



Case Summaries – North Carolina Court of Appeals (July 21, 2020)

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This post summarizes opinions issued by the Court of Appeals of North Carolina on July 21, 2020.

On the limited record before the Court of Appeals, the trial court did not err in finding that the defendant failed to make a *prima facie* claim under *Batson*.

[State v. Campbell](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 21, 2020). This case involves a first-degree murder conviction previously upheld by the Court of Appeals, ___ N.C. App. ___, 838 S.E.2d 660 (2020), back before the court for reconsideration in light of the Supreme Court's recent decisions in *State v. Hobbs*, ___ N.C. ___, 841 S.E.2d 492(2020), and *State v. Bennett*, ___ N.C. ___, 843 S.E.2d 222 (2020).

At his murder trial, the defendant raised a *Batson* challenge in response to the State's use of three of its four peremptory challenges to strike African American prospective jurors. The trial judge said that he did not find that the defendant established a *prima facie* case of discrimination, but he nonetheless ordered the State to give reasons for its challenges, which the State did. After hearing the State's explanations, the trial court reiterated its finding that the defendant had not made a *prima facie* showing of purposeful discrimination and denied his *Batson* challenge. The defendant was convicted of first-degree murder and appealed.

The Court of Appeals first rejected the State's motion to dismiss the appeal in light of the defendant's failure to include in the appellate record a transcript of jury selection proceedings. At trial, the defendant's lawyer made a motion for recordation of all proceedings, but specifically noted that she was not requesting recordation of jury selection. The appellate court concluded that the record was minimally sufficient to permit appellate review here, but emphasized that it will generally be extremely difficult for a defendant to prevail on a *Batson* argument without a transcript of jury selection.

The Court of Appeals next determined that the scope of its review was limited to step one of the *Batson* analysis—that is, the trial judge's finding that the defendant had failed to establish a *prima facie* case of discrimination. The court distinguished this case from *State v. Williams*, 343 N.C. 345 (1996) (step one becomes moot when the State volunteers the reasons for its peremptory challenges before the trial court rules on whether the defendant has made a *prima facie* showing), and *State v. Hobbs*, ___ N.C. App. at ___, 841 S.E.2d at 499–501 (step one becomes moot when the trial judge rules that the defendant has not established a *prima facie* case but nonetheless orders the State to provide nondiscriminatory reasons for its peremptory challenges and then enters findings on those reasons). Unlike *Williams*, the State did not volunteer reasons before the trial court ruled on step one; the State was ordered to give reasons after the court ruled. And unlike *Hobbs*, the trial judge never conducted a full hearing or made findings on the State's proffered reasons. The step one inquiry therefore was not rendered moot, and Court of Appeals majority thus considered itself precluded from consideration of the State's proffered nondiscriminatory reasons. The court concluded that the trial court's order addressing only step one of the inquiry was not facially deficient when that was the only step of the inquiry the trial court technically reached.

On the merits, the court concluded that based on the limited available record, the defendant had not established that the trial court erred in finding that the defendant failed to make a *prima facie* showing. The transcript showed only the

race of the defendant and that the State used three of its four peremptory challenges to remove prospective African American jurors. It did not provide other information about the so-called *Quick* factors (derived from *State v. Quick*, 341 N.C. 141 (1995)), such as the race of the victim, the questions and statements of the prosecutor during jury selection, or the final racial composition of the jury. The court noted its concern that the State used seventy-five percent of its peremptory challenges on African American prospective jurors, but said that alone was not sufficient to establish a *prima facie* case of discrimination.

A judge dissenting in part would have concluded that the rate at which the State used its peremptory challenges on African American jurors obligated the trial court to conduct a more thorough analysis of the defendant's objection. He therefore would have remanded the case for specific findings of fact in order to permit a meaningful appellate review.

The record on appeal did not support a determination that the defendant forfeited his right to counsel.

[State v. Patterson](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 21, 2020). The defendant was charged with multiple crimes related to a break-in at the home of the elected district attorney. The trial court allowed the defendant's first appointed lawyer to withdraw based on an unspecified conflict in February 2018. In April 2018 his second appointed lawyer also moved to withdraw when the defendant was uncooperative. The trial court allowed the motion and appointed a third lawyer. The third lawyer moved to withdraw in November 2018. The court held a hearing on that motion, ultimately granting it and finding that the defendant had forfeited his right to counsel based on his conduct, "including incessant demands and badgering" of his three appointed lawyers. The trial judge appointed the third lawyer as standby counsel. The defendant represented himself at trial, presented no evidence, was convicted of all charges and sentenced. On appeal, the defendant argued that the trial court erred by determining that he had forfeited his right to counsel. In light of *State v. Simpkins*, 373 N.C. 530 (2020)—a case decided by the Supreme Court while the defendant's appeal was pending—the Court of Appeals agreed. The test articulated in *Simpkins* is that a finding that a defendant has forfeited his right to counsel requires "egregious dilatory or abuse conduct on the part of the defendant which undermines the purpose of the right to counsel." The Supreme Court further clarified that forfeiture is appropriate when the defendant's behavior is so threatening or abusive toward counsel that it makes the representation itself physically dangerous, or when the defendant's actions related to counsel are an attempt to obstruct the proceedings and prevent them from coming to completion. Here, the defendant's attorneys moved to withdraw because the defendant was uncooperative, uncivil, and made unreasonable demands based on his concern that any court-appointed counsel would be biased against him due to his or her relationship with the victim in the case—the district attorney. However, no evidence in the record suggested that the defendant threatened or physically abused his lawyers. And nothing in the record indicated that the defendant's behavior actually delayed or obstructed the proceedings. The defendant's actions therefore did not fit within the forfeiture criteria recently spelled out in *Simpkins*, and the Court of Appeals vacated the criminal judgments. Nevertheless, based on the reference in the trial court's order to the defendant's "abusive nature" and "abuse of counsel," the court remanded the matter for a new forfeiture hearing at which the trial judge could put into the record any evidence from prior in-chambers discussions with counsel that might support a forfeiture under either prong of the new *Simpkins* test.