

## **Summary of SC91849, *State of Missouri v. Ines Leticia***

Appeal from the St. Louis city circuit court, Judge Thomas J. Frawley  
Argued and submitted Nov. 10, 2011; opinion issued Dec. 20, 2011

**Attorneys:** Leticia was represented by Steven V. Stenger of Klar, Izsak & Stenger LLC in St. Louis, (314) 863-1117, and the state was represented by Timothy A. Blackwell 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 challenges his conviction and sentence. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. Although the trial court erred in sustaining prematurely the state's challenge to the defense's request to remove a potential juror from the jury pool, this error was harmless because it resulted merely in an otherwise qualified juror serving on the jury and, therefore, does not require reversal. The trial court did not err in overruling the man's motions for judgment of acquittal notwithstanding the jury's verdict or, alternatively, for a new trial because the evidence was sufficient to support the jury's verdict. Further, the trial court did not commit plain error because the sentences were within the range of punishment permissible by statute, certain statements made by the prosecution did not rise to the level of manifest injustice, and the admission of certain photographs into evidence did not rise to the level of manifest injustice.

Judge Jodie Capshaw Asel, a circuit judge in the 13th Judicial Circuit (Boone and Callaway counties), sat in this case by special designation in place of Judge George W. Draper III.

**Facts:** Ines Leticia was charged with first-degree assault and armed criminal action following his December 2007 altercation in a bar with another man, who spent five days in the hospital as a result of the knife injuries he sustained in the altercation. During jury selection for Leticia's trial, the state made peremptory strikes (to remove from the jury pool, without having to give a cause) against five potential jurors, all of whom were black women. The defense raised challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), to all five strikes; after hearing the state's reasons for striking these potential jurors, the trial court let the strikes stand. The defense then made peremptory strikes to remove four white women from the jury pool. The state raised a reverse-*Batson* challenge to the strikes. As to one, the state argued she did not say anything to prompt the strike, and defense counsel responded about concerns that the potential juror was young. The court sustained the state's objection as to this one potential juror, who ultimately served on the jury in Leticia's trial. The jury found Leticia guilty, and he was sentenced to two concurrent sentences of 15 years in prison. Leticia appeals.

**AFFIRMED.**

**Court en banc holds:** (1) The trial court erred in ruling prematurely on the state's reverse-*Batson* challenge to the juror who was young, but because this error resulted in an otherwise qualified juror being empanelled, it is harmless and does not require reversal. Although no juror

may be removed solely on the grounds of race, gender or ethnic origin, the circuit court is afforded great deference concerning a *Batson* or reverse-*Batson* challenge because its findings of fact largely depend on its evaluation of credibility and demeanor. As such, its findings will be set aside only if they are clearly erroneous, leaving the definite and firm conviction that a mistake has been made. There are three steps to a challenge or reverse challenge under *Batson*. First, the opponent of the peremptory strike must set out a prima facie (on its face) case of racial discrimination. If the first step is met, then second, the burden shifts to the proponent of the strike to produce a race-neutral explanation for the strike. If a race-neutral explanation is offered, then third, the trial court must determine whether the opponent of the strike has proven purposeful prohibited discrimination making the race-neutral explanation a mere pretext for discrimination. Throughout the analysis, the ultimate burden of proving racial motivation always lies with the opponent of the strike. Here, the circuit court followed the first two steps, but it erred in stepping in for the state at the third step instead of requiring the state to prove that defense counsel's reasons for the strike were merely pretextual. By failing to proceed to step three, the court relieved the state of its burden of persuasion as the opponent of the strike. As such, the court misapplied the law. Nonetheless, by not contending or demonstrating that an unqualified person served on the jury that convicted him, Letica has failed to demonstrate he was prejudiced by this particular person serving on his jury. As such, the court's error was harmless and does not entitle Letica to a new trial.

(2) The circuit court did not err in overruling Letica's motion for judgment of acquittal notwithstanding the jury's verdict or, alternatively, his motion for a new trial because the evidence was sufficient to support Letica's convictions. It is the jury's job to determine the credibility of witnesses, resolve conflicts in testimony and weigh evidence. As such, the jury was well within its province to reject Letica's claim of self-defense, given the victim's testimony combined with the number of his wounds and their severity. This was sufficient evidence for a reasonable juror to conclude that Letica attempted to kill or knowingly cause serious physical injury to the victim (supporting the first-degree assault conviction) and that Letica knowingly did so using the assistance or aid of a dangerous instrument (supporting the armed criminal action conviction).

(3) The court did not commit plain error in sentencing Letica to two concurrent sentences of 15 years each. Each sentence was within the range of punishment allowed by statute for each crime of which Letica was convicted. Nor did certain statements made by the state during the trial rise to the level of manifest injustice constituting plain error. Further, the admission into evidence of certain photographs did not constitute manifest injustice. Even though the photographs were taken post-surgery, they were probative to corroborate the victim's testimony about the location of his stab wounds and how the attack took place. As such, their probative value was not outweighed by the photographs' prejudicial effect.