



Batson/Wheeler

November 2015

Batson/Wheeler

- *People v. Wheeler* (1978) 22 Cal.3d 258 – State constitutional right to fair/impartial cross section
- *Batson v. Kentucky* (1986) 476 U.S. 79 – 14th Amendment right to equal protection
- Cannot exercise peremptory challenge to discriminate against cognizable groups
- Constitutional rule applies to civil cases, and the defense use of peremptory challenges

Batson/Wheeler Ramifications

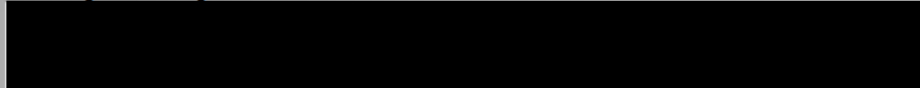


Timeliness

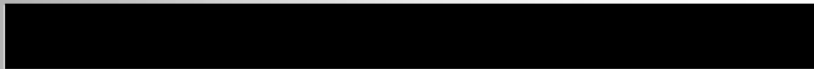
- Motion is timely as long as it is made before the jury is impaneled, e.g. before the alternates are selected and sworn (*People v. McDermott* (2002) 28 Cal.4th 946, 970)

Three Stages

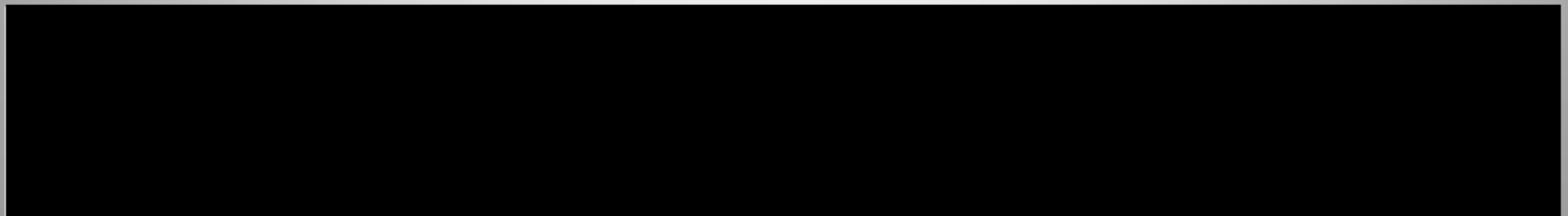
- **Stage 1:** Defendant makes prima facie showing of purposeful discrimination



- **Stage 2:** DA offers a non-discriminatory reason for exercising strike(s)

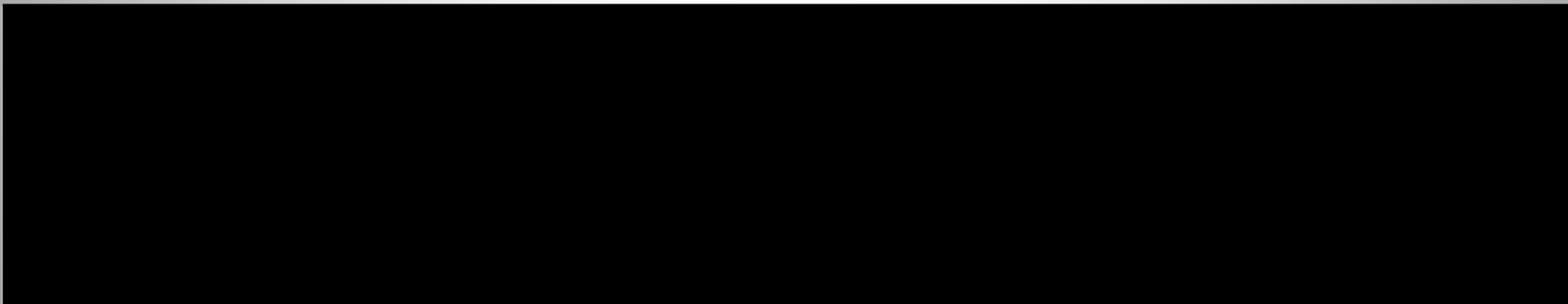


- **Stage 3:** Court determines whether the defendant proved purposeful discrimination



Stage 1

The Prima Facie Case

- Objecting party must identify juror(s) allegedly improperly struck
 - &
 - The discriminatory purpose
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Stage 1

What are cognizable groups?

- Race
 - Includes “white” (*People v. Willis* (2002) 27 Cal.4th 811)
- National Origin
- Spanish surname
- Religion
- Gender
- Sexual Orientation

Stage 1

What are cognizable groups?

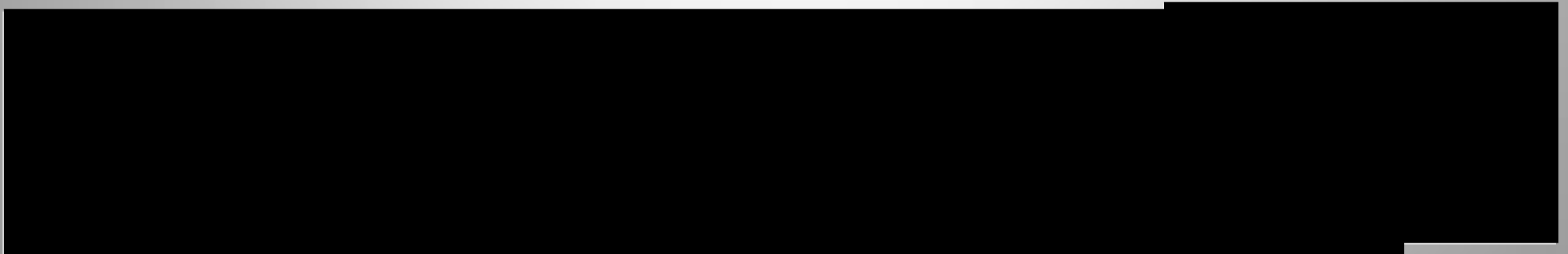
California Code of Civil Procedure 231.5

“A party may not use a peremptory challenge to remove a prospective juror on the basis of an assumption that the prospective juror is biased merely because of his or her race, color, religion, sex, national origin, sexual orientation, or similar grounds.”

Stage 1

What are cognizable groups?

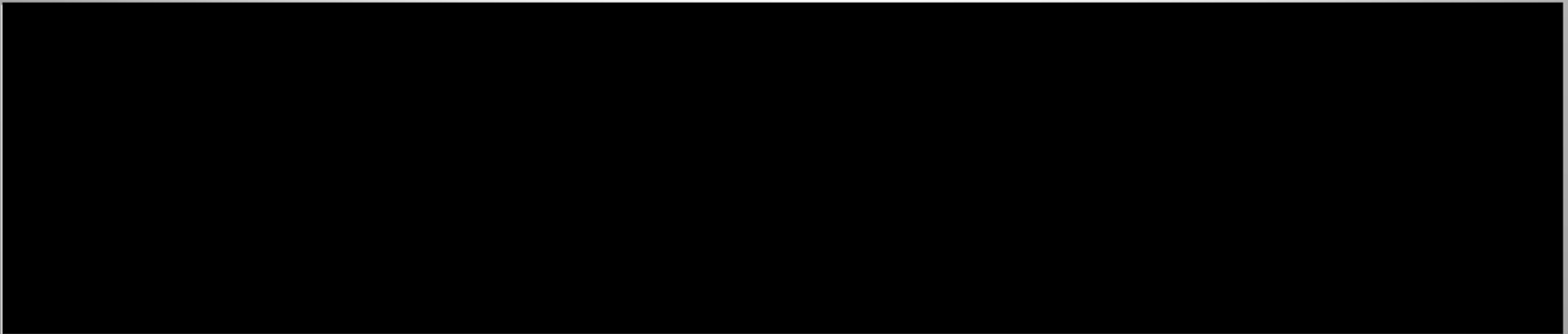
- Yes to black woman, black men . . . (*People v. Young* (2005) 34 Cal.4th 1149)
- No to “people of color” (*People v. Davis* (2009) 46 Cal.4th 539)



Stage 1

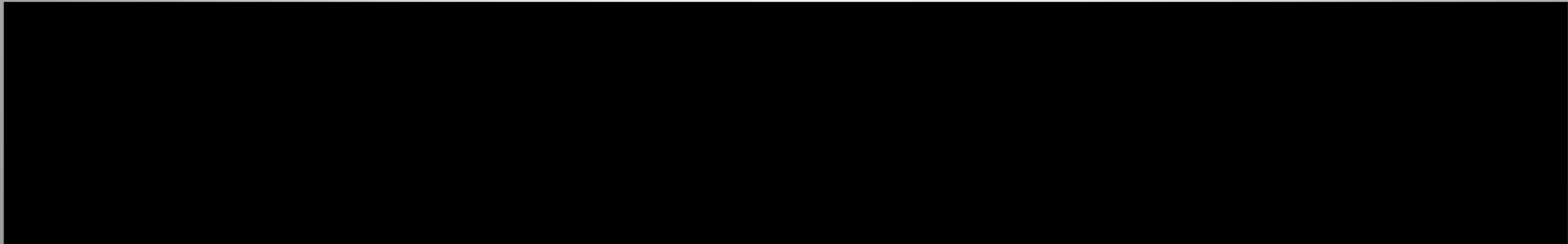
What is a prima facie case?

- *Johnson v. California* (2005) 545 U.S. 162
- “the totality of the relevant facts gives rise to an inference of discriminatory purpose”



Stage 1

Should Your Notes Document Race?

- *Miller-El v. Dretke* (2005) 545 U.S. 231: In a case tried pre-Batson, USSC found notes documenting race are evidence of discrimination.
 - *People v. Lenix* (2008) 44 Cal.4th 602, 671, fn. 12: “We emphasize, however, that post *Batson*, recording the race of each juror is an important tool to be used by the court and counsel in mounting, refuting or analyzing a *Batson* challenge.”
 - *Green v. Lamarque* (9th Cir. 2008) 532 F.3d 1028: “[T]he prosecutor had noted the race of each venire member he struck from the jury pool; when the trial judge asked him who he struck and why, the prosecutor was able to read off a list, and he had noted the race of each venire member next to the member’s name.”
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Stage 1

- *People v. Scott* – Supreme Court “clarifies” Batson/Wheeler review
- “In sum, where (1) the trial court has determined that no prima facie case of discrimination exists, (2) the trial court allows or invites the prosecutor to state his or her reasons for excusing the juror for the record, (3) the prosecutor provides nondiscriminatory reasons, and (4) the trial court determines that the prosecutor’s nondiscriminatory reasons are genuine, an appellate court should begin its analysis of the trial court’s denial of the *Batson/Wheeler* motion with a review of the first-stage ruling.”
- **Exception** → If you give a reason that is discriminatory on its face, the court is not going to ignore that at first stage review.

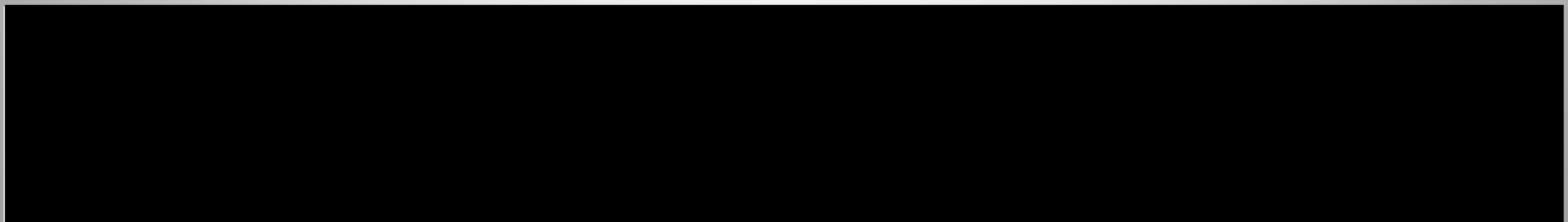
Stage 2

The Non-Discriminatory Reasons

- Court does not have to agree that its good reason or sound strategic decision making



- “trivial”; “based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons” (*People v. Lenix* (2008) 44 Cal.4th 602, 613)



Stage 2

The Non-Discriminatory Reasons

- Demeanor [REDACTED]
 - “the juror’s body language seemed angry and hostile”; “looked nervous, who looked tired, who looked weird, who seemed unable to relate to the prosecutor, who had a very defensive body position, who were overweight and poorly groomed and seemed not to trust the prosecutor”
[REDACTED]
 - “[H]er very response to your answers,” her “dress” and “how she took her seat” too vague. (*People v. Allen* (2004) 115 Cal.App.4th 542)
- [REDACTED]

Stage 2

The Non-Discriminatory Reasons

- *Aleman v. Uribe* (2013) 723 F.3d 976 – prosecutor honestly thought excused juror had made a statement that was actually made by a different juror. No Batson error. Batson prohibits *purposeful* discrimination, not honest mistakes.

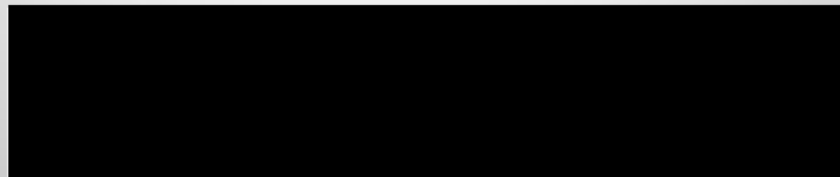
Stage 2

People v. Cisneros

- *People v. Cisneros* (2015) 234 Cal.App.4th 111: DA's reason was I want the next juror in line. Court of Appeal found this is the same as giving *no reason at all*.
- Anytime you strike a juror, it necessarily means that you prefer the next prospective juror to the one being struck. There are 12 jurors available to reach that next prospective juror. You must explain why you chose to strike that particular juror in order to reach the next prospective juror.

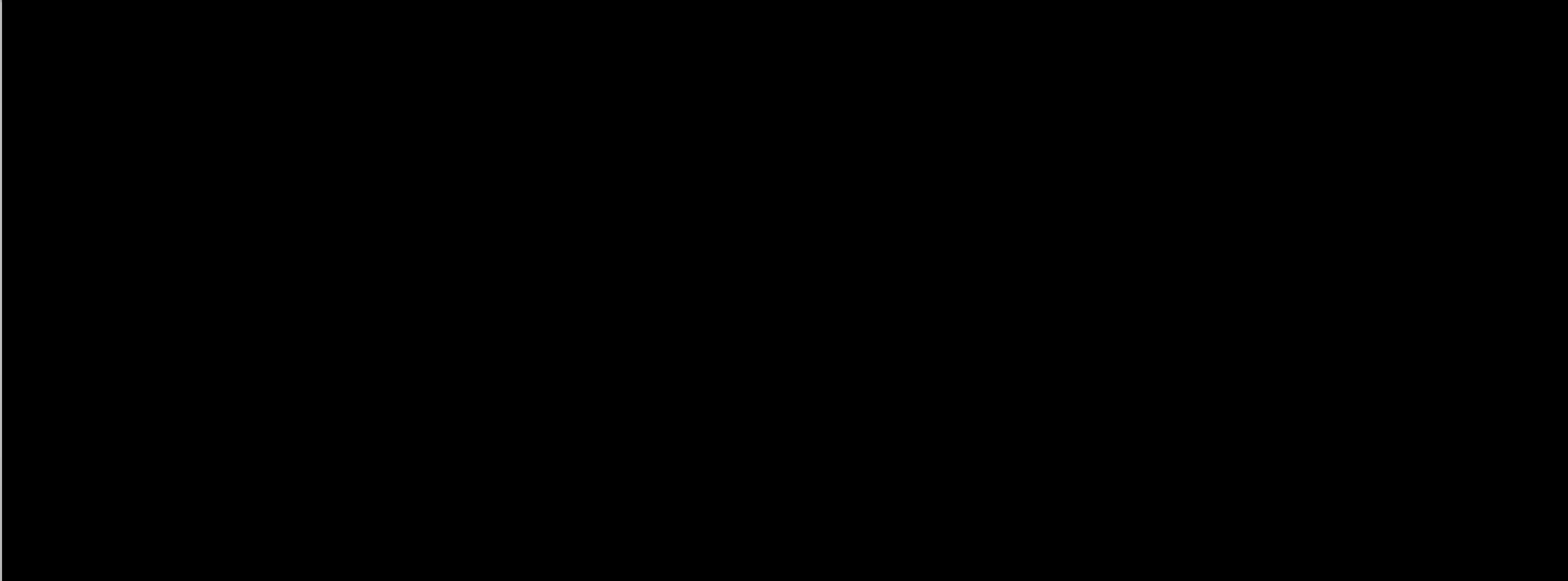
Stage 3

- Are the given reasons genuine or is the given reason a pretext for discrimination
- “The focus at this point is on the subjective *genuineness* of the race-neutral reasons given for the peremptory challenge, *not* on the objective *reasonableness* of those reasons.” (*People v. Trinh* (2014) 59 Cal.4th 216, 241.)



Stage 3

Comparative Juror Analysis

- Comparative juror analysis – 
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- *Miller-El v. Dretke* (2005) 545 U.S. 231

Stage 3

Comparative Juror Analysis

- Even if not raised in trial court, will conduct it on appeal [REDACTED]
[REDACTED]
 - (*People v. Lenix* (2008) 44 Cal.4th 602)

Stage 3

Credibility Determination

Court is to consider:

- demeanor
- inherent reasonableness or improbability of proffered explanations
- plausible basis in accepted trial strategy
- the court's own observation of the relevant jurors' voir dire
- court's own experience as a trial lawyer and judge in the community
- **the common practices of the prosecutor's office and the individual prosecutor himself**

(People v. Mai (2013) 57 Cal.4th 986)

The Remedy

- Default remedy is quash whole venire and start over
- Alternative remedy is reseal the improperly excused juror

Prevailing party gets to pick, but forfeited if he fails to request a particular remedy. (*People v. Mata* (2013) 57 Cal.4th 178)

The Remedy

- *People v. Willis* (2002) 27 Cal.4th 811 – Def Atty tried to dismiss venire, then exercised peremptories against all white jurors. People did not want to give him the remedy he wanted so agreed to monetary sanctions.
- CSC approved of alternative remedies because had consent of the prevailing party.
- Courts have discretion to fashion appropriate alternative remedies, but prevailing party always has the choice

Appellate Review

- **The law**

- “Great deference” to trial court
- “Presume that a prosecutor uses peremptory challenges in a constitutional manner”

(People v. Montes (2014) 58 Cal.4th 809, 847)

