



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. FRANCISCO MIGUEL URREA,
No. CR-17-0261-PR**

PARTIES:

Petitioner: Francisco Miguel Urrea
Respondent: State of Arizona

FACTS:

In June 2014, a sheriff's deputy stopped Francisco Miguel Urrea for a routine traffic violation. He arrested Urrea after finding sixty grams of cocaine in the vehicle. Urrea was charged with transportation of a narcotic drug for sale.

During jury selection, Urrea raised a *Batson* challenge after both parties had used their peremptory strikes, but before a jury had been empaneled. He claimed that five of the prosecutor's six strikes targeted potential jurors with "Hispanic ethnic backgrounds." *See* Ariz. R. Crim. P. 18.5(g). The trial court heard the prosecutor's reasons for striking the five potential jurors and ruled that three of the strikes lacked sufficient "race-neutral justification." It reinstated those three potential jurors to the venire. The trial court then ruled that the State had forfeited three of its strikes and would not be allowed to strike three additional potential jurors. Urrea moved for a mistrial and dismissal of the entire venire. The court denied his motion and immediately empaneled the first nine jurors who had not been struck, over Urrea's objection. Two of the three reinstated potential jurors were empaneled and sat on the jury. The jury found Urrea guilty of the drug charge, and the trial court sentenced him to serve five years in prison.

The court of appeals affirmed. The majority rejected Urrea's argument that the superior court was required to declare a mistrial and select a new jury *de novo*. It would leave it to trial judges' discretion to tailor an appropriate remedy to the particulars of the constitutional violation. The dissenting appellate judge agreed that a trial court has broad discretion to fashion appropriate remedies for a *Batson* violation, but would conclude the superior court here erred by not placing all three improperly struck jurors on the jury. He also would allow the defendant to amend his peremptory strikes, or vacate all valid strikes and begin the procedure anew.

ISSUES:

"(1) Whether the Court of Appeals applied the correct standard in determining what remedies a trial court must use when there has been a finding of a *Batson* violation?"

"(2) Whether the Court of Appeals improperly concluded that the trial court did not abuse its discretion in [not] granting a motion for a new trial [as] the remedy for *Batson* violation in this case?"

DEFINITIONS:

Ariz. R. Crim. P. 18.5(g), governing the exercise of peremptory challenges, provides:

After examining the prospective jurors and completing all challenges for cause, the parties must exercise their peremptory challenges on the list of prospective jurors by alternating strikes, beginning with the State, until the peremptory challenges are exhausted or a party elects not to exercise further challenges. Failure of a party to exercise a challenge in turn operates as a waiver of the party's remaining challenges, but it does not deprive the other party of that party's full number of challenges. If the parties fail to exercise the full number of allowed challenges, the court will strike the jurors on the bottom of the list of prospective jurors until only the number to serve, plus alternates, remain.

“*Batson*” refers to the United States Supreme Court’s opinion in *Batson v. Kentucky*, 476 U.S. 79 (1986). There the Court ruled that using peremptory strikes to exclude potential jurors based on race violates the Fourteenth Amendment to the U. S. Constitution. *Batson* established a three-step process for inquiring into racially motivated peremptory strikes. *Id.* at 96-98.

- First, the challenging party raises a challenge to the court and makes a *prima facie* case that racial discrimination motivated specific peremptory strikes. *Id.* at 96.
- Second, the striking party must give a race-neutral justification for the strike, or forfeit the challenge. *Id.* at 96-97.
- Third, if a race-neutral justification is given, then the trial court determines whether the challenger has carried the burden of proving purposeful racial discrimination.

But the Supreme Court did not enunciate specific remedies that courts may impose for *Batson* violations. It only said in footnote 24:

In light of the variety of jury selection practices followed in our state and federal trial courts, we make no attempt to instruct these courts how best to implement our holding today. For the same reason, we express no view on whether it is more appropriate in a particular case, upon a finding of discrimination against [improperly struck] jurors, for the trial court to discharge the venire and select a new jury from a panel not previously associated with the case [citation omitted], or to disallow the discriminatory challenges and resume selection with the improperly challenged jurors reinstated on the venire.

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