

Bananaberry v. State

In 1997, under fierce political pressure from the Arkansas Communist Party, the Arkansas legislature enacted laws prohibiting moper. Moper is the use of any construction tool for the purpose of sexual gratification. Based on an obscure passage in a footnote in Chapter 2,368 of *Das Kapital* by Karl Marx, referred to by Lenin in his pamphlet "Left Wing Communism: An Infantile Disorder," Communists have long considered moper a crime against the working class in that it reflects decadent bourgeois disdain of workers' tools. Shortly after the law came into effect, videotape of Millionaire Tycoon O Julius Bananaberry committing an unnatural act with a hammer was provided to the *Incredible Inquirer* by a blackmailer. The electronic date on the videotape showed that it was taken at 3:59 p.m., two days after the new law came into effect. Reporter and part-time deputy sheriff Freddy Engels called upon Bananaberry about the photograph.

Engels identified himself as a reporter, but did not identify himself as a law enforcement officer. When confronted with the videotape, Bananaberry said he could not be sure of the date, but he admitted committing the act. He was promptly arrested.

At trial, five potential jurors were members of the Communist Party. One, Wojciech Jaruzelski, was vice-president of the Workers' and Farmers' Anti-Moper League of Chenal Valley. He was dismissed for cause. V.I. Ulyanov and Nadezhda Krupskaya were aware of their party's stand on moper but stated that they could set aside their political beliefs and be fair. Leon Trotsky was

unaware that the Party had a stand on mopery. Party member Homer Simpson was unaware of the party's stand on anything and professed to have joined the party for the neat t-shirt with all the guys with beards. At first he professed not to know who the guys with beards were, but on examination by Bananaberry's counsel he testified one looked like Santa Claus and another was probably Z.Z. Top.

Bananaberry's counsel moved to strike all four Communists on the basis of their party membership. That motion was denied. Bananaberry then exercised his peremptory challenges against Ulyanov, Krupskaya, and Trotsky, leaving Simpson on the jury.

The prosecution contended that the strikes were made Wholly on the basis of political affiliation, and therefore were in violation of *Batson*. The trial court upheld the strikes.

At trial, the prosecution played the tape for the jury and rested. Bananaberry's motion for a directed verdict was denied.

In his case, Bananaberry introduced the testimony of a high school kid who said he'd used lots of video cameras and you can set the dates on all of them at whatever date you choose. In spite of the judge's surprise that video cameras could be so easily manipulated, he held that the date shown on the tape was some evidence of the date on which it was taken.

Bananaberry was convicted. The jury recommended a fine of \$3.50 and fifteen minutes community service as punishment. The trial judge imposed the

statutory minimum fine of \$5,000 over Bananaberry's objection. The judge suspended the community service.

Bananaberry appeals on the jury selection issues. The State cross-appealed on its *Batson* argument.

PURPOSES:

- * Preserve record on jury selection State's cross appeal
- ` Preserve objection to sentence.