She did not have a specific memory of Mr. Smith assaulting her. *Id.*, at 34:20-24; 36:17-19; 37:1-3. Initially, she was shown her written statement, which partially refreshed her recollection. *Id.*, at 37:4 to 39:11. Her 911 call was then admitted. *Id.*, at 42:23 to 43:13. A recess was taken so that Ms. Copeland could review the body-cam videos of the officers. *Id.*, at

44:524. After the recess, Ms. Copeland stated that reviewing those videos helped refresh her recollection as to some of the events. *Id.*, at 45:20-25.

After reviewing the body-cam videos, Ms Copeland recalled Mr. Smith strangling her in the kitchen by the sink. D0102, at 46:7-12. She didn't recall whether she could talk or breathe. *Id.*, at 46:19-22. She didn't recall telling the police that she was strangled for 40 seconds. *Id.*, at 64:5-10. She did recall Mr. Smith hitting her head on the pantry three times. *Id.*, at 46:23 to 47:9.

By the time police arrived, Mr. Smith was gone. D0102, at 49:6-9. She talked to Mr. Smith, who called from the jail a few times, and said he was sorry. *Id.*, at 49:10-15. The Court recessed for the day with Ms. Copeland still on the stand.

When her testimony resumed, Ms. Copeland stated that she had reviewed the video of her talking to the EMTs. D0100, Transcript, Trial Day 3, at 11:6-13. She also testified that she had reviewed the calls from the Linn County jail. *Id.*, at 12:17-24. Recordings of two of those calls, marked as Exhibits 11 and 12, were then admitted over

Defendant's objection. *Id.*, at 13:4-11. She admitted that Mr. Smith, in those calls, denied doing anything to her. *Id.*, at 22:6-8.

Defendant James Smith testified in his defense. He testified that he was at Ms. Copeland's house as they were wrapping Christmas gifts. D0100, at 83:25 to 84:3. Both of them were drinking. *Id.*, at 84:4-5. It was out of character for him to drink the amount he was drinking. *Id.*, at 89:11-16. He also does not remember a lot of what happened. *Id.*, at 89:17-20. He was on the couch talking to another woman who he has a child with. *Id.*, at 84:17 to 85:10. Ms. Copeland heard the conversation, yelled at him, and took the phone. *Id.*, at 85:11-17.

Mr. Smith chased Ms. Copeland into the kitchen to get his phone back. D0100, at 85:18 to 86:2. His phone was on the shelf in a basket. *Id.*, at 86:13-16. He left, called his mom, and walked to a gas station. *Id.*, at 86:17-21. He never choked Ms. Copeland. *Id.*, at 87:10-12. He did not hit her head on the wall. *Id.*, at 87:13-15. He does not know how Ms. Copeland got the knot on her head. *Id.*, at 92:20 to 93:3. He does not recall seeing any redness or bruising on her neck. *Id.*, at 93:17-23.

The jury's verdict suggests that the jury believed some, but not all, of Ms. Copeland's testimony and some, but not all, of Mr. Smith's testimony.

*Batson Issue*

At the end of jury selection, Defendant Smith challenged two of the State's peremptory challenges, relating to jurors V. W. and S. H., based on *Batson v. Kentucky*, 476 U.S. 79 (1986). D0104, Transcript, Trial Day 1, at 153:8 to 154:1. Counsel for Mr. Smith noted that both jurors were black. *Id.*, at 153:18-20.

The State stated that it had struck V. W. because counsel “couldn't understand him when he spoke. I could not hear him, he stated that – the only thing I understood him saying is that he has not had to determine someone's credibility and the rest was very, very, unclear to me.” D0104, at 154:3-8.

The State stated that it had struck S. H. because “she nodded off twice, and when I asked her if she was capable of judging credibility she said she's never had to before.” D0104, at 154:9-11.

The District Court ruled as follows:

Well, certainly the Court also had concerns with being able to understand [V. W.], and noticed the same issues with [S. H.] falling asleep or appearing to fall asleep during the proceedings. I do find that those are both neutral reasons for the strikes of those two jurors. The *Batson* challenge is overruled at this time.

D0104, at 154:23 to 155:3. The District Court made no ruling or comment with respect to the State's proffered reason that the two jurors had not judged someone's credibility before, implicitly concluding that that proffered reason was insufficient.

On appeal, Defendant Smith challenges only the denial of his *Batson* challenge relating to V. W. With respect to V. W., he was asked the following questions and gave the following answers in the only exchange with him during jury selection:

What about you, Mr. [W]?

POTENTIAL JUROR W\*\*: [W] [pronouncing.]

MS. SLAUGHTER: Yes. Have you been in a situation or tasked with judging the credibility of something somebody says?

POTENTIAL JUROR W\*\*: No.

MS. SLAUGHTER: No? Never?

POTENTIAL JUROR W\*\*: Never.

MS. SLAUGHTER: Do you have kids?

POTENTIAL JUROR W\*\*: Yes.

MS. SLAUGHTER: Do they ever tell you something you're not quite sure you believe?

POTENTIAL JUROR W\*\*: Yes, sometimes.

MS. SLAUGHTER: And how do you determine when your kids talk to you whether or not you should believe everything they tell you?

POTENTIAL JUROR W\*\*: I mean, I take one of them, and at the end, they care for each other, and they say their thoughts.

MS. SLAUGHTER: Okay. Do you think that you can listen to a stranger and determine if they're telling the truth?

POTENTIAL JUROR W\*: Yes.

MS. SLAUGHTER: Do you think you're capable of that? Okay.

D0104, at 93:22 to 94:21.

## ARGUMENT

### I. THE STATE'S PEREMPTORY STRIKE OF JUROR V. W. VIOLATED *BATSON*

#### A. *Preservation of Error*

The *Batson* issue was raised in the District Court and decided by the District Court. D0104, at 153:8 to 155:3. Error was preserved.

#### B. *Scope and Standard of Review*

*Batson* challenges are reviewed *de novo*. See *State v. Veal*, 930 N.W.2d 319, 327 (Iowa 2019); *Valdez v. W. Des Moines Cmty. Schools*, 992 N.W.2d 613, 622 (Iowa 2023).

#### C. *The State's Proffered Reason That Counsel for the State Couldn't Understand V. W. Was Pretextual Under Batson*

This Court most recently set forth the framework for analyzing a *Batson* challenge in *Valdez*:

Analyzing Valdez's *Batson* challenge involves a three-step inquiry: (1) Valdez must establish a prima facie case of purposeful racial discrimination in Defendants' peremptory strike; (2) Defendants must proffer a race-neutral explanation for the strike; and (3) Valdez must carry the ultimate burden of proving purposeful

discrimination, which turns on whether the strike "was 'motivated in substantial part by discriminatory intent.'" *Flowers v. Mississippi*, — U.S. —, 139 S. Ct. 2228, 2243–44, 204 L.Ed.2d 638 (2019) (quoting *Foster v. Chatman*, 578 U.S. 488, 513, 136 S.Ct. 1737, 195 L.Ed.2d 1 (2016)); see *State v. Booker*, 989 N.W.2d 621, 627 (Iowa 2023). Within our de novo review, "we give 'a great deal of deference' to the district court's evaluation of credibility when determining" whether the strike was motivated by a discriminatory intent at this final step. See *Booker*, 989 N.W.2d at 627 (quoting *Veal*, 930 N.W.2d at 327).

*Valdez*, 992 N.W.2d at 622. The District Court, in its analysis, appears to have largely stopped at step 2, finding that the State's proffered reason that counsel for the State was unable to understand V. W. was a race-neutral reason. D0104, at 154:23 to 155:3.<sup>2</sup>

Federal courts have concluded that a prospective juror's difficulty understanding English can be a race-neutral reason under step two of *Batson*. See *United States v. Canoy*, 38 F.3d 893, 900 (7th Cir. 1994); *United States v. Changco*, 1 F.3d 837, 840 (9th Cir. 1993). However, because use of language difficulty as a basis for peremptory strikes may

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<sup>2</sup>No one at trial questioned whether Defendant had established a prima facie case under *Batson* by the State using peremptory challenges to remove two minority jurors. While no record was developed as to whether those two jurors were the only minorities on the panel, it is fairly rare to have any minorities on an Iowa jury panel.

have a disparate impact on racial minorities, who are more likely to be educated in a different language, the court should closely examine whether the government's reason is "merely a pretext for racial or national origin discrimination." *Canoy*, 38 F.3d at 900.

*See also Pemberthy v. Beyer*, 19 F.3d 857, 869 (3rd Cir. 1994) ("Because language-speaking ability is so closely correlated with ethnicity, a trial court must carefully assess the challenger's actual motivation even where the challenger asserts a rational reason to discriminate based on language skills.").

While the record made at trial was sparse, this Court can make several observations from the record made. First, while counsel for the State and the District Court stated that they had some difficulty understanding V. W., the transcript does not reflect that the Court Reporter had any difficulty understanding and recording V. W.'s statements. Additionally, defense counsel did not indicate that she had any difficulty understanding V.W. Second, while not explicit in the record, the most likely reason for difficulty understanding V. W. was that English was not his first language and he had an accent. Third,

V. W. appeared to understand and appropriately answer the few questions he was asked by counsel for the State.<sup>3</sup>

Significantly, it is not a juror's ability to speak English which is important, it is a juror's ability to understand others speaking English which is important. A juror speaks only two times during a jury trial. First, potential jurors answer questions during jury selection. Second, jurors talk to each other during deliberations. Jurors do not speak while evidence is being presented. During the presentation of evidence, jurors listen to witnesses and may need to read documents. Jurors also need to be able to understand the jury instructions provided by the District Court and the opening statements and the closing arguments of counsel.

Minimum qualification for jury service are set forth in Iowa Code § 607A.4. Those qualifications include “Be able to understand the English language in a written, spoken, or manual mode,” Iowa Code § 607A.4(1)(c); and “Be able to receive and evaluate information such

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<sup>3</sup>Appellant notes that V. W.'s juror questionnaire was not made part of the record. Accordingly, there is no evidence as to whether or not he had any difficulty completing that form. There is nothing in the record made indicating that he had any difficulty completing the juror questionnaire.

that the person is capable of satisfactory jury service.” Iowa Code § 607A.4(1)(d). Minimum qualifications for a juror do not include being able to speak clearly understandable English.

The State did not develop any information during jury selection that V. W. is unable to understand English in a written, spoken, or manual mode. Nor did the State develop any evidence that V. W. would be unable to receive and evaluate information such that he would not be capable of satisfactory jury service. Nor did the State develop specific evidence that other jurors would not be able to understand V. W. during jury deliberations.

*Changco* is on point:

English proficiency is a statutory requirement for serving on a federal jury. 28 U.S.C. Secs. 1865(b)(2)-(3). If the prosecutor had doubts about the ability of Maldia or Delacruz to follow the events of the trial, comprehend the judge's instructions or deliberate effectively with the other jurors, she had ample grounds for striking them. So long as the prosecutor (or the defendant, for that matter) can convince the district court that the potential juror who is being struck in fact has difficulty with English, the justification is race-neutral.

*Changco*, 1 F.3d at 840 (emphasis added).

Here, there is nothing demonstrating, or even suggesting, that V. W. “in fact has difficulty with English.” In particular, there was nothing remotely suggesting that V. W. has any difficulty whatsoever in understanding English. Although the questioning of V. W. was limited, he appeared to understand and appropriately answer the few questions he was asked. There is no specific evidence that V. W. would have been unable to effectively communicate with other jurors during deliberations.

Based on the circumstances as a whole, the State's proffered reason for striking juror V. W. that counsel for the State could not understand him is not supported by the record. Nor is it a valid reason for exercising a peremptory strike to remove V. W. from the jury. That proffered reason was pretextual. Based on the State's use of peremptory strikes on the only two evident minority members of the jury panel, the State's reason for striking V. W. was pretextual.

As a policy matter, upholding the State's exercise of a peremptory challenge to remove V. W. from the jury would improperly allow the State to remove any juror whose native language is not English based

on the flimsiest of claims that counsel had difficulty understanding the juror. This Court should not allow such blatant racial and national origin discrimination to stand.

Defendant Smith's *Batson* challenge as to juror V. W. was improperly denied. His conviction must be reversed and this matter remanded for a new trial.<sup>4</sup>

### **CONCLUSION AND RELIEF SOUGHT**

For the above stated reasons, Defendant/Appellant James D. Smith respectfully requests this Court to reverse the District Court's Judgment and Sentence and to remand this matter for a new trial.

### **REQUEST FOR ORAL ARGUMENT**

Defendant/Appellant James D. Smith requests fifteen minutes of oral argument.

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<sup>4</sup>Appellant Smith notes that pursuant to double jeopardy principles he cannot be retried on the greater offenses included in Count 1. *See Green v. United States*, 355 U.S. 184 (1957). He can only be retried, if he can be retried at all, on the lesser included offense of Domestic Abuse Assault that the jury convicted him on with respect to Count1 and on Count 2.

Respectfully Submitted,

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1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(i) because this brief contains 2,753 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1)
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Date: June 18, 2025

By: \_\_\_\_/s/ Webb L. Wassmer\_\_\_\_\_  
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I certify that on the 18th day of June, 2025, I electronically filed this document with the Clerk of the Supreme Court of Iowa by filing it through EDMS, which will send notice to the following registered filers:

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