

APPLYING *BATSON* IN TEXAS STATE COURTS:
PEREMPTORY JURY STRIKING IN VOIR DIRE
DETERMINED TO BE RACE-BASED
HAYES V. THALER, NO. 08-10057, 2010 WL 183395
(5TH CIR. JAN. 19, 2010)

Highlight

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Eight years ago, in a Dallas County state district court, Cecil Keith Hayes, appellant in this case, was preparing to defend himself on a charge of aggravated robbery.¹ Of the jury panel that was finally selected, none of the members were African-American because the prosecution had used eight out of its eleven peremptory strikes to eliminate all eligible African-American venire members.² Hayes objected, and as a result, the trial court conducted a *Batson* hearing.³ Accordingly, the trial court sustained the *Batson* challenge with respect to Juror #6, Gertrude Hashaway, but overruled the challenge in regards to Juror #15, Cynthia Richards, and Juror #16, Linda Jackson.⁴

Hayes was subsequently convicted, and appealed the denial of his objections to both the intermediate state court of appeals and the Texas Court of Criminal Appeals.⁵ Both courts affirmed the trial court's decision.⁶ In a further attempt to seek relief, Hayes requested the United States District Court to grant a writ of habeas corpus.⁷ The magistrate judge denied habeas relief in the first hearing, but granted habeas relief as to the strike of Richards in a second hearing; the district judge denied habeas relief and accordingly denied Hayes's petition.⁸

During the original trial court proceedings, the trial court judge sustained the *Batson* challenge as to Hashaway because the judge did not find the prosecution's reasons for striking Hashaway—that she was

¹ Hayes v. Thaler, No. 08-10057, 2010 WL 183395, at *1 (5th Cir.).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at *2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

sleeping during voir dire and was “grandmotherly and careless in her appearance”—to be true or proper.⁹ In striking potential juror Richards, the prosecution contended that it struck her because she (1) was hostile, (2) failed to respond to the trial judge’s questions, (3) was employed as a teacher, (4) had a “bad juror rating,” and (5) named “rehabilitation” as an important goal for the criminal justice system.¹⁰ In striking potential juror Jackson, the prosecution contended that it struck her because she (1) had a cousin in a pending criminal case within the same county, (2) allegedly provided conflicting answers regarding whether she found it necessary to see the gun used in the robbery, and (3) chose rehabilitation as a goal for the criminal justice system.¹¹

Significantly, the Fifth Circuit noted that in regards to the reasoning the prosecution used to strike Richards, the prosecution did not strike two white jurors who were teachers.¹² Also, the prosecution did not strike a white juror who also had a “bad juror rating,” and the record did not actually reflect that Richards had stated rehabilitation should be a goal of the criminal justice system.¹³ With respect to Jackson, the Fifth Circuit noted that other jury members who were ultimately selected also had “relatives with criminal cases” and “chose rehabilitation as a goal of the criminal justice system.”¹⁴ Additionally, the Court opined that, because Jackson maintained that she no longer needed to see the gun once the prosecution’s original question was clarified, the conflicting responses were likely a result of confusion.¹⁵

In reviewing the *Batson* challenges to potential jurors Richards and Jackson, the Fifth Circuit applied the highly deferential Anti-Terrorism and Effective Death Penalty Act (AEDPA) standard.¹⁶ But while the AEDPA standard accords great deference to the factual findings of the trial court, the court can still grant relief if the state court decision “involves an unreasonable application of clearly established federal law [when] the state court ‘correctly identifies the governing legal rule but applies it unreasonably to the facts of a particular prisoner’s case’”¹⁷

Under a *Batson* challenge, the burden of proof shifts in the

⁹ *Id.* at *1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at *2.

¹⁷ *Id.*

following manner: (1) the defendant makes a prima facie showing that the prosecutor exercised its peremptory challenges based on race; (2) the burden then moves to the prosecutor to articulate a race-neutral reason in striking the juror in question; and (3) the trial court judge must then determine whether the defendant has carried her burden of proving purposeful discrimination.¹⁸ In conducting its review, the Fifth Circuit focused on the third prong and applied the comparative analysis the Supreme Court employed in subsequent cases concerning *Batson* challenges.¹⁹ As such, the *Hayes* court “examine[d] both jurors and then compare[d] them to other non-African-American jurors who were not struck.”²⁰

As a preliminary concern, the Fifth Circuit noted that, because the prosecution struck 100% of the eligible African-American venire members, it was “unlikely to be the product of happenstance” and was “indicative of discriminatory intent.”²¹ In regards to the race-neutral reasons the prosecution proffered for striking Jackson, the *Hayes* court disagreed with the district court and held that the State’s explanations were “pretexts for discrimination.”²² The Fifth Circuit established that in comparing Jackson with other jurors, another non-African-American juror also gave inconsistent answers regarding the need to see the gun, several non-African-American jurors had relatives who had previously been prosecuted for crimes, and other non-African-American jurors mentioned that rehabilitation was a goal of the criminal justice system.²³ Because the non-African-American jurors were not struck for the above-mentioned reasons, the Fifth Circuit held that the prosecutions reasons were “implausible or invalid.”²⁴

In regards to the race-neutral reasons the prosecution proffered for striking juror Richards, the Fifth Circuit countered that Richards never selected the rehabilitation option, and two white teachers served on the jury.²⁵ Furthermore, the Fifth Circuit stated that the trial court judge incorrectly focused on the fact that hostility is a valid reason for striking a juror.²⁶ Rather, the correct analysis should regard the

¹⁸ *Id.* at *3.

¹⁹ *See, e.g.,* Miller-El v. Dretke (Miller-El II), 545 U.S. 231, 251-52 (2005) (conducting a comparative analysis between jurors who were stricken and those who were not based on the State’s proffered reasons).

²⁰ *Id.* at *6.

²¹ *Id.*

²² *Id.* at *8.

²³ *Id.* at *9.

²⁴ *Id.* at *8.

²⁵ *Id.* at *9.

²⁶ *Id.*

truthfulness of the State's contention.²⁷ The Fifth Circuit concluded that the trial court did not actually find Richards to be hostile.²⁸ Thus, the Fifth Circuit held that "the strike of Richards represents an unreasonable application of clearly established law to the facts."²⁹

Hayes is noteworthy because the Fifth Circuit delineated the proper way to apply Supreme Court precedent in determining whether the State has committed a *Batson* violation.³⁰ As a result, appellate attorneys should be cognizant of the comparative analysis that the Fifth Circuit uses in evaluating *Batson* challenges.³¹ Further, defense attorneys and appellate attorneys alike can take note of the other circumstances courts consider, such as the striking of all eligible African-American venire members.³² In conclusion, while the Fifth Circuit will accord a high deference to the trial court's findings in a *Batson* challenge, a multitude of comparisons resulting in suspicious outcomes can cause the Fifth Circuit to overturn the lower court's ruling.³³

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*; see also *Miller-EI v. Dretke (Miller-EI II)*, 545 U.S. 231, 252 (2005) ("A *Batson* challenge does not call for a mere exercise in thinking up any rational basis. If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.").

³⁰ *Hayes*, 2010 WL 183395, at *10.

³¹ *Id.* at *6.

³² *Id.*

³³ *Id.* at *10.