

2002

The State of Utah v. Jared Casanova : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 JARED CASANOVA, : Case No. 20020527-CA
 :
 Defendant/Appellant. :

REPLY BRIEF OF APPELLANT

Appeal from a judgment of conviction for aggravated robbery, a first degree felony, in violation of Utah Code Ann. § 76-6-302 (1999); attempted theft, a third degree felony, in violation of Utah Code Ann. § 76-6-404 (1999); failure to respond to an officer's signal to stop, a third degree felony, in violation of Utah Code Ann. § 41-6-13.5 (Supp. 2001); and attempted escape, a class A misdemeanor, in violation of Utah Code Ann. § 76-8-309 (1999), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Robin W. Reese, Judge, presiding.

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ARGUMENT

**ISSUE: CASANOVA ESTABLISHED PURPOSEFUL RACIAL
DISCRIMINATION AS REQUIRED BY BATSON V. KENTUCKY.**

Contrary to the State's assertion in its brief ("SB"), Casanova has met his burden of proof under Batson v. Kentucky, 476 U.S. 79 (1986). In order to meet the requisite burden of proof in the trial court, the party challenging the peremptory strike is required to establish a prima facie case of racial discrimination in the trial court. See State v. Merrill, 928 P.2d 401, 403 (Utah App. 1996) (citations omitted).

It is incumbent on the non-moving party to challenge whether a prima facie showing was made. See State v. Higginbotham, 917 P.2d 545, 547 (Utah 1996). Absent such challenge, the argument is waived and the "burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation." State v. Merrill, 928 P.2d 401, 403 (Utah App. 1996) (quotations omitted).

In fact, Casanova argued the Batson challenge and made a prima facie showing of racial discrimination to the trial court. R.157[83]. The State concedes on appeal that it did not assert a challenge to the prima facie challenge. See SB Point I.B.1. It rightly concedes that "the issue of whether a prima facie case was established by defendant has been waived by the State." Id. at p. 10.

Consequently, at that time, Casanova satisfied his burden of proof and it then shifted to the State to establish that the peremptory strike was race-neutral. See Merrill, 928 P.2d at 403 (quotations omitted). Hence, the State's assertion on appeal that Casanova "has not carried his burden" is unwarranted. SB 12.

The State also posits that the analysis in State v. Slappy, 522 So. 2d 18 (Fla.), cert. denied 487 U.S. 1219 (1988), is not appropriate in this context¹. See SB 13. In fact, the analysis of Slappy was adopted by the Utah Supreme Court in State v. Cantu, 778 P.2d 517, 518-19 (Utah 1989), applying it in its Batson analysis. See also State v. Span, 819 P.2d 329, 342-43 (Utah 1991) (acknowledging that Slappy analysis was adopted in Utah).

Moreover, it does not, as the State suggests, shift the burden of production or proof onto the non-challenging party. See SB 13. The State particularly challenges the notion that the proponent of a strike should ask follow-up questions to confirm or deny suspicions of bias. See SB 14. As noted in Cantu II, the Slappy factors provide a

¹ These factors are fully discussed in Casanova's opening brief ("AB") at p. 19-24.

meaningful framework for assessing the "legitimacy of a purportedly race-neutral explanation." 778 P.2d at 518. It is helpful to an appellate court, and good practice at the trial level, for the proponent of a challenge to posit follow-up questions on the record. Such practice gives all parties concerned the information they need to assess whether a peremptory strike is proper, including the proponent himself. Absent clarification via follow-up questions on the record, the motives for the strike remain vague and the risk that an improper racial- or gender-based strike may infect the jury selection process remains unacceptably high.

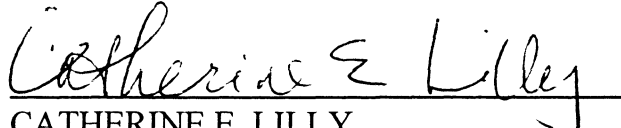
Consequently, the State's concern that Slappy shifts the burden of production or proof onto the non-challenging party is misplaced. As recognized by the Utah Supreme Court, Slappy's factors are well-advised guidelines, both at the trial level and on appeal, for addressing the issue of improper peremptory strikes. See Cantu II, 778 P.2d at 518-19.

CONCLUSION

In light of the foregoing, and for the reasons set forth in Casanova's opening brief, Casanova respectfully requests this Court to reverse his convictions since the trial court erred in upholding the State's racially motivated peremptory strike. Moreover, the aggravated robbery conviction fails for insufficient evidence.²

² Casanova submits on his opening brief in response to the State's argument regarding the sufficiency of the evidence. Casanova similarly submits on his brief regarding the Batson challenge in response to any of the State's arguments not

RESPECTFULLY submitted this 15th day of May, 2003.



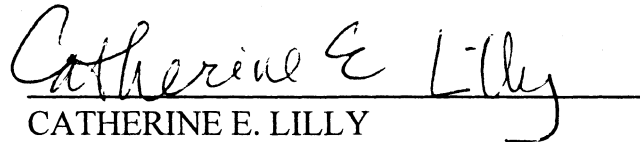
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specifically addressed in his reply brief.

CERTIFICATE OF DELIVERY

I, CATHERINE E. LILLY, hereby certify that I have caused to be hand-delivered eight copies of the foregoing to the Utah Court of Appeals, 450 South State Street, Fifth Floor, P. O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, Third Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 15th day of May, 2003.


CATHERINE E. LILLY

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this _____ day of May, 2003.
