Federal appeals court hears Lewiston man's case

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Malik Hollis of Lewiston listens to his attorney, James Howaniec, during a hearing in Androscoggin County Superior Court in Auburn seeking a new trial in September 2017. *Sun Journal file photo*

A federal appeals court heard arguments Tuesday in a Lewiston case where a 20-year-old Black man was convicted of two felonies by an all-white jury after the sole black person was stricken by a prosecutor from serving on the jury.

James Howaniec, defense attorney for Malik Hollis of Lewiston, had appealed in Maine's highest court in 2018 the trial court judge's decision to allow the prosecutor to strike the Black man in a preemptory challenge.

The case later made its way to federal court and was heard Tuesday by three judges at the U.S. Court of Appeals for the 1st Circuit in Boston.

At issue Tuesday was whether the Maine Supreme Judicial Court applied the law or facts to the case unreasonably when it upheld the conviction of Hollis in its July 2018 ruling.

Howaniec had argued in 2018 that Androscoggin County Superior Court Justice William Stokes had erred a year earlier when he'd allowed an assistant district attorney to strike a Black juror — the only person of color in the jury pool — from

being empaneled on the jury in a criminal case involving a Black defendant in which race was a prominent issue.

But Maine 's high court had affirmed the trial judge's decision, reasoning that "the record supports the trial court's determination that the (prosecutor) did not engage in purposeful discrimination when it peremptorily challenged the juror," according to court records.

On Tuesday, the federal judges asked Howaniec what he viewed as an error committed by the state's top court.

"It's a very unreasonable application of the logical facts in this case," Howaniec said.

He said Stokes had applied an outdated standard during jury selection when Howaniec had raised an objection to the prosecutor striking a Black prospective juror. Only after the trial ended had Stokes gone back three months later and applied the proper test to Howaniec's objection to determine whether the prosecutor's preemptory challenge of the juror was allowable and not a violation of the so-called "Batson" test that prohibits prosecutors from keeping minorities from serving as jurors because of their race.

> "Maybe it's time to look at these cases more strictly. There's a lot of racism out there. I've been doing this 35 years and it's a lot tougher to defend blacks than whites." — Defense attorney James Howaniec

Then-Androscoggin County Assistant District Attorney Kate Bozeman had told Stokes, when he questioned about her striking juror No. 71, the only Black juror, that his 11th grade education level was the reason for her decision.

U.S. Circuit Judge Sandra Lynch noted Tuesday that Howaniec had said earlier that he didn't think Bozeman was a racist and didn't believe race discrimination was what had motivated her to strike juror No. 71.

Stokes had said he believed Bozeman — based on her demeanor at the time — when she said she struck juror No. 71 for educational reasons.

So, Lynch asked Howaniec, why wasn't Stokes' acceptance of Bozeman's reasoning for her actions credible?

Howaniec said a prosecutor doesn't have to be racist to commit a Batson violation.

Moreover, Howaniec argued: "it is arbitrary to say that a person with an 11th grade education is less equipped to understand the concept of self-defense than a person with a 12th grade education, especially when we're talking about four white guys coming at you with baseball bats and iron pipes and calling you the 'N' word, calling you a gorilla," he said. "I don't think it takes a PhD to understand that concept."

U.S. Circuit Judge Kermit Lipez said: "This notion that if you've had a senior year in high school, you're equipped to deal with this complexity; if you've only had 11 years of high school, you're not. I mean that is a, I would say, a very vulnerable distinction."

Asked by U.S. Circuit Judge William Kayatta Jr. whether Howaniec was saying Bozeman had lied when she cited juror No. 71's education level as the reason for her striking him, Howaniec answered: "Whether you want to call it lying or exaggerating or whatever you want to call it, it was a pretext" to eliminating that particular juror. "We were in a room of 120 white people and there was one Black person," he said.

Lynch said she was troubled by Stokes' "pretty egregious error" in not applying the Batson test at the time of Howaniec's initial objection during jury selection and only corrected the record three months after the fact.

"I'm a bit concerned that a Maine state judge committed such an out-of-the-box error from the very beginning," Lynch said. "Maybe this is a question that goes better to your opponent, but Batson's been around for a long time, that was plainly, not an appropriate reading of Batson."

Later in the Tuesday hearing, Lynch told Assistant Attorney General Donald Macomber, who was representing the state of Maine, that "this whole thing is actually quite disturbing. It's not that we have any superintendent's powers here. Only the Maine law court does. But you can understand why, even with our limited review, we would be concerned about this situation."

Macomber noted that Stokes had later corrected the error.

"That's what we want judges to do," he said.

"No!" Lynch said. "We want them not to make that mistake in the first place."

She also suggested to Macomber that Maine prosecutors might benefit through his office from more education on the Batson test.

Lynch said Howaniec should have called out Stokes at the time of his error, but didn't, though Howaniec did preserve his objection for later appeal.

Howaniec suggested the courts might do away with preemptory challenges altogether so that a Batson test wouldn't ever be necessary in the future.

"Maybe it's time to look at these cases more strictly," he said. "There's a lot of racism out there. I've been doing this 35 years and it's a lot tougher to defend blacks than whites."

Kayatta asked Macomber: "What are we to make of the prosecutor claiming that, in this case, where race, played a huge role, and it's a racially tinged case, that she didn't notice that 71 was the only Black juror? What are we to make of that?"

Macomber said the trial judge and Maine Supreme Judicial Court determined that the prosecutor's striking of juror No. 71 was not a "pretext" for considering his race and found instead that the exclusion was instead based on juror No. 71's education level.

"And your job is to determine whether that's unreasonable," Macomber said.

The judges made no ruling Tuesday.

If they affirm the lower court's ruling, the next step in appeal would be to the U.S. Supreme Court.

Hollis was convicted in July 2017 by a jury in Androscoggin County Superior Court in Auburn on felony charges of reckless conduct with a firearm and criminal threatening with a dangerous weapon. He was sentenced to three years in prison.

Police said Hollis fired gunshots in the direction of several men in late morning on May 21, 2016.

Hollis claimed the shooting was self-defense.

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