DISTRICT COURT, ARAPAHOE COUNTY, STATE OF COLORADO 7325 S. Potomac St. Centennial, Colorado 80112	▲COURT USE ONLY▲
PEOPLE OF THE STATE OF COLORADO **v.** **JAMES EAGAN HOLMES,** **Defendant**	Case No. **12CR1522** Division: **201**
ORDER REGARDING RULINGS ON THREE OF THE DEFENDANT'S *BATSON* CHALLENGES (C-196)	

INTRODUCTION

On April 14, 2015, as the parties exercised their peremptory challenges, the defense made five challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).[1] One of those *Batson* challenges was made with respect to prospective juror 263, an African American; another challenge was made with respect to prospective juror 988, who was not a member of a cognizable racial group.[2] Both challenges were denied. This Order addresses the rulings the

[1] Jury selection commenced on January 20, 2015. Individual *voir dire* started on February 11, 2015. The Court selected a jury on April 14, 2015. Opening statements are scheduled to take place on April 27, 2015.

[2] The defense asserted that prospective juror 988 was Hispanic because he had "dark hair and dark skin," but the Court eventually ruled that, while he had dark hair, there was no basis in the prospective juror's questionnaire (including his name), individual questioning, or appearance to

Court made with respect to the remaining three challenges, which involved Hispanics.[3]

LEGAL STANDARD

"In *Batson*, the United States Supreme Court affirmed a principle that was established well over a century ago: the Equal Protection Clause of the Fourteenth Amendment guarantees to the defendant that the state will not discriminate on account of race in the jury selection process." *Valdez v. People*, 966 P.2d 587, 589 (Colo. 1998).[4] Therefore, the prosecution may not exercise peremptory challenges to "purposefully discriminate" against potential jurors based on race. *People v. Collins*, 187 P.3d 1178, 1181 (Colo. App. 2008). "*Batson* outlines a three-step

---

support the assertion that he was Hispanic. [redacted] Taking the defense's assertion regarding the number of Hispanics in the venire at face value, that ruling reduced the number of Hispanics in the venire to seven. However, later, the Court agreed with the People that prospective juror 267, whom the defense had not considered as a Hispanic, is Hispanic, raising the number of Hispanics back to eight.

[3] The Court uses the term "Hispanic" in this Order to refer to both Hispanics and Latinos because this distinction is academic for *Batson* purposes. "While the two terms are sometimes used interchangeably, 'Hispanic' is a narrower term which only refers to persons of Spanish-speaking origin or ancestry, while 'Latino' is more frequently used to refer more generally to anyone of Latin American origin or ancestry, including Brazilians." "*Hispanic-Latino naming dispute*," Wikepedia, http://en.wikipedia.org/wiki/Hispanic%E2%80%93Latino_naming_dispute (last visited April 16, 2015). "Hispanic" includes people "from Spain and Spanish-speaking Latin Americans but excludes Brazilians, while 'Latino' excludes persons from Spain but includes Spanish-speaking Latin Americans and Brazilians." *Id.* "Latino" is a term that is "broader" and encompasses "more people." *Id.*

[4] "[T]he Supreme Court appears to use 'race' and 'ethnicity' interchangeably in the *Batson* context, at least when discrimination against jurors of Hispanic or Latino origin is at issue." *United States v. Ochoa-Vasquez*, 428 F.3d 1015, 1052 n.8 (11th Cir. 2005) (Barkett, J., concurring in part and dissenting in part) (citations omitted).

process for evaluating claims of racial discrimination in jury selection under the Equal Protection Clause." *Id.* at 1182 (quotation omitted). In step one, the defendant must make a prima facie showing that the prosecution used its peremptory challenges to exclude potential jurors due to their race. *Batson*, 476 U.S. at 93-97, 106 S.Ct. 1712. If the defendant makes that showing, the burden shifts to the prosecution in step two to articulate a race-neutral reason for excluding the juror in question. *Id.* at 97, 106 S.Ct. 1712. If the prosecution is able to articulate a race-neutral explanation for its challenge, the trial court must give the defendant an opportunity to rebut that explanation before determining whether he has carried his burden of proving by a preponderance of the evidence purposeful discrimination. *Valdez*, 966 P.2d at 590.[5]

ANALYSIS

The defense represented that there were eight Hispanic prospective jurors in the venire. Because the Court selected 12 alternates, for a total of 24 jurors, each party was allotted 22 peremptory challenges, and the Court seated a venire of 68.[6] Using the defense's assertion of eight Hispanic prospective jurors, Hispanics made up 11.7% of the venire. The defense asserted, and the Court found, that the

[5] The defense raised a *Batson* challenge with respect to every Hispanic and African American excused by the People.

[6] Without objection from either party, the Court employed the "modified civil method" of jury selection. A detailed description of this method is contained in Order P-82. *See* Order P-82 at p. 1 n.1.

prosecution used three of its 22 peremptory challenges (or 13.6%) on the following Hispanics: prospective jurors 466, 502, and 720.[7] Therefore, the five remaining Hispanic prospective jurors were either excused by the defense or are on the jury. The Court believes that there are two Hispanics on the jury: jurors 329 and 267.[8] If the Court is correct, the defense excused three Hispanic prospective jurors, the same number of Hispanic prospective jurors excused by the prosecution.[9] If the defense only excused two Hispanics, there are three Hispanics on the jury.[10]

---

[7] Because the prosecution did not use two of its 22 allotted peremptory challenges, two members of the venire of 68 never made it into the presumptive jury of 24 and were not excused pursuant to a peremptory challenge. Neither of those two individuals was Hispanic.

[8] [redacted]

[9] The Court is aware that the defense excused at least two Hispanic prospective jurors, 663 and 802.

[10] It is possible that juror 557, [redacted], is Hispanic. However, she does not have a Hispanic surname, and the Court does not know if she is Hispanic. Like the parties' disagreement regarding prospective juror 998, this uncertainty highlights the difficulties that are inherent in applying the standard *Batson* set forth almost three decades ago. During the exercise of peremptory challenges, it was sometimes very difficult for counsel and the Court to discern who was Hispanic. The situation was exacerbated by the large number of prospective jurors in the courtroom (90), some of whom were sitting in the back of the gallery. Because there are many Hispanics, including the undersigned, who do not have a Hispanic surname, *Batson* almost forces courts and parties to stereotype to determine who "looks" Hispanic. Of course, even then, it is an impractical and unworkable standard because some Hispanics, like the undersigned, do not fit the stereotype of what a Hispanic apparently looks like. The alternative is to ask a prospective juror: "are you Hispanic?" This is awkward, if not offensive. Yet, at the defense's request, that is precisely what the Court was forced to do with respect to prospective juror 502. In the Court's humble view, it is the height of irony that the very holding that aims to prevent racial discrimination in the jury selection process sometimes leaves counsel and the courts little choice but to profile or ask prospective jurors to disclose their ethnicity, both of which the Court finds distasteful. The undersigned is not the first judicial officer to experience frustration as a result of the difficulties inherent in the *Batson* standard. As Judge Meyers thoughtfully explained in his concurring opinion in *Wamget v. State*, "defining a cognizable racial/ethnic group or determining what racial/ethnic group a particular venireperson falls within may become

With the exception of prospective juror 466, the defense raised all of its *Batson* challenges one at a time, as the prosecution was exercising its peremptory challenges.[11] Consequently, the Court properly ruled on all timely *Batson* challenges individually and contemporaneously. The Court first concluded that the defense failed to meet its burden in step one of the *Batson* analysis with respect to

---

such an ordeal as to be either absurd or nearly impossible." 67 S.W.3d 851, 864 (Tex. Crim. App. 2001) (Meyers, J., concurring). Even the United States Census Bureau has historically struggled with such distinctions, especially with respect to Hispanics or Latinos. *Id.* at 864-65 (discussing at length the struggles the Census Bureau has had, and continues to have, in attempting to define and identify "Hispanics" and "Latinos"). Yet, lawyers and judges, "as rank ethnological amateurs," must "play[] guessing games based upon surnames." *Mejia v. State*, 599 A.2d 1207, 1212 (Md. Ct. Spec. App. 1992), *vacated on other grounds*, 616 A.2d 356 (Md. 1992). "The problem is not the label attached to the group . . . . The problem is that if the United States government, accomplished authors, statisticians, linguists, etc. have been unable to define what is a 'Hispanic,' with some precision and clarity, how is a trial judge to determine which juror can be stricken and which is protected?" *Alen v. State*, 596 So. 2d 1083, 1095 (Fla. Dist. Ct. App. 1992) (Hubbart, J., concurring). In the end, *Batson* and its progeny, while well-intentioned, "have made a [ ] muck of things by transforming *voir dire* into a lengthy ordeal involving inquiries into inappropriate questions of race and ethnicity that not only have nothing to do with impartiality, but will also become increasingly muddled in the face of our changing society." *Wamget*, 67 S.W.3d at 860 (Meyers, J., concurring). Consistent with Justice Marshall's lack of faith in *Batson*'s ability to detect and eradicate racial discrimination in the exercise of peremptory challenges, Judge Meyers "register[ed] his agreement with the growing ranks of other jurists and commentators who have come to the [ ] conclusion" that peremptory challenges should be abolished. *Id.* at 861 (Meyers, J., concurring) (citation omitted). *See also* Morris B. Hoffman, *Peremptory Challenges Should be Abolished: A Trial Judge's Perspective*, 64 U. Chi. L. Rev. 809, 864 (1997) (explaining that "*Batson* has injected a new affirmative action twist into the racism and sexism of peremptory challenges," and concluding that "[t]he elimination of the peremptory challenge would invigorate our jury selection system with a long overdue dose of individuality").

[11] Before trial, the Court instructed counsel that any *Batson* challenge had to be made in a timely fashion. The defense did not make a timely *Batson* challenge with respect to prospective juror 466. It was only after that prospective juror had been excused, as the prosecution subsequently exercised a peremptory challenge on prospective juror 988, that the defense raised *Batson* challenges with respect to both prospective jurors. The *Batson* challenge regarding prospective juror 466 fails on this independent basis.

prospective jurors 466 and 988.[12] After the exercise of some additional peremptory challenges, the Court subsequently made the same finding with respect to prospective juror 502. Later, following the exercise of more peremptory challenges, when the prosecution excused prospective juror 720, the Court found that the defense had made the required prima facie showing under step one of the *Batson* analysis. The Court, therefore, proceeded to address steps two and three of the analysis before denying the defense's *Batson* challenge. As the Court denied each of these *Batson* challenges, it released the prospective juror in question.[13]

Following the Court's ruling on the *Batson* challenge concerning prospective juror 720, the defense took the position that, since the Court found that the defense made the required prima facie showing regarding that *Batson* challenge, it was now required to reverse its rulings denying the *Batson* challenges raised as to prospective jurors 466 and 502 in step one of the *Batson* analysis. When the Court asked for the prosecution's position, the prosecution seemed at a loss for words and informed the Court that it did not know how the Court should proceed.[14] The

---

[12] As indicated, the Court later concluded that prospective juror 988 was not Hispanic. Prospective juror 466 was born in Brazil. The prosecution argued that he was not Hispanic. The prosecution may be correct that someone born in Brazil is considered Latino, not Hispanic. But this is an inconsequential difference for purposes of the Court's *Batson* analysis.

[13] In an abundance of caution, the Court asked each released prospective juror to wait in another courtroom until a jury was selected.

[14] Earlier in the proceedings, the People seemed equally reticent when the defense objected to the Court seeking their position on the defense's assertion that it had met its burden of proof in step one of the *Batson* analysis with respect to prospective juror 988. Upon hearing the objection, the

prosecution eventually told the Court that the most cautious course of action was to grant the defense's request and to proceed to steps two and three of the *Batson* analysis with respect to the *Batson* challenges made as to prospective jurors 466 and 502. The Court did so.

Now that the Court has had an opportunity to research the issue, it concludes that it was unnecessary to revisit its rulings on the defense's *Batson* challenges with respect to prospective jurors 466 and 502. *See Williams v. Haviland*, 394 F. App'x 397, 399 (9th Cir. 2010) ("we cannot hold" that the trial court "unreasonably applied *Batson*" when it "refus[ed] to reconsider a previously rejected *Batson* challenge after finding a prima facie case of discrimination with respect to a subsequent juror") (quotation omitted); *United States v. Bernal-Benitez*, 594 F.3d 1303, 1312-13 (11th Cir. 2010) (explaining that it was "unable to locate" precedent for the proposition "that before ruling on a *Batson* objection based on race, a trial court has a duty *sua sponte* to reconsider any ruling it previously may have made on a *Batson* objection based on the same race"); *Higgins v. Cain*, 720 F.3d 255, 267 (5th Cir. 2013) ("Given the want of authority directly addressing the issue of whether a trial judge faced with multiple *Batson*

People chose to remain silent. This forced the Court to rule based solely on the moving party's perspective, which is counterintuitive to an adversarial system. It was not until the Court had denied the defense's *Batson* challenge in step one of the analysis that the prosecution pointed out that prospective juror 988 was not Hispanic. After reviewing the record, the Court agreed and denied the challenge on this alternative ground. The prosecution followed the same practice with all of the other *Batson* challenges advanced by the defense—it elected to remain silent each time the defense averred that it had met its burden in step one of the *Batson* analysis.

challenges is required to re-visit earlier *Batson* challenges, there is a reasonable argument that [the defendant's] appellate counsel satisfied *Strickland*'s deferential standard, even though he did not raise the argument on appeal").

The initial rulings regarding prospective jurors 466 and 502—that the defense failed to make the required prima facie showing in step one of the *Batson* analysis—did not need to be reconsidered simply because the Court subsequently advanced to steps two and three of the *Batson* analysis in denying the defense's challenge with respect to prospective juror 720. *See id.* The initial rulings rejecting the defense's *Batson* challenges regarding prospective jurors 466 and 502 were supported by the law and the record (as it existed at the time), and, therefore, should not have been disturbed after those prospective jurors had already been released.

Under the method of jury selection utilized in this case, when the defense raises a *Batson* challenge simultaneous with the prosecution's exercise of a peremptory challenge with respect to an individual prospective juror, all a trial court can do is resolve the *Batson* challenge contemporaneously, based on the record as it exists at the time. If the trial court denies the *Batson* challenge and excuses the prospective juror, the trial court is entitled to treat that ruling as final and is not required to revisit it later based on its ruling on a subsequent *Batson* challenge advanced with respect to a different prospective juror.

To the extent that the defense persuaded the Court to revisit its initial rulings with respect to prospective jurors 466 and 502 and to reconsider those rulings based on a comprehensive review of all three of the prosecution's peremptory challenges against Hispanics, the Court should have waited until the parties had exercised all of their peremptory challenges and the record was complete. It was particularly important for the Court to do so given that the sole reason for the defense's request to reconsider was a single statistic: the prosecution's excusal of three of the eight Hispanics in the venire of 68.[15] The Court could not properly address, or even consider, the defense's request based on a statistic that was not yet final and a record that was not yet complete. As the Colorado Supreme Court has explained, the question whether the defense has made the required prima facie showing with respect to a *Batson* challenge must be resolved based on "the totality of the relevant facts." *Valdez*, 966 P.2d at 589 (citing *Batson*, 476 U.S. at 96-98, 106 S.Ct. 1712).

Contrary to the "totality of the relevant facts" standard, when the Court revisited its initial rulings with respect to prospective jurors 466 and 502 and reconsidered those rulings based on a comprehensive review of all three of the

[15] In its attempt to make a prima facie showing of racial discrimination with respect to each of the three Hispanics excused by the prosecution, the defense relied on the same statistic: how many of the eight Hispanics in the venire the prosecution had excused at that juncture in the proceedings. The defense at times also asked the Court to consider the number of Hispanic prospective jurors in the presumptive jury of 24. However, *Batson* requires the Court to focus on the number of Hispanics in the venire. *Batson*, 476 U.S. at 94, 106 S.Ct. 1712 (referring to the venire); *Valdez*, 966 P.2d at 593 (considering the venire).

prosecution's peremptory challenges against Hispanics, the record was not yet complete because the parties were still in the process of exercising their peremptory challenges. Indeed, thereafter, the defense excused at least one more Hispanic, prospective juror 802, and the prosecution exercised additional peremptory challenges without excusing any other Hispanics. The prosecution also subsequently passed on exercising two of its peremptory challenges, which could have been utilized to replace Hispanics in the presumptive jury of 24 with white prospective jurors.

Equally important, when the Court reversed its rulings with respect to prospective jurors 466 and 502, it was not aware that there were already two Hispanic prospective jurors (267 and 329) in the presumptive jury. The Court was under the mistaken impression that there was only one Hispanic prospective juror in the presumptive jury—prospective juror 267, [redacted].[16] Neither party made mention of prospective juror 329, [redacted].

[16] [redacted]

The Court should have waited until after the parties had finished exercising their peremptory challenges and the record was complete before addressing the defense's request to revisit the rulings with respect to prospective jurors 466 and 502 and to reconsider those rulings based on a comprehensive analysis of all three of the prosecution's peremptory challenges against Hispanics. Had the Court done so, it would have realized that the defense ultimately excused the same number of Hispanic prospective jurors as the prosecution—three—and that there are two Hispanics on the jury, [redacted]. On a complete record, the defense could not in good conscience have argued that the excusal of three Hispanics by the prosecution was sufficient to create an inference of purposeful discrimination.

Even if the defense excused two, not three, Hispanics from the venire, the Court's conclusion would not have been altered. First, in this scenario, three Hispanics, including juror 557, or almost 40% of all Hispanics in the venire, made it on the jury, [redacted].

Second, under this scenario, the defense excused two of the remaining five Hispanics (or 25% of the Hispanics in the venire) by using 9% of its peremptory

challenges, while the prosecution excused three of the remaining five Hispanics (only 12.5% more than the percentage of Hispanics excused by the defense) using 13.6% of its peremptory challenges (only 4.6% higher than the percentage of peremptory challenges used by the defense to excuse Hispanics).

Third, [redacted].

Finally, this scenario, like the last scenario, reflects that the prosecution waived the use of two peremptory challenges, which could have been exercised to excuse the Hispanic jurors [redacted] in order to replace them with the last two prospective jurors in the venire, both of whom were white.

Given the totality of these relevant facts, defense counsel's second attempt to make the required prima facie showing regarding its *Batson* challenges as to prospective jurors 466 and 502, solely by referring to the prosecution's excusal of

three Hispanics, should have failed. If, notwithstanding their attempts to prevent the prosecution's excusal of Hispanic prospective jurors, defense counsel nevertheless excused one quarter of Hispanics from the venire, they could not have made a prima facie showing of racial discrimination by simply relying on the prosecution's excusal of one more Hispanic prospective juror than they did. This is particularly the case considering the other relevant facts discussed above.[17]

The goal of the holding in *Batson* was to prevent "[t]he harm from discriminatory jury selection," which "extends beyond that inflicted on the defendant and the excluded juror to touch the entire community." 476 U.S. at 87, 106 S.Ct. 1712. The Court in *Batson* was keenly aware that purposeful discrimination based on a prospective juror's race "undermine[s] public confidence

[17] The Court acknowledges that shortly before revisiting its initial rulings regarding prospective jurors 466 and 502 and granting defense counsel's request to reconsider those rulings by conducting a comprehensive analysis of the three Hispanics released by the prosecution, it found that the defense made the prima facie showing required in step one of the *Batson* analysis with respect prospective juror 720. However, because the defense's *Batson* challenge as to prospective juror 720 was raised contemporaneous with the prosecution's exercise of a peremptory challenge, the Court's ruling was likewise contemporaneous and was necessarily based on the state of the record as it existed at that time. Notably, the Court mentioned that, as of that time, the defense had only excused a single Hispanic from the venire, while the prosecution was in the midst of using its third peremptory challenge to excuse a Hispanic. Furthermore, the Court did not assign great weight to the number of Hispanics in the presumptive jury of 24 because it was aware that each party still had a handful of peremptory challenges available and the composition of the jury remained in flux. The Court knew that both sides retained the ability to subsequently excuse any Hispanic in the presumptive jury. As such, the Court's focus was almost entirely on the number of Hispanics who had been released by the prosecution. Consistent with the rest of this Order, the Court stands by its ruling regarding the *Batson* challenge raised by the defense simultaneous with the prosecution's exercise of a peremptory challenge with respect to prospective juror 720. The Court properly addressed that *Batson* challenge contemporaneously, based on the record as it existed at the time of the ruling.

in the fairness of our system of justice." *Id.* But the *Batson* Court never intended its ruling as an avenue for either party to gain a strategic trial or appellate advantage, even in a death penalty case. As one Court put it, "[i]f *Batson v. Kentucky* were allowed to run amok, the prosecutor might be called upon . . . to give a racially neutral, ethnically neutral, religiously neutral, and gender neutral explanation" for any or all prospective jurors struck. *Mejia v. State*, 599 A.2d 1027, 1212 (Md. Ct. Spec. App. 1992), *vacated on other grounds*, 616 A.2d 356 (Md. 1992).

Throughout individual *voir dire* in this case, which lasted two months, the Court never once observed any discriminatory practices that run counter to *Batson*. The same is true for group questioning and the exercise of the parties' peremptory challenges. Both parties in this case have been aggressive about selecting jurors whom they view as favorable to their position. At the end of the process, they exercised their peremptory challenges strategically in an effort to select jurors they viewed as favorable (including Hispanics) and to eliminate prospective jurors they viewed otherwise (including Hispanics). Based on the complete record before it, however, the Court cannot fairly determine that the defense complied with *Batson* but the prosecution did not. The reality is that both parties excused prospective jurors they believed were unfavorable, regardless of race, and both parties accepted

prospective jurors they believed were favorable, regardless of race. Neither party ran afoul of *Batson*. The record, as supplemented, fully supports this conclusion.

In sum, after denying the defense's *Batson* challenge with respect to prospective juror 720, there was no need for the Court to revisit its rulings denying the defense's *Batson* challenges with respect to prospective jurors 466 and 502. The Court properly resolved each of those challenges contemporaneously as the defense advanced it and then released the prospective juror in question. As such, the initial rulings with respect to prospective jurors 466 and 502 should not have been reviewed, much less altered, and are now reinstated. Contrary to the defense's contention, the subsequent ruling on the *Batson* challenge advanced with respect to prospective juror 720, which the Court firmly stands by, did not require the Court to modify the rulings regarding the *Batson* challenges asserted with respect to prospective jurors 466 and 502. Accordingly, the Court reconsiders the decision it made on April 14 to change its initial rulings with respect to prospective jurors 466 and 502.[18]

[18] The Court is aware that, for appellate review purposes, "[o]nce a prosecutor has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing becomes moot." *Hernandez v. New York*, 500 U.S. 352, 359, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991). However, here, the trial court that addressed steps two and three of the *Batson* analysis with respect to prospective jurors 466 and 502, not an appellate court, reconsiders the decision to do so. Further, here, the Court initially ruled that the defense had not met its burden in step one of the *Batson* analysis in opposing the prosecution's peremptory challenges with respect to those two prospective jurors. It was only after the Court had already released those prospective jurors that, at the defense's request, it changed its initial rulings and

In any case, to the extent the defense convinced the Court to revisit its initial rulings regarding prospective jurors 466 and 502 and to reconsider those challenges in the context of a comprehensive analysis of the three Hispanics excused by the prosecution, the Court should have waited until the statistic cited by the defense—that the prosecution had excused three of eight Hispanics in the venire—was final and the record was complete. Considering the totality of all of the relevant facts, the Court now finds that neither the initial ruling with respect to the *Batson* challenge as to prospective juror 466 nor the initial ruling with respect to the *Batson* challenge as to prospective juror 502 warranted reconsideration. The complete record before the Court demonstrates that in each instance the defense failed to make a prima facie showing "that the totality of the relevant facts gives rise to an inference of purposeful discrimination." *Valdez*, 966 P.2d at 589 (citing *Batson*, 476 U.S. at 96-98, 106 S.Ct. 1712). Therefore, in both cases, the defense failed to meet its burden in step one of the *Batson* analysis.

CONCLUSION

For all the foregoing reasons, the Court concludes that, following its ruling on the defense's *Batson* challenge with respect to prospective juror 720, it should

---

proceeded to steps two and three of the *Batson* analysis with respect to each prospective juror. Additionally, the Court now has final statistics, enjoys a complete record, and is aware that at the time of the rulings in question there were more Hispanics in the presumptive jury, [redacted], than it realized. *Cf. People v. McCoy*, 944 P.2d 577, 581 (Colo. App. 1996) (the trial court "was not prohibited from reconsidering its ruling" on the defense's *Batson* challenge "in light of new circumstances").

not have revisited its initial rulings on the defense's *Batson* challenges with respect to prospective jurors 466 and 502. Further, the Court finds that, to the extent it granted defense counsel's request to revisit those rulings and to reconsider them in the context of a comprehensive review of all three of the peremptory challenges exercised by the prosecution on Hispanics, it should have waited until it had all the facts and the record was complete. Had the Court done so, it would have determined that, notwithstanding its ruling regarding the *Batson* challenge asserted as to prospective juror 720, there was no basis to alter its initial rulings with respect to the *Batson* challenges advanced as to prospective jurors 466 and 502. Accordingly, those initial rulings are now reinstated.

Dated this 20th day of April of 2015.

BY THE COURT:

Carlos A. Samour, Jr.
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2015, a true and correct copy of the **Order regarding rulings on three of the defendant's *Batson* challenges (C-196)** was served upon the following parties of record:

Karen Pearson
Christina Taylor
Rich Orman
Jacob Edson
Lisa Teesch-Maguire
George Brauchler
Arapahoe County District Attorney's Office
6450 S. Revere Parkway
Centennial, CO 80111-6492
(via e-mail)

Sherilyn Koslosky
Rhonda Crandall
Daniel King
Tamara Brady
Kristen Nelson
Colorado State Public Defender's Office
1290 S. Broadway, Suite 900
Denver, CO 80203
(via e-mail)

Cheryl Robinson