Batson/Wheeler

January 2018

Overview

Voir Dire Procedure

- Swear prospective panel (venire)
- 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 Generally

- *People v. Wheeler* (1978) 22 Cal.3d 258 – Federal and state constitutional right to fair/impartial cross section

  ➤ p. 272 "[I]n this state the right to trial by a jury drawn from a representative cross-section of the community is guaranteed equally and independently by the **Sixth Amendment** to the federal Constitution and by **article I, section 16, of the California Constitution**."

- *Batson v. Kentucky* (1986) 476 U.S. 79 – 14th Amendment right to equal protection, lays out the "stages"

  ➤ Cannot exercise peremptory challenge to discriminate against "cognizable groups"

  ➤ Applies to civil cases, and the **defense** use of peremptory challenges

Timeliness

Timely if motion is made before **jury impaneled**

- (*People v. McDermott* (2002) 28 Cal.4th 946, 970.)
  - ➢You have selected and sworn alternates

Three Stages

- **Stage 1**: Defendant makes prima facie showing of purposeful discrimination: totality of circumstances = inference of discriminatory intent
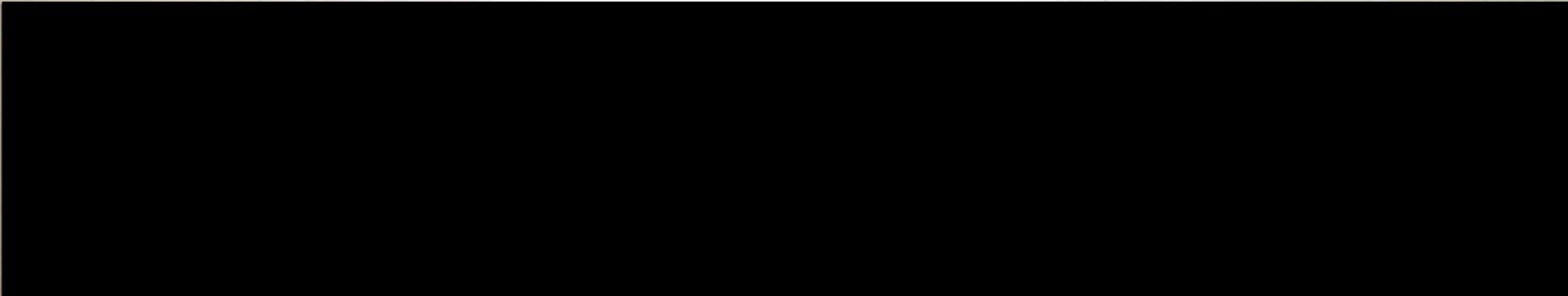
████████████████████████

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

███████████████████████████████████

- **Stage 3**: Court determines whether <u>the defendant proved purposeful discrimination</u>

██████████████████

Details

Stage 1
The Prima Facie Case

- Objecting party must identify juror(s) allegedly improperly struck

  &

- The discriminatory purpose

Stage 1
What are cognizable groups?

California Code of Civil Procedure 231.5

"A party shall 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 a characteristic listed or defined in Section 11135 of the Government Code, or similar grounds."

Stage 1
What are cognizable groups?

- Govt Code 11135 was amended as of January 1, 2017, to include:

➢ Sex
➢ Race
➢ Color
➢ Religion
➢ Ancestry
➢ National Origin
➢ Ethnic Group Identification

➢ Sexual Orientation
➢ Physical Disability
➢ Medical Condition
➢ Mental Disability
➢ Genetic Information
➢ Age
➢ Marital Status