

NO. 44382-1-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

DEVON MARTEEN DANIELS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

APPELLANT'S REPLY BRIEF

VICTORIA J. LYONS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

TABLE OF CONTENTS

A. ARGUMENT IN REPLY..... 1

 1. The trial court abused its discretion and an impartial jury denied Mr. Daniels his right to a trial when juror 18 was improperly removed for cause..... 1

 a. Juror 18 was properly rehabilitated and should not have been removed for cause.....1

 b. An improper dismissal for cause may be challenged under *Batson v Kentucky*.....3

B. CONCLUSION..... 4

TABLE OF AUTHORITIES

WASHINGTON SUPREME COURT DECISIONS

State v. Latham, 100 Wn.2d 59, 667 P.2d 56 (1983).....1

State v. Mak, 105 Wn.2d 692, 718 P.2d 407, *cert. denied* 479 U.S. 995,
107 S.Ct. 599, 93 L.Ed.2d 599 (1986).....1

State v. Noltie, 116 Wn.2d 831, 839, 809 P.2d 190 (1991)

State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987).....1

State v. White, 60 Wn.2d 551, 374 P.2d 942 (1962) *cert. denied*, 375
U.S. 883, 84 S.Ct. 154, 11 L.Ed.2d 113 (1963).....1

WASHINGTON APPEALS COURT DECISIONS

Ottis v. Stevenson-Carson Sch. Dist. No. 303, 61 Wn. App. 747, 812
P.2d 133 (1991)..... 1

UNITED STATES SUPREME COURT DECISIONS

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986)
..... 4

STATUTES

RCW 4.44.170.....1

A. ARGUMENT IN REPLY

1. The trial court abused its discretion and an impartial jury denied Mr. Daniels his right to a trial when juror 18 was improperly removed for cause.

a. Juror 18 was properly rehabilitated and should not have been removed for cause.

A juror can only be removed for cause if he or she is actually biased against the case. Actual bias exists only when the juror “cannot try the issues impartially and without prejudice to the substantial rights of the challenging party.” *Ottis v. Stevenson-Carson Sch. Dist. No. 303*, 61 Wn. App. 747, 752, 812 P.2d 133 (1991); RCW 4.44.170(2). It has long been held that “equivocal answers alone do not require a juror to be removed when challenged for cause, rather, the question is whether a juror with reconvicted ideas can set them aside.” *State v. Noltie*, 116 Wn.2d 831, 839, 809 P.2d 190 (1991), *see also*, *State v. Rupe*, 108 Wn.2d 734, 749, 743 P.2d 210 (1987), *State v. Mak*, 105 Wn.2d 692, 707, 718 P.2d 407, *cert. denied* 479 U.S. 995, 107 S.Ct. 599, 93 L.Ed.2d 599 (1986) *overruled on other grounds*; *State v. Latham*, 100 Wn.2d 59, 64, 667 P.2d 56 (1983); *State v. White*, 60 Wn.2d 551, 569, 374 P.2d 942 (1962) *cert. denied*, 375 U.S. 883, 84 S.Ct. 154, 11 L.ed.2d 113 (1963).

The State's argument that "no attempt at rehabilitation could" allow Juror 18 to sit on the appellant's jury is an erroneous one that misinterprets the record. SRB 16. Juror 18 was questioned extensively and her answers were not always unequivocal. She alluded to "things she had seen" that weren't "right" while growing up in Detroit, as well as in Seattle. 1RP 78. She did not, as presented by the State say unequivocally that that her son was wrongfully killed due to police action. SRB 16. Much of Juror 18's discussion during voir dire was ambiguous. Juror 18 admittedly provided some equivocal answers but that is not the standard to remove a juror for cause.

The State misses the larger issue in this case, which is whether or not Juror 18 was properly rehabilitated following her statements that may have initially indicated some bias. The record shows she was rehabilitated and able to be impartial. Juror 18 very clearly expressed concern over the honesty of police officers when she stated, "I can't believe anything that comes out their mouth." 1RP 79. However when questioned further she stated, "I won't necessarily not believe them because they are law enforcement officers." 1RP 104-05. In response to the question "Do you think you could be fair and impartial based upon the evidence that has been presented to you and not based upon

the experiences?” Juror 18 very clearly and unequivocally stated, “Yes, I could.” She went on to state that law enforcement would have to prove something 100 percent and that it would not be based on her personal experiences. 1RP 105-06. There is nothing in these statements that would suggest an actual bias, in fact Juror 18’s statements regarding her need to “really, really, really believe” a witness echo the State’s burden to prove things beyond a reasonable doubt. *Id.* Juror 18 also said “no prosecutor probably won’t want me on their case because I see things *fairly*.” 1RP 107. (emphasis added). Appellant argues that this coupled with other statements made by Juror 18 demonstrate that she was rehabilitated, able to act impartially and would follow instructions. As a result, the trial court abused its discretion when granting the State’s motion to strike her for cause.

b. An improper dismissal for cause may be challenged under *Batson v Kentucky*.

The State is also incorrect when it argues that a *Batson* challenge can only be volleyed against a juror who is removed with a preemptory strike. SRB 17-18. A for cause challenge cannot be used as a mask to remove a protected class, such as race, from the jury. A *Batson* challenge protects a defendant by cementing the right to a jury

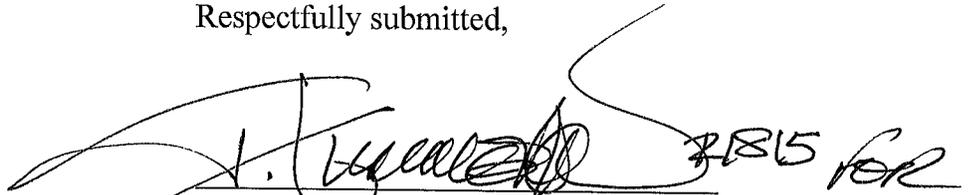
selected pursuant to nondiscriminatory criteria. *Batson v. Kentucky*, 476 U.S. 79, 85-86, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). It is this right that is violated when a "for cause" challenge is used to remove a juror of a specific race who has successfully been rehabilitated, such as occurred in appellant's case. It is for this reason a *Batson* challenge is appropriate and appellant's convictions should be reversed.

B. CONCLUSION

For the reasons stated above and in his opening brief, Mr. Daniels respectfully asks this Court to reverse his convictions and remand for a new trial.

DATED this 3rd day of July 2014.

Respectfully submitted,


VICTORIA J. LYONS (WSBA 45531)
Washington Appellate Project
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 44382-1-II
)	
DEVON DANIELS,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 3RD DAY OF JULY, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<p>[X] KAWYNE ANN LUND, DPA [PCpatcecf@co.pierce.wa.us] PIERCE COUNTY PROSECUTOR'S OFFICE 930 TACOMA AVENUE S, ROOM 946 TACOMA, WA 98402-2171</p>	<p>() () (X)</p>	<p>U.S. MAIL HAND DELIVERY E-MAIL VIA COA PORTAL</p>
<p>[X] DEVON DANIELS 705832 CLALLAM BAY CORRECTIONS CENTER 1830 EAGLE CREST WAY CLALLAM BAY, WA 98326</p>	<p>(X) () ()</p>	<p>U.S. MAIL HAND DELIVERY _____</p>

SIGNED IN SEATTLE, WASHINGTON THIS 3RD DAY OF JULY, 2014.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

July 03, 2014 - 3:46 PM

Transmittal Letter

Document Uploaded: 443821-Reply Brief.pdf

Case Name: STATE V. DEVON DANIELS

Court of Appeals Case Number: 44382-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org

A copy of this document has been emailed to the following addresses:

PCPATCECF@CO.PIERCE.WA.US