

## QUESTIONS PRESENTED

- I. Whether the evidence of intent was sufficient to support a conviction of first degree manslaughter.

*The jury acquitted Nicole of murder, but convicted her of manslaughter in the first degree without any evidence that she intended to harm, or none that she intended to kill, her boyfriend. The State offered no evidence of intent; it offered only evidence of motive to kill.*

- II. Whether, in the absence of an admission or conviction, the trial court's order of restitution for theft constitutes an illegal sentence.

*The court ordered Nicole to pay "restitution for whatever monies [she] stole from Richard, pursuant to the evidence presented at trial . . . ." Evidence was presented by both sides on this issue and no finding was made by the jury or the court as to guilt or the alleged amount of money spent. In fact, Nicole was never charged with theft and never admitted the same.*

- III. Whether Nicole's constitutional rights of due process and equal protection were violated when the trial court allowed the State to use its preemptory strikes to remove all of the Native American jurors from the panel.

*The court allowed the prosecution to strike all five Native Americans from the jury. The court went through the first two steps of the Batson analysis, but failed to address the third step and held that the State had rebutted the presumption of discrimination.*

- IV. Whether the trial court abused its discretion and committed prejudicial error in refusing Defendant's proposed jury instruction on spoliation of evidence.

*The court refused Defendant's proposed instruction on the basis that the State's spoliation, although committed as part of a "pattern of bungling," was not committed in bad faith.*