

11-8976 SMITH V. UNITED STATES

DECISION BELOW: 651 F3d 30

LOWER COURT CASE NUMBER: 05-3051, 05-3052

QUESTION PRESENTED:

I. Whether in reviewing a claim under *Batson v. Kentucky*, 476 U.S. 79 (1986), an appellate court must 1) apply de novo review where a federal trial judge failed to make specific findings on the question whether the prosecution's proffered justifications for challenged peremptory strikes were pretextual; and 2) review each of the government's explanations for each challenged strike where the prosecution proffered multiple explanations for certain peremptory strikes.

II. Whether withdrawing from a conspiracy prior to the statute of limitations period negates an element of a conspiracy charge such that, once a defendant meets his burden of production that he did so withdraw, the burden of persuasion rests with the government to prove beyond a reasonable doubt that he was a member of the conspiracy during the relevant period -- a fundamental due process question that is the subject of a well-developed circuit split.

GRANTED LIMITED TO QUESTION II PRESENTED BY THE PETITION.

CERT. GRANTED 6/18/2012