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Touro Law Review

Volume 19
Number 2 *New York State Constitutional
Decisions: 2002 Compilation*

Article 8

April 2015

Court of Appeals of New York, *People v. Brown*

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Recommended Citation

Hendry, Melanie (2015) "Court of Appeals of New York, *People v. Brown*," *Touro Law Review*. Vol. 19: No. 2, Article 8.

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Court of Appeals of New York, *People v. Brown*

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EQUAL PROTECTION

United States Constitution Amendment XIV, Section 1:

[N]o State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

New York Constitution Article I, Section 11:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

COURT OF APPEALS OF NEW YORK

People v. Brown¹
(decided March 19, 2002)

Tarkisha Brown was convicted of criminal sale of a controlled substance in or near school grounds, pursuant to Penal Law Section 220.42 and sentenced to a two to six year prison term.² Brown challenged her conviction, asserting that the prosecution exercised its peremptory challenges³ in a racially discriminatory manner, and such improper use of peremptory challenges violates the Equal Protection Clauses of the Federal⁴

¹ 97 N.Y.2d 500, 769 N.E.2d 1266, 743 N.Y.S.2d 374 (2002).

² *Id.* at 503, 769 N.E.2d at 1268, 743 N.Y.S.2d at 376.

³ N.Y. CRIM. PROC. LAW § 270.25(1) (McKinney 2002), “[A] peremptory challenge is an objection to a prospective juror for which no reason need be assigned.”

⁴ U.S. CONST. amend. XIV § 1 provides in pertinent part: “[N]o State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.”

and New York State⁵ Constitutions and both federal⁶ and state⁷ statutes.⁸

Both the appellate division and Court of Appeals rejected Brown's *Batson*⁹ challenge and affirmed her conviction.¹⁰ The Court of Appeals held that Brown failed to establish a prima facie showing of racially discriminatory practices applied by the prosecution.¹¹ The Court of Appeals indicated that "defendant's reliance on the People's removal of seven African-Americans through the exercise of eight peremptory challenges was inadequate without more . . ." to satisfy the defendant's burden.¹²

Brown was arrested after selling cocaine to an undercover police officer.¹³ She raised her *Batson* challenge during the second round of *voir dire*.¹⁴ Of the fifteen African-Americans in the venire, the prosecutor challenged seven.¹⁵ Four of the seven sworn jurors were African-American.¹⁶ Despite the trial court's request that the defendant offer any facts and circumstances that supported the discrimination claim, defense counsel simply replied that there

⁵ N.Y. CONST. art. I § 11 provides:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

⁶ 18 U.S.C. § 243 (2000) provides in pertinent part:

No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude

⁷ N.Y. CIVIL RIGHTS LAW § 13 (McKinney 1992) provides: "No citizen of the state possessing all other qualifications which are or may be required or prescribed by law, shall be disqualified to serve as a grand or petit juror in any court of this state on account of race, creed, color, national origin or sex"

⁸ *Brown*, 97 N.Y.2d at 507, 769 N.E.2d at 1271, 743 N.Y.S.2d at 379.

⁹ See *Batson v. Kentucky*, 476 U.S. 79 (1986) (establishing the manner for challenging racially discriminatory use of peremptory challenges).

¹⁰ *Brown*, 97 N.Y.2d at 505, 769 N.E.2d at 1269, 743 N.Y.S.2d at 377.

¹¹ *Id.* at 508, 769 N.E.2d at 1271, 743 N.Y.S.2d at 379.

¹² *Id.*

¹³ *Id.* at 502-03, 769 N.E.2d at 1267-68, 743 N.Y.S.2d at 375-76.

¹⁴ *Id.* at 508, 769 N.E.2d at 1271, 743 N.Y.S.2d at 379.

¹⁵ *Brown*, 97 N.Y.2d at 508, 769 N.E.2d at 1271, 743 N.Y.S.2d at 379.

¹⁶ *Id.*

was nothing to indicate that the challenged jurors could not be impartial.¹⁷ The trial court found the defendant's argument insufficient and denied the *Batson* challenge.¹⁸ Both the appellate division and Court of Appeals affirmed the decision.¹⁹

In order to successfully challenge the discriminatory use of peremptory challenges, New York State courts require the movant to satisfy the elements enumerated in *Batson v. Kentucky*.²⁰ The proponent of the challenge²¹ must establish a prima facie showing of discrimination.²² To do so, it must be shown that the other party used its peremptory challenges "to remove one or more members of a cognizable racial group from the venire and that there exist facts and other relevant circumstances sufficient to raise an inference that the [party] used its peremptory challenges to exclude potential jurors because of their race."²³ After such a prima facie showing is made, the burden shifts to the opponent of the *Batson* challenge to rebut the discriminatory claim by providing race neutral explanations for the peremptory challenges.²⁴ Although the trial court's ruling on such challenges is reviewable, the Court of Appeals indicated in *New York v. Hernandez*²⁵ that deference should be accorded to the trial court's decision.²⁶

¹⁷ *Id.* at 508, 769 N.E.2d at 1272, 743 N.Y.S.2d at 380.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Batson*, 476 U.S. at 79; *Brown*, 97 N.Y.2d at 507, 769 N.E.2d at 1271, 743 N.Y.S.2d at 379.

²¹ Although *Brown* involved an allegation of discriminatory practices undertaken by the prosecution, there have been several cases where the same requirements have been applied to challenges to the defense's discriminatory use of peremptory challenges made by the prosecution. See, e.g., *Georgia v. McCollum*, 505 U.S. 42, 59 (1992); *New York v. Payne*, 88 N.Y.2d 172, 177, 666 N.E.2d 542, 546, 643 N.Y.S.2d 949, 953 (1996); *New York v. Kern*, 75 N.Y.2d 638, 643, 554 N.E.2d 1235, 1236, 555 N.Y.S.2d 647, 648 (1990); *New York v. Vega*, 198 A.D.2d 56, 603 N.Y.S.2d 147 (1st Dep't 1993).

²² *Brown*, 97 N.Y.2d at 507, 769 N.E.2d at 1271, 743 N.Y.S.2d at 379.

²³ *New York v. Childress*, 81 N.Y.2d 263, 266, 614 N.E.2d 709, 711, 598 N.Y.S.2d 146, 148 (1993) (citations omitted).

²⁴ *Id.*

²⁵ 75 N.Y.2d 350, 552 N.E.2d 621, 553 N.Y.S.2d 85 (1990).

²⁶ *Id.*

In several cases, the Court of Appeals addressed what is needed to meet the threshold *prima facie* standard.²⁷ In *Childress*, an African-American convicted of burglary in the second degree appealed, arguing that the trial court erred when it refused to require the prosecution to provide race neutral explanations for its peremptory challenges used to exclude African-Americans.²⁸ The appellate division rejected the defendant's argument, holding that he did not substantiate his claim because he failed to make the *voir dire* proceedings available to the court.²⁹ The Court of Appeals affirmed the decision, however, the court's conclusion was based on different reasoning than that relied on by the appellate division.³⁰

The Court of Appeals explained that while it is often easy to "demonstrate that members of a cognizable racial group have been excluded," it is sometimes difficult to present the supporting facts and circumstances that are required to satisfy the *prima facie* showing.³¹ The court noted that there are no strict rules regarding what is sufficient to establish a *prima facie* showing.³² Rather, courts utilize a case by case approach.³³ However, the court has indicated that reliance solely on the number of jurors of a particular race that is challenged is usually not enough.³⁴ The number of challenges of African-Americans coupled with the defense attorney's claim that several of the challenged jurors had

²⁷ See, e.g., *New York v. Jenkins*, 84 N.Y.2d 1001, 1002-03, 646 N.E.2d 811, 811-12, 622 N.Y.S.2d 509, 509-10 (1994) (holding that a defendant that relied solely on a numerical argument failed to make a *prima facie* showing); *Childress*, 81 N.Y.2d 263, 206-07, 614 N.E.2d 709, 711, 598 N.Y.S.2d 146, 148 (discussing the minimum showing required to establish a *prima facie* case); *New York v. Hawthorne*, 80 N.Y.2d 873, 874, 600 N.E.2d 231, 232, 587 N.Y.S.2d 600, 601 (1992) (holding the defendant successfully made a *prima facie* showing by demonstrating four of the six African-American venire persons were challenged).

²⁸ *Childress*, 81 N.Y.2d at 265, 614 N.E.2d at 710, 598 N.Y.S.2d at 147.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 266, 614 N.E.2d at 711, 598 N.Y.S.2d at 148.

³³ *Childress*, 81 N.Y.2d at 265, 614 N.E.2d at 710, 598 N.Y.S.2d at 147.

³⁴ See, e.g., *Jenkins*, 84 N.Y.2d at 1002, 646 N.E.2d at 812, 622 N.Y.S.2d at 510; *New York v. Bolling*, 79 N.Y.2d 317, 325, 591 N.E.2d 1136, 1141, 582 N.Y.S.2d 950, 956 (1992).

pro-prosecution backgrounds, was sufficient to establish a prima facie showing in *Bolling*.³⁵ In *Bolling*, there were five African-Americans on the venire, and four of them were dismissed following the prosecution's challenges.³⁶ Two of the four challenged by the prosecution were considered pro-prosecution because of their ties to law enforcement.³⁷ It is also possible to make a prima facie showing by comparing the challenged jurors of a particular race with those selected.³⁸ Demonstrating that a large number of the challenged potential jurors are minorities or have pro-prosecution backgrounds are just two examples of the supporting facts or circumstances that the proponent of the *Batson* challenge can rely on in satisfying his or her burden.

Once the prima facie showing is established, the burden shifts to the opponent to demonstrate race neutral explanations for the peremptory challenges exercised.³⁹ While the opponent need not offer a reason that would be of a level sufficient to satisfy a challenge for cause, the explanation cannot simply be that the challenged jurors would have been sympathetic to the proponent merely on the basis that they are of the same race or ethnicity.⁴⁰ Therefore, the sufficiency of the race neutral explanation proffered is also determined on a case by case basis.

In *New York v. Simmons*, the defendant was African-American and the court accepted the prosecutor's explanation for peremptory challenges removing the only two African-American venire persons.⁴¹ The prosecutor explained that she challenged the jurors because when questioned they responded that they were aware of the area where the crime occurred, and she routinely excluded jurors familiar with the crime scene.⁴² The court deemed that explanation was race neutral and also found it noteworthy that the prosecutor excluded a white juror for the same reason.⁴³

³⁵ *Bolling*, 79 N.Y.2d at 325, 591 N.E.2d at 1141, 582 N.Y.S.2d at 955.

³⁶ *Id.* at 320, 591 N.E.2d at 1139, 582 N.Y.S.2d at 953.

³⁷ *Id.* at 322, 591 N.E.2d at 1140, 582 N.Y.S.2d at 954.

³⁸ *Id.* at 324, 591 N.E.2d at 1140, 582 N.Y.S.2d at 955.

³⁹ *Childress*, 81 N.Y.2d at 266, 614 N.E.2d at 711, 598 N.Y.S.2d at 509.

⁴⁰ *Hernandez*, 75 N.Y.2d at 355, 552 N.E.2d at 623, 553 N.Y.S.2d at 87.

⁴¹ *New York v. Simmons*, 79 N.Y.2d 1013, 1014, 594 N.E.2d 917, 918, 584 N.Y.S.2d 423, 424 (1992).

⁴² *Id.*

⁴³ *Id.*

Conversely, in *New York v. Mitchell*, the Court of Appeals reversed the defendant's conviction and ordered a new trial.⁴⁴ The court concluded that the prosecutor's claim that he exercised his peremptory challenges to remove minority jurors because he expected defense counsel to challenge the white jurors was not a sufficient race neutral explanation to defeat the *Batson* challenge.⁴⁵

New York and federal courts apply the same standard when determining whether a peremptory challenge has been improperly used. The federal standard was enunciated in *Batson*, where the defendant, an African-American man, was convicted of second-degree burglary and receipt of stolen goods.⁴⁶ At *voir dire*, the prosecutor used his (or her) peremptory challenges to exclude all four African-Americans on the venire, which resulted in an all white jury. Defense counsel objected, asserting this was an impermissible use of peremptory challenges, but the objection was overruled,⁴⁷ and the Kentucky Supreme Court affirmed.⁴⁸

The United States Supreme Court reversed the Kentucky Supreme Court and noted that the use of peremptory challenges in a racially discriminatory manner harms not only the defendant but also the improperly excluded jurors and community as well.⁴⁹ The Court indicated that the defendant's equal protection rights are violated when he or she is tried by "a jury from which members of his [or her] race have been purposefully excluded."⁵⁰ However, it does not follow that a defendant has the right to be tried by a jury that includes members of his or her racial group.⁵¹ The defendant's right is limited to ensuring that he or she is tried before a jury that was selected in a non-discriminatory manner.⁵² The Court further noted that jurors excluded pursuant to a discriminatory motive have also suffered a violation of their

⁴⁴ *New York v. Mitchell*, 80 N.Y.2d 519, 606 N.E.2d 1381, 591 N.Y.S.2d 990 (1992).

⁴⁵ *Id.* at 530, 606 N.E.2d at 1386-87, 591 N.Y.S.2d at 995-96.

⁴⁶ 476 U.S. at 82-83.

⁴⁷ *Id.* at 83.

⁴⁸ *Id.* at 84.

⁴⁹ *Id.* at 87.

⁵⁰ *Id.* at 85.

⁵¹ *Id.* at 85-86.

⁵² *Batson*, 476 U.S. at 85-86.

constitutional rights.⁵³ The community at large is harmed as well by the discriminatory selection of jurors as it undermines confidence in the fairness of judicial proceedings.⁵⁴

The Court indicated that the improper use of peremptory challenges violates the Equal Protection Clause which “forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable to impartially consider the State’s case against a black defendant.”⁵⁵ In order to challenge such violations, the defendant must first make a prima facie showing that the “totality of relevant facts” indicates a discriminatory purpose for the challenges, after which the prosecutor must provide race-neutral explanations for the challenges.⁵⁶

In 1991, the United States Supreme Court reviewed a case originating in New York. In *Hernandez v. New York*,⁵⁷ Dionisio Hernandez was granted certiorari for review of the New York courts’ denial of his *Batson* challenge.⁵⁸ Specifically, the Court addressed whether the prosecution’s proffered reasons for exercise of the peremptory challenges were sufficiently race neutral rather than pretextual.⁵⁹

Hernandez, a Latino, was convicted of attempted murder and criminal possession of a weapon.⁶⁰ During jury selection, defense counsel objected to the prosecutor’s use of four peremptory challenges to remove Latinos.⁶¹ Two of those potential jurors had brothers that had been convicted of crimes, and the defendant did not challenge their exclusion.⁶² Regarding the two potential jurors whose exclusion the defendant did challenge, the prosecutor offered his reasons for the challenge before the court even determined that Hernandez made a prima facie showing

⁵³ *Id.* at 87.

⁵⁴ *Id.*

⁵⁵ *Id.* at 89.

⁵⁶ *Id.* at 93-94.

⁵⁷ 500 U.S. 352 (1991).

⁵⁸ *Id.* at 355.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 356.

⁶² *Hernandez*, 500 U.S. at 356.

of racial discrimination.⁶³ The prosecutor explained that after questioning the potential jurors, he “felt there was a great deal of uncertainty as to whether they could accept the interpreter as the final arbiter of what was said by each of the witnesses”⁶⁴ He further explained that he had no reason to want to exclude Latinos from the jury as all of his complainants and civilian witnesses were also Latino.⁶⁵ The trial court denied the defendant’s motion, and both the appellate division and Court of Appeals affirmed.⁶⁶

The United States Supreme Court also affirmed, holding that the New York Courts properly concluded that the prosecutor offered race neutral explanations for his peremptory challenges.⁶⁷ The Court stressed the need for deference to the trial court’s findings when reviewing *Batson* challenges because considerations of credibility weigh heavily in making such determinations.⁶⁸ The Court also noted that aside from evaluation of the prosecutor’s credibility, there were other factors in support of the trial court’s determination that the proffered reasons were racially neutral.⁶⁹ For instance, the prosecutor voluntarily defended his peremptory challenges without the judge requiring him to do so.⁷⁰ The Court also noted that the prosecutor claimed he did not know which of the potential jurors were Latinos and that there was no apparent motive for the prosecutor to exclude Latinos.⁷¹ Therefore, the Court concluded the trial court had not abused its discretion and affirmed the New York courts’ denial of defendant’s *Batson* challenge.⁷²

The requirements for challenging racially discriminatory application of peremptory challenges are thus identical in both New York State and federal courts. Both recognize that such

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 357.

⁶⁶ *Id.* at 358.

⁶⁷ *Hernandez*, 500 U.S. at 372.

⁶⁸ *Id.* at 365.

⁶⁹ *Id.* at 369.

⁷⁰ *Id.*

⁷¹ *Id.* at 369-70.

⁷² *Hernandez*, 500 U.S. at 372.

abuse of peremptory challenges is a violation of equal protection.⁷³ Each utilizes the same procedure requiring the proponent to establish a prima facie showing of discrimination which the opponent must rebut with a race neutral explanation.⁷⁴ A *Batson* challenge can be brought against either the prosecution or the defense in both New York State and federal court.⁷⁵ Thus, the standard applied to review of the use of peremptory challenges is identical in both state and federal court.

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⁷³ See, e.g., *Batson*, 476 U.S. at 89; *Kern*, 75 N.Y.2d at 649, 554 N.E.2d at 1240, 555 N.Y.S.2d at 652.

⁷⁴ See, e.g., *Batson*, 476 U.S. at 93-94; *Childress*, 81 N.Y.2d 263, 614 N.E.2d 709, 598 N.Y.S.2d 146.

⁷⁵ See, e.g., *McCollum*, 505 U.S. at 59; *Payne*, 88 N.Y.2d at 177, 666 N.E.2d at 546, 643 N.Y.S.2d at 953.

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