

IN THE SUPREME COURT OF FLORIDA

MOTION FOR REHEARING AND CLARIFICATION

¹ Batson v. Kentucky, 476 U.S. 79 (1986).

decision and a binding precedential opinion are created to the extent that at least four members of the Court have joined in an opinion and decision.” (citing Art. V, § 3(a), Fla. Const.) (footnotes omitted); Caruthers v. State, 42 Fla. L. Weekly D2616, 2017 WL 6368614 (Fla. 4th DCA Dec. 13, 2017) (recognizing that a concurring supreme court opinion signed by three justices was not precedential).

3. The Second District’s opinion changes the prevailing law to require more verbal objections from a party attempting to preserve a Batson issue than this Court required under Melbourne² and the U.S. Supreme Court has required under its precedent. E.g., Snyder v. Louisiana, 552 U.S. 472 (2008). The Second District enforced its new preservation rules by procedurally defaulting Spencer’s Batson claims even though his attorney complied with the three steps set out in Batson and Melbourne and additionally complied with the renewal of objection before the jury was sworn, as mandated in Joiner. See Spencer v. State, 196 So. 3d 400, 401 (Fla. 2d DCA 2016) (“Because the defendant did not preserve a Melbourne issue in this manner, we affirm.”).

4. This Court’s affirmance of the Second District without a majority opinion creates such uncertainty that it is now impossible for a lawyer or a judge to know what is required to preserve a Batson objection for review in this state.

5. This Court has not addressed the entire record of the jury selection in this case, which is necessary to put Spencer’s

² Melbourne v. State, 679 So. 2d 759 (Fla. 1996).

claims into the appropriate context. See Snyder. It is only through examining the entire record of the questions posed by the prosecutor to the venire and the responses given that it becomes obvious that the prosecutor gave disingenuous reasons for his strikes of the two black jurors.

6. Justice Quince's plurality opinion notes "that on appeal the defendant has not argued that the record supports a finding of pretext for the challenged strikes and our review of the record uncovered none." (Slip op. at 16) This statement overlooks that part of Spencer's Initial Brief where he argued that "the prosecutor did not provide credible race-neutral reasons for his strikes of the two black jurors." (Initial Brief at 28). With regard to Mr. Thermidor, in particular, even Judge Altenbernd acknowledged below that "the State's explanation for its peremptory challenge would seem to apply to many people who are subpoenaed for jury duty." Spencer v. State, 196 So. 3d 400, 410 (Fla. 2d DCA 2016). In short, Spencer did indeed argue that the record supports a finding of pretext for the challenged strike of Juror Thermidor. That the reason given was pretextual is revealed only through an examination of the prosecutor's questions posed to the venire.

7. This Court should grant rehearing and render a majority opinion that clarifies the preservation requirements for a Batson claim and reverses for a new trial for Tavares Spencer.

CERTIFICATE OF SERVICE

I certify that a copy has been electronically served on Assistant Attorney General Bilal A. Faruqui at crimaptpa@myfloridalegal.com on this 1st day of February, 2018.

Respectfully submitted,

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