

## 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

- What are non-discriminatory reasons?
  - Age, occupation, attire, language ability, intelligence, residence, cleanliness, body language, demeanor, inattentiveness, confusion, answers, tardiness, hesitation, overly eager, awkward...
  - Can consider jury make up – too many followers/leaders etc.



## Stage 2

# The Non-Discriminatory Reasons

- Demeanor OK, [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

- When give your reasons, judge will be evaluating your demeanor and credibility
- You can make an *honest* mistake
  - *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

- Court evaluates evidence and determines if defendant has met burden to prove purposeful discrimination
  - Burden = more likely than not
- Look totality of the evidence (direct and circumstantial)



## 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.)

