

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)

Stage 3

Credibility Determination

People v. Arellano, supra:

- Prosecutor excused black juror, claiming she had worked for a “liberal political organization” because she had worked as a field representative for the Department of Commerce.
- She had the same job for 22 years, which meant she worked throughout presidential administrations and congressional majorities from both political parties.
- Nothing in record that she was affiliated with a particular political party.
- When court and defense counsel express confusion over this response, DA then mentioned her prior experience with the police and jury service on a “police brutality” case:
- Trial court summarily denied defendant's *Batson/Wheeler* objection and simply said that the prosecutor had “provided a race-neutral explanation. Defense has not proved any purposeful racial discrimination.

Stage 3

Credibility Determination

People v. Arellano, supra (Continued)

Appellate court **reversed**:

- “Although we generally ‘accord great deference to the trial court's ruling that a particular reason is genuine,’ we do so only when the trial court has made a sincere and reasoned attempt to evaluate each stated reason as applied to each challenged juror. When the prosecutor’s stated reasons are both inherently plausible and supported by the record, the trial court need not question the prosecutor or make detailed findings. But when the prosecutor's stated reasons are either unsupported by the record, inherently implausible, or both, more is required of the trial court than a global finding that the reasons appear sufficient.
- (*People v. Arellano, supra*, 245 Cal.App.4th at pp. 1165-1166, citing *People v. Silva, supra*, 25 Cal.4th at pp. 385-386.)

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

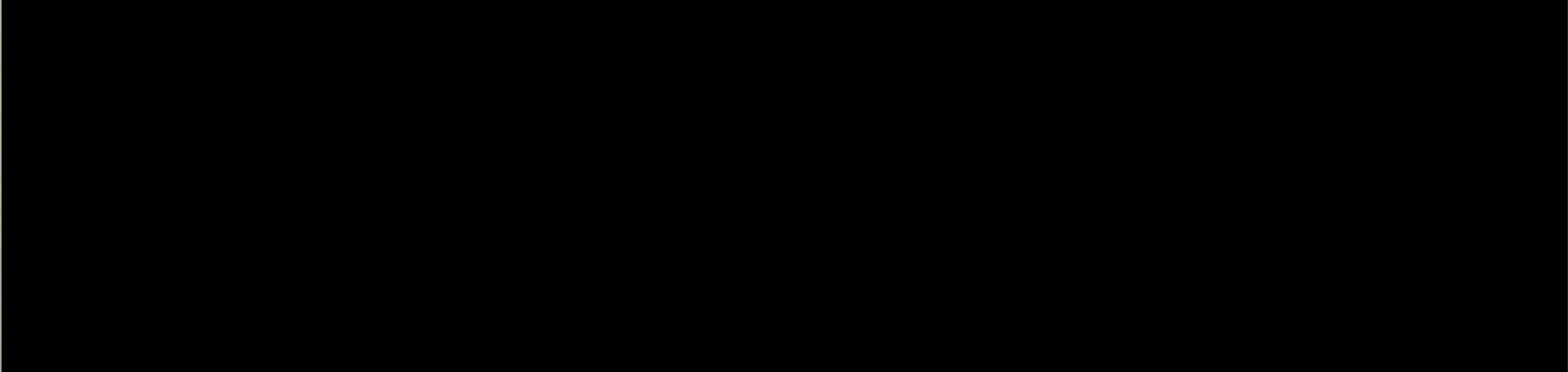
- *People v. Willis* (2002) 27 Cal.4th 811 – Def Atty tried to dismiss venire, then exercised peremptories against all white jurors. People did not want to give him the remedy he wanted so agreed to monetary sanctions.
- CSC approved of alternative remedies because had consent of the prevailing party.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



Appellate Review

- People v. Scott (June 8, 2015) 61 Cal.4th 363
 - Ideal Record: p. 349
 - » (1) Trial court finds no prima facie case;
 - » (2) Prosecutor states 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
 - If this is present, 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.

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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Example

An accused is “brought to trial” within the meaning of the speedy trial statute when a case has been called for trial by a judge who is normally available and ready to try the case to conclusion; the court must have committed its resources to the trial, and the parties must be ready to proceed and a panel of prospective jurors must be summoned and sworn.

***People v. Giron-Chamul (2016) 245 Cal.App.4th
932***

Example

CA PEN 1382 (a)(2): 60 days for trial after mistrial

Mistrial = Jeopardy attached + defendant consents and/or legal necessity requires discharge of the jury

➤ See e.g., ***Carrillo v. Superior Court (2006) 145 Cal.App.4th 1511, 1524***

