

**Salazar v. State**

During jury selection, the defense alleged that the prosecution improperly struck minority jurors in violation of *Batson v. Kentucky*. Following conviction, the defense successfully argued on appeal that it had preserved the issue and a *Batson* hearing was ordered. At the hearing, the trial judge determined that the defense had failed to establish a prima facie case of discrimination. The defense again appealed, objecting to several of the trial judge's actions during the hearing. The hearing itself was conducted in the judge's chambers rather than in the courtroom, despite the defense's objection. During the hearing, the judge had refused to allow the defense to cross-examine the prosecutor on the issue of his peremptory challenges or to examine the State's notes on the jury questionnaires.

The Court of Criminal Appeals determined that the trial court's *Batson* hearing was deficient in several regards. First, it noted that Texas statutes required court proceedings to be public, rather than conducted behind closed doors in chambers. Next, the Court corrected the erroneous presumption that cross-examination was not permitted in conducting the *Batson* hearing. Rather, the Court asserted, cross-examination was crucial because once the State had offered its race-neutral explanation for its peremptory strikes, the obligation was on the defense to impeach or refute the neutral explanation or demonstrate pretext. Finally, the Court asserted the defense's right to examination of the juror forms since the prosecutor had used them to refresh his memory before the hearing.

After deciding that the hearing was improperly conducted and sustaining the defendant's appeal on those grounds, the Court went on to hold that the defense had established a prima facie case of discrimination. As the Court explained, all that was necessary was to show that the defendant was a member of a cognizable racial group and that the prosecution exercised peremptory challenges to remove members of that race from the venire. The facts demonstrated that the only person on the venire who was of the same race as the defendant was struck by a peremptory challenge from the prosecution. Since 100% of the members of the defendant's race were struck, this alone was sufficient to establish a prima facie case for discrimination.