

## SUMMARY STATEMENT

*State v. Ish*

Docket No. 45345

The Idaho Supreme Court vacated the judgment of conviction entered against Martin Edmo Ish for involuntary manslaughter and remanded the case for a new trial. The State charged Ish with second-degree murder for the June 2009 killing of Eugene Lorne Red Elk (“Red Elk”) in Pocatello, Idaho. The district court denied Ish’s motion to dismiss premised on police destruction of a VHS tape around three years prior. During jury selection, Ish made a timely *Batson* challenge, asserting that the prosecutor had unconstitutionally used its peremptory challenges to exclude all minorities from the jury pool. The district court denied the challenge, finding that the State did not exclude those jurors with discriminatory intent. Ish appealed and asserted error in the jury-selection process, evidentiary rulings, rulings on destruction of evidence, and jury instructions.

On appeal, the Idaho Supreme Court found the *Batson* issue determinative. The Court found clear error in the district court’s finding that the prosecution did not have discriminatory intent when it used a peremptory challenge on a specific juror. The record showed that the prosecution had used its peremptory challenges to exclude all minority jurors in the jury pool, and the district court’s conclusion that the prosecution’s reasons for striking the specific juror were not pretextual was unsupported by evidence and factual findings. However, the Court determined that the district court properly denied Ish’s motion to dismiss because the evidence supported the district court’s conclusion that the police did not destroy the VHS tape in bad faith.