



Batson/Wheeler

September 2016

Voir Dire Procedure

- Swear prospective panel
- 18 pack/6-pack/12-pack
- Court's voir dire
 - Juror name, occupation, know LE, etc.
- Defense
- You
- Cause challenges
- Peremptory challenges of 12 in box
- Alternates
- Swear jury (jeopardy attaches)

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

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
[REDACTED]
- **Stage 2:** DA offers a non-discriminatory reason for exercising strike(s)
[REDACTED]
- **Stage 3:** Court determines whether the defendant proved purposeful discrimination
[REDACTED]

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?

- Effective January 1, 2016 CCP 231.5 was amended to refer to Govt Code 11135: “race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability.”