


IN THE SUPREME COURT OF THE STATE OF NEVADA

MANINDER SINGH, INDIVIDUALLY
AND AS HEIR OF THE ESTATE OF
JASVIR KAUR, KEWAL SINGH, AND
NIRBHAI SINGH; GURDEV SINGH, AS
HEIR OF THE ESTATE OF JASVIR
KAUR, KEWAL SINGH, AND NIRBHAI
SINGH; SURJIT KAUR,
INDIVIDUALLY AND AS HEIR OF THE
ESTATE OF KEWAL SINGH; LAKHVIR
HANS, AS HEIR OF THE ESTATE OF
KEWAL SINGH; AND SHERYL BELL,
ADMINISTRATOR OF THE ESTATES
OF KEWAL SINGH, AND JASVIR
KAUR AND NIRBHAI SINGH,
Appellants,
vs.
NISSAN MOTOR COMPANY, LTD.;
AND NISSAN NORTH AMERICA, INC.,
Respondents.

No. 85869

FILED

SEP 12 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

This is an appeal from a district court judgment following a jury verdict and a post-judgment order awarding costs in a negligence and product liability matter. Eighth Judicial District Court, Clark County; David M. Jones, Judge.

Three members of the Singh family died in a car accident. Appellants, surviving members of the Singh family, sued Respondents Nissan Motor Company, Ltd., and Nissan North America, Inc. (collectively Nissan). The Singhs were unsuccessful at trial, and the district court

awarded costs in favor of Nissan. The Singhs raise two issues on appeal: first, that the district court judge improperly denied a *Batson* challenge for an alternate juror; second, that the district court judge improperly awarded costs to Nissan when Nissan failed to provide sufficient documentation. Because the second alternate juror was never seated, we conclude any error was harmless and affirm the judgment based on the jury verdict. Additionally, we conclude the district court erred in awarding costs based on insufficient supporting documentation. We reverse the award of costs and remand for the district court to recalculate the costs consistent with this order.

Striking Khan was harmless because the second alternate did not deliberate with the jury

During jury selection, Nissan exercised one of its peremptory challenges on alternate prospective juror Dinyal Khan. The Singhs objected that the peremptory strike was based on race under *Batson v. Kentucky*, 476 U.S. 79 (1986). See also *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614 (1991) (holding the Equal Protection Clause of the U.S. Constitution prohibits race-based exclusion of jurors in civil cases). The district court denied the *Batson* challenge and allowed the strike. Following the strike, a different juror replaced Khan as the second alternate at trial. During the trial, the first alternate was seated on the jury; however, the second alternate was never seated as a regular member of the jury and did not deliberate. After deliberations, the jury found in favor of Nissan and awarded no damages to the Singhs.

The Singhs moved for a new trial, arguing that the district court erred in denying their *Batson* challenge. The district court denied the new trial motion, reasoning that Nissan provided at least one race-neutral reason for striking Khan. During the hearing, the district court

acknowledged that without this alternative reason, striking Khan “would have been *Batson* all day long.”

Discriminatory jury selection in violation of *Batson* “generally constitutes structural error that mandates reversal.” *Diomampo v. State*, 124 Nev. 414, 423 185 P.3d 1031, 1037 (2008). Yet, “where a discriminatory peremptory challenge was made against a prospective alternate juror and no alternate was called upon to deliberate,” harmless-error review applies. *Dixon v. State*, 137 Nev. 217, 222, 485 P.3d 1254, 1259 (2021). Under a harmless error review, reversal is only warranted when an error affects a party’s substantial rights such that “a different result might reasonably have been reached” but for the error. *See McClendon v. Collins*, 132 Nev. 327, 333, 372 P.3d 492, 495-96 (2016) (internal quotation marks omitted). Addressing this standard, the Singhs argue that *Dixon*’s harmless-error review applies only when no alternate deliberates on the jury, and here, a first alternate was seated and deliberated with the jury.

In *Dixon*, we held that “[t]here is no constitutional right to alternate jurors, nor is there a right to be an alternate juror.” 137 Nev. at 222, 485 P.3d at 1259. Despite acknowledging the district court erred in denying the *Batson* challenge, we found the error to be harmless because no alternate deliberated with the jury. *Id.* at 223, 45 P.3d at 1259. The same rationale applies here.

Although the first alternate juror was seated and deliberated, the second alternate was ultimately excused without participating in deliberations. Even if the district court had granted the Singhs’ *Batson* challenge, Khan, who had been slotted as a second alternate, would not have deliberated on the jury. As a result, any error in the district court’s denial of the Singhs’ *Batson* challenge to Nissan’s use of a peremptory challenge to

remove a prospective second alternate juror based on race can only amount to harmless error. *See McClendon v. Collins*, 132 Nev. at 333, 372 P.3d at 495-96. Stated another way, Khan's ability to serve as an alternate had no effect on the outcome of the trial and was therefore harmless because the second alternate who replaced Khan did not deliberate with the jury anyway. To the extent the Singhs argue *Dixon* should be overturned, that argument fails as they do not present a compelling argument that *Dixon* is unworkable or badly reasoned. *Cf. State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013) (recognizing that while stare decisis plays a critical role in our jurisprudence, governing decisions that are unworkable or badly reasoned should be overruled).¹

Nissan failed to provide sufficient documentation to support its request for costs

After prevailing at trial, Nissan moved for costs. In its initial memorandum of costs Nissan requested \$940,517.41. The Singhs filed a motion to retax, arguing that Nissan failed to include sufficient documentation. Nissan then filed a supplement to the memorandum of costs without leave of the court. In the supplement, Nissan requested \$148,444.28 in costs, decreasing its requested expert fees to the statutory limit at that time. *See* NRS 18.005(5) (2007); 2007 Nev. Stat., ch. 440 § 7, at 2191 (allowing costs awards to include "[r]easonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as

¹To the extent the Singhs urge us to adopt a new *Batson* test addressing when both a discriminatory reason and a neutral reason have been provided for a peremptory strike, we decline to do so here.

to require the larger fee”). Nissan attached an itemized list of expenses and several receipts and invoices to its supplement. The district court granted the motion to retax and awarded Nissan \$144,936.99 in costs, seemingly consistent with the Singhs’ argument that \$3,507.29 of the claimed costs were not recoverable under NRS 18.005.

We review an award of costs to the prevailing party for an abuse of discretion. NRS 18.020 and NRS 18.050 give the district court wide discretion in awarding costs to the prevailing party, but these “costs must be reasonable, necessary, and actually incurred.” *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). A review of the record reveals that Nissan failed to provide documentation substantiating each cost. Indeed, it failed to provide documentation to support most of its copies and postage costs, some of its deposition and transcript costs, some of its translation costs, and most of its service of process costs. The lack of documentation for these requested costs falls short of what is required under Nevada law. *See Village Builders 96*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005) (concluding a party requesting costs must provide documentation for each copy made to ensure that the costs awarded are only those costs actually incurred); *see also Cadle Co.*, 131 Nev. at 121, 345 P.3d at 1054 (concluding an affidavit providing only the date and cost of each copy failed to demonstrate the costs were “necessary to and incurred in the present action” (quoting *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352-53, 971 P.2d 383, 386 (1998))).

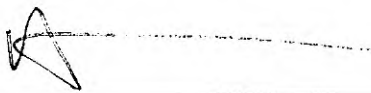
While Nissan failed to provide documentation to support its requested court fees and expert fees, the district court had sufficient information to determine these fees were incurred in this action, namely independent knowledge about standard court fees and testimony from


Nissan's experts that their fees far exceeded the requested amount. Because the district court had a sufficient basis to award these costs, we affirm with respect to the award for court fees and expert witness fees.

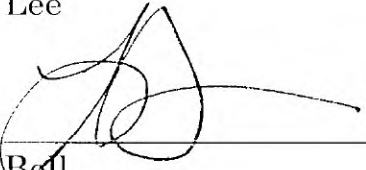
With respect to the costs for copies, postage, depositions, transcripts, translations, and service of process, the district court abused its discretion in awarding costs in an amount that was not supported by the documentation provided by Nissan. *Hyatt v. Franchise Tax Bd. of the State of Cal.*, No. 84707, 2023 WL 4362562, at *2 (Nev. Jul. 5, 2023) (Order Affirming in Part, Reversing in Part and Remanding) (recognizing that without justifying documentation a district court may not award costs). We remand for the district court to recalculate the cost award.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART as to the cost award only, AND REMANDED to the district court for proceedings consistent with this order.²


_____, J.
Herndon


_____, J.
Lee


_____, J.
Bell

²To the extent the parties raise arguments on appeal that we did not specifically address, we are not persuaded that those arguments warrant reversal.

cc: Hon. David M. Jones, District Judge
Stephen E. Haberfeld, Settlement Judge
Robins Cloud, LLP\Santa Monica
Claggett & Sykes Law Firm
Christian Morris Trial Attorneys
The Mann Law Firm\San Jose
Holland & Hart LLP/Las Vegas
Lewis Roca Rothgerber Christie LLP/Las Vegas
Hall & Evans / Las Vegas
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Legal Aid Center of Southern Nevada, Inc.
American Civil Liberties Union of Nevada/Las Vegas
Eighth District Court Clerk