

**Summary of SC90528, *State of Missouri v. Tyrone C. Bateman***

Appeal from the St. Louis city circuit court, Judge Joan L. Moriarty  
Argued and submitted May 5, 2010; opinion issued Aug. 3, 2010

**Attorneys:** Bateman was represented by Jessica M. Hathaway of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Richard A. Starnes of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A man appeals his first-degree murder conviction, arguing that the evidence was insufficient to allow the jury to find beyond a reasonable doubt that he deliberated before shooting the victim and that the trial court erred in overruling his challenge under *Batson v. Kentucky*, 476 U.S. 86 (1987), to the state's peremptory strike of a potential juror who was black. In a 5-2 opinion written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms the trial court's judgment. The evidence presented at trial, if believed, was sufficient to permit a reasonable juror to find the element of deliberation beyond a reasonable doubt. As to the man's *Batson* challenge, this Court finds no reversible error in the trial court's rejection of his claim that the state's strike of a potential juror who was black was pretextual. In a dissenting opinion, Judge Richard B. Teitelman notes he would reverse the judgment and remand (send back) the case for further proceedings because he would find the state's strike of the potential juror violated *Batson*. Considering the circumstances in their totality, the state's justification for striking the potential juror was pretextual.

**Facts:** In the underlying action, evidence was presented that Tyrone Bateman and his cousin engaged in a physical altercation. Bateman then left his cousin's home, drove to his own house to retrieve his shotgun, drove back to his cousin's house, kicked down the door, fatally shot his cousin, and then drove from the scene while exclaiming, "I got him. I got him." The state charged Bateman with first-degree murder. At the start of the second day of jury selection, after the prosecutor asked potential jurors whether they had questions, a potential juror who was white – B.B. – asked why the death penalty was not being sought. Later in jury selection, the prosecutor asked whether the potential jurors could follow the "instructions as to one of the elements in the case ...." After five potential jurors answered in the affirmative, the prosecutor asked the question of B.T., a potential juror who was black and who responded by asking the prosecutor to explain what was meant by the terms first- or second-degree murder. The prosecutor did not initially include B.T. in his peremptory strikes (removing potential jurors from the jury pool without having to give reasons), but when Bateman's *Batson* challenge was upheld as to one of the prosecutor's original strikes, the prosecutor struck B.T., explaining he did so because B.T.'s question tended to show initiative and leniency. Bateman's counsel argued that this explanation was pretextual and that B.B. was similarly situated to B.T. because B.B. also showed initiative in asking why the jury could not consider capital punishment in this case. The trial court denied the challenge, finding that the strike was race-neutral. During trial, Bateman admitted he shot his cousin but argued he was guilty only of voluntary manslaughter. The jury ultimately found Bateman guilty of first-degree murder and armed criminal action. He appeals.

## AFFIRMED

**Court en banc holds:** (1) The evidence was sufficient to support the jury's determination beyond a reasonable doubt that Bateman shot and killed his cousin after deliberation. The state presented evidence that Bateman had ample opportunity to terminate the confrontation, threatened his cousin, left and returned to the location of the altercation with a deadly weapon, kicked down the door, fired his shotgun directly at his cousin, and fled while exclaiming, "I got him. I got him." There was substantial evidence from which a reasonable juror could find the element of deliberation beyond a reasonable doubt.

(2) The trial court did not clearly err in finding that the state's strike of B.T. was race-neutral. Although the state failed to exercise a peremptory challenge as to B.B., a potential juror who was white and who asked a question about punishment, the state's explanation that it struck B.T. because he showed initiative and leniency in asking about the degrees of murder was not pretextual. The focus of some prior cases on the "crucial" nature of the presence of a similarly situated white juror who was not stricken should be understood to mean that this evidence often is determinative of the presence of pretext; the presence of a similarly situated but unstricken white juror is not necessary to find pretext, however. While no single factor is dispositive in determining whether a strike was pretextual, and multiple factors have been identified as relevant, here the challenge was made solely on the bases that there was a similarly situated white juror who was not stricken and that the prosecutor mischaracterized the nature of a question asked by the stricken juror. The defense did not claim below, and does not claim in this Court, any other indicia of pretext. The record shows that the white potential juror, B.B., was not similarly situated and that his answers supported the prosecutor's statement that he believed B.B. would be more favorable to the prosecution than would B.T. While both potential jurors showed some minor initiative by asking questions regarding punishment, it is evident that B.B.'s question about the death penalty tended to show he was interested in the higher degrees of murder. A reasonable prosecutor may have concluded from these facts that B.B. would be a more favorable juror for the prosecution than would B.T.

**Dissenting opinion by Judge Teitelman:** The author dissents from the principal opinion to the extent it finds no violation of *Batson v. Kentucky*, 476 U.S. 86 (1987), with respect to the state's peremptory strike of B.T. While the presence of similarly situated white jurors is a crucial factor, it is not dispositive because the proper analysis of a *Batson* claim requires consideration of the totality of the circumstances. There are three suspect factors of this case that, when considered together, indicate a strong likelihood that the state's justifications for striking B.T. were pretextual. First, as to B.T.'s "initiative" in asking a question, the record refutes the prosecutor's justification; B.T. did not raise the issue on his own initiative but rather was responding to the prosecutor's direct question. Second, despite being fully apprised of B.T.'s supposed leniency, the state originally did not strike B.T. but only did so after the trial court sustained Bateman's *Batson* challenge to the state's attempt to strike another potential juror who was black. Third, the fact that the trial court previously sustained a *Batson* challenge is relevant to showing that, in this case, the prosecutor demonstrated a tendency to use pretextual peremptory strikes. Given these circumstances, the author concludes the state's justification for striking B.T. was pretextual and would reverse the judgment and remand (send back) the case for further proceedings.