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Equal Protection

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rather than the Federal Constitution, it is likely that the outcome would have been the same.

People v. Jones¹⁵⁴
(decided May 9, 1994)

The defendant claimed that the prosecutor failed to create a prima facie example of race discrimination required to trigger a *Batson* inquiry.¹⁵⁵ The use of peremptory challenges by counsel for the purpose of excluding jurors on the basis of race is a violation of the Equal Protection Clause of both the United States¹⁵⁶ and New York State¹⁵⁷ Constitutions.¹⁵⁸ The Appellate Division, Second Department, affirmed the trial court's decision to seat two challenged jurors based on the court's finding that the race neutral explanations given by defense counsel for exclusion were pretextual.¹⁵⁹

During jury selection for the trial, the prosecutor claimed defense counsel was using his peremptory challenges¹⁶⁰ to remove venirepersons from the jury panel due to the fact that they were white.¹⁶¹ In response, defense counsel provided race neutral explanations to the court for his strikes.¹⁶² However, although defense counsel's explanations were facially race

154. 204 A.D.2d 485, 611 N.Y.S.2d 640 (2d Dep't 1994).

155. *Id.* at 485, 611 N.Y.S.2d at 641 (referring to a test used for prompt resolution to objections to peremptory challenges found in the famous case of *Batson v. Kentucky*, 476 U.S. 79 (1986)).

156. U.S. CONST. amend. XIV, § 1. The Equal Protection Clause provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

157. N.Y. CONST. art. I, § 11. Section 11 states in relevant part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

158. *Jones*, 204 A.D.2d at 485, 611 N.Y.S.2d at 641.

159. *Id.*

160. The permitted amount of peremptory challenges, challenges made without a showing of reason, are permitted in state criminal cases is provided by N.Y. CRIM. PROC. LAW § 270.25 (McKinney 1993 & Supp. 1994).

161. *Jones*, 204 A.D.2d at 485, 611 N.Y.S.2d at 641.

162. *Id.*

neutral, the trial judge found them to be pretextual, and subsequently seated two of the challenged jurors.¹⁶³ Based on an acting in concert theory, the jury convicted the defendant of manslaughter in the first degree, and defendant appealed.¹⁶⁴

In affirming the conviction, the appellate division held that where "trial counsel has proffered race neutral explanations for peremptory challenges and the court has ruled as to the validity of those explanations, [the peremptory challenge issue] becomes academic."¹⁶⁵ The analysis set forth in *Batson* provides an efficient method for prompt decisions by the courts concerning objections made about peremptory challenges. First, the objecting party must make a prima facie demonstration that counsel used peremptory challenges to exclude potential jurors on the basis of race.¹⁶⁶ Second, if such a showing is made, the burden shifts to opposing counsel to provide race neutral explanations for the strikes.¹⁶⁷ Finally, it is for the trial court to decide if counsel has demonstrated purposeful discrimination by the attorney exercising his strikes.¹⁶⁸

The defense counsel in *Jones* did not wait for the trial court to request that the prosecutor first establish a prima facie case of discrimination, but rather, immediately stated race neutral explanations for his strikes.¹⁶⁹ Consequently, it was not necessary for the prosecutor to satisfy the first criteria of the *Batson* inquiry, in that it was rendered moot by the fact that

163. *Id.*

164. *Id.* The defendant was charged in the shooting of an individual who had allegedly robbed a drug sale area guarded by the defendant. *Id.*

165. *Id.* In addition to the equal protection claim, the court found it legally adequate to fix the defendant's guilt beyond a reasonable doubt when the evidence was viewed in a light most favorable to the prosecution. *Id.* at 486, 611 N.Y.S.2d at 641. Moreover, in exercising its power of factual review, the appellate court was satisfied that the guilty verdict was not in contravention with the weight of the evidence. *Id.* at 486, 611 N.Y.S.2d at 641-42.

166. *Batson*, 476 U.S. at 79.

167. *Id.*

168. *Id.* (reversing the defendant's conviction because trial court "flatly rejected" removal of all black venirepersons without requiring prosecutor to provide race neutral basis for his strikes).

169. *Jones*, 204 A.D.2d at 485, 611 N.Y.S.2d at 641.

defense counsel immediately jumped to the second prong of the test by providing race neutral reasons to the trial court.¹⁷⁰ Therefore, the only aspect of the inquiry left for the trial court was to evaluate the validity of defense counsel's explanations, which were found to be merely pretextual.¹⁷¹ As articulated in *Hernandez v. New York*,¹⁷² the United States Supreme Court explained that great deference is given to the trial court's assessment of the validity of counsel's race neutral explanations for peremptory strikes.¹⁷³

In *Hernandez*, the Supreme Court noted that the main issue to be determined by the trial court concerning counsel's race neutral explanations is their credibility.¹⁷⁴ Due to the fact that "the finding will 'largely turn on evaluation of credibility,'" the Supreme Court found it proper to defer to the trial court's findings concerning issues involving intent to discriminate.¹⁷⁵ In so doing, the Court held that it would not overturn a trial court's decision concerning discriminatory intent unless the finding was clearly erroneous.¹⁷⁶

New York law is in harmony with the federal law concerning the deference which should be given to the trial court in determining whether peremptory challenges were racially motivated.¹⁷⁷ Specifically, in *People v. Green*,¹⁷⁸ the Appellate

170. See *Hernandez v. New York*, 500 U.S. 352 (1991). "Once a prosecutor has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing becomes moot." *Id.* at 359.

171. *Jones*, 204 A.D.2d at 485, 611 N.Y.S.2d at 641. The appellate division found no reason to overturn the trial court's finding that the race-neutral explanations were pretextual. *Id.* In addition, the court gave great deference to the trial court's finding. *Id.* See *Hernandez*, 500 U.S. at 372.

172. 500 U.S. 352 (1991).

173. *Id.* at 372 (holding that trial court came to correct conclusion that prosecutor's basis for exercise of peremptory strikes was race neutral).

174. *Id.* at 365.

175. *Id.* (quoting *Batson*, 476 U.S. at 98 n.21).

176. *Id.* at 369.

177. See, e.g., *People v. Kern*, 75 N.Y.2d 638, 650, 554 N.E.2d 1235, 1241, 555 N.Y.S.2d 647, 653 (holding that *Batson* applies to use of peremptory challenges by the defense), *cert. denied*, 498 U.S. 824 (1990);

Division, Second Department reiterated the rule set forth in *Hernandez*, that a trial court should be given great deference to determine whether or not counsel's race neutral explanations are pretextual.¹⁷⁹

In conclusion, federal courts and the New York courts clearly give great deference to a trial court's determination of the credibility of trial counsel's race neutral explanations. Accordingly, upon finding that the trial court was not clearly erroneous in determining that defense counsel's race neutral explanations were pretextual, the Appellate Division, Second Department, in *Jones*, affirmed the conviction of the defendant.¹⁸⁰

People v. Stiff¹⁸¹

(decided December 12, 1994)

The criminal defendant claimed the trial court erred when it refused to allow him to use his peremptory challenges to "exclude potential jurors because they [did] not belong to a particular racial group."¹⁸² The Appellate Division, Second Department, concluded that it was unconstitutional for either the defendant or the prosecutor to use racially motivated peremptory

People v. Green, 181 A.D.2d 693, 694, 581 N.Y.S.2d 357, 358 (2d Dep't 1990) (affirming trial court's finding that defendant counsel's race neutral basis proffered for challenge to white juror was pretextual).

178. 181 A.D.2d 693, 581 N.Y.S.2d 357. In *Green*, the prosecution objected to the defendant's use of peremptory challenges claiming they were being used to exclude white jurors. *Id.* at 693, 581 N.Y.S.2d at 358. Eleven of the defendant's thirteen peremptory challenges were used to exclude potential white jurors. *Id.* The prosecution proceeded to establish a prima facie case of discrimination and defense counsel was forced to "articulate race-neutral explanations for the challenges." *Id.* Finding the excuses to be pretextual, the trial court seated two of the jurors to which the defendant had objected. *Id.*

179. *Id.* at 694, 581 N.Y.S.2d at 358.

180. *Jones*, 204 A.D.2d at 485, 611 N.Y.S.2d at 641.

181. 206 A.D.2d 235, 620 N.Y.S.2d 87 (2d Dep't 1994).

182. *Id.* at 236, 620 N.Y.S.2d at 88.