



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)

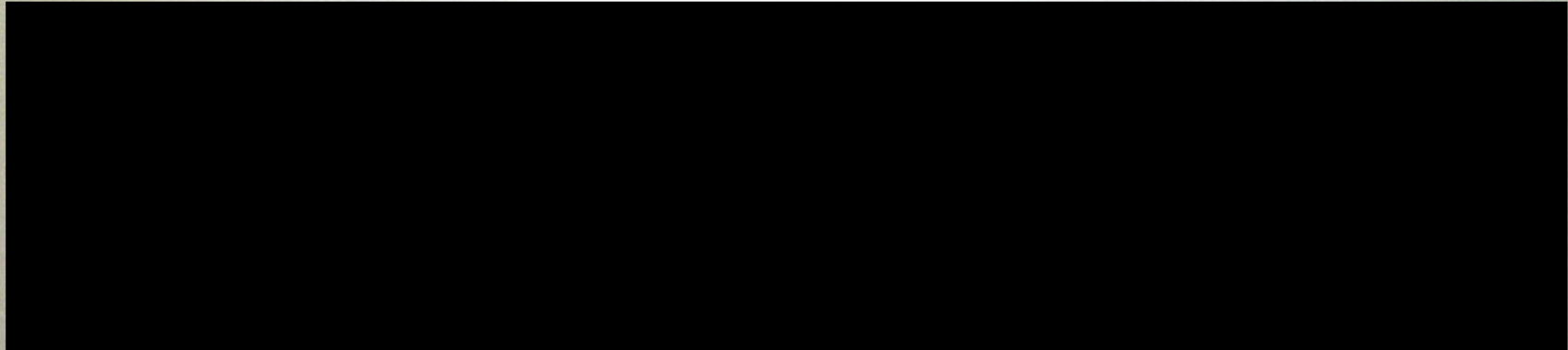
- **Stage 3:** Court determines whether the defendant proved purposeful discrimination

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

Stage 1

What are cognizable groups?

- Race includes “white”
 - (*People v. Willis* (2002) 27 Cal.4th 811)
- Religion
 - Different if juror says cannot judge others due to religion
- Hearing or Vision Impaired
 - CCP § 203 (a)(6) no person shall be deemed incompetent solely because of the loss of sight or hearing in any degree or other disability which impedes the person’s ability to communicate or which impairs or interferes with the person’s mobility.
 - But see *People v. Fauber* (1992) 2 Cal.4th 792, 816 [hearing impaired not necessarily protected class, but this is pre-2016 amendment to CCP 231.5].)