Touro Law Review

Volume 10 | Number 3 Article 34

1994

Equal Protection: People v. Peart

of the City Court of Long Beach served Nassau County. Both counties are within the second department. Although plaintiff may have argued that the costs of living in Nassau and Westchester, second department counties, were found to be significantly higher than in Onondaga or Oneida, fourth department counties, the costs of living in Long Beach was also significantly lower than in White Plains. Thus, as in *Mackston*, state and federal constitutional geographical distinctions are not limited only between counties and appellate departments, but also between the cities within the counties, as well as within the appellate departments. Furthermore, even if the duties, responsibilities, and caseloads among the city court judges in both White Plains and Long Beach, as reasoned in *Barth*, were shown to be comparable, a rational basis for geographically disparate salaries may still be satisfied by demonstrating a significant differential in population, and cost of living.[888] Therefore, even if the suit had been brought under the New York State Constitution, it is likely that the outcome would have been the same.

People v. Peart[889]
(decided October 12, 1993)

Defendant claimed that his right to equal protection, pursuant to the State[890] and Federal[891] Constitutions, was violated because

888. *See* Edelstein v. Crosson, 187 A.D.2d 694, 590 N.Y.S.2d 277 (2d Dep't 1992). In *Edelstein*, the plaintiffs, six County Court Judges from Dutchess, Rockland, and Orange Counties, submitted evidence that demonstrated the similarity between their caseloads and the caseloads of the Westchester County Court Judges, while the defendants submitted evidence that demonstrated that the population and the cost of living in Westchester County were higher than in Dutchess, Rockland, and Orange Counties. *Id.* at 696, 590 N.Y.S.2d at 278. The court held that there was a rational basis for the disparate salaries where the average home in Westchester was sold in late 1987 for $361,094 while in late 1987, an average home in Orange County sold for $132,050. By contrast, in Rockland County the average home sold for $185,000 in 1988, and in Dutchess County, for $149,270, in 1989. *Id.*

889. 197 A.D.2d 599, 602 N.Y.S.2d 424 (2d Dep't 1993).

890. N.Y. CONST. art. I, § 11 ("No person shall be denied the equal protection of the laws of this state or any subdivision thereof.").

the prosecutor's use of its peremptory challenge was racially discriminatory.[892] The Appellate Division, Second Department held that the defendant's right to equal protection was violated because the prosecutor failed to give a race-neutral explanation for its use of its peremptory challenges.[893]

On March 8, 1991, the defendant was convicted of "criminal sale of a controlled substance in the third degree" and "criminal possession of a controlled substance in the third degree."[894] During voir dire, the prosecutor peremptorily challenged the only two black members on the venire panel.[895] The defendant objected to the exclusion of these potential jurors as a violation of *Batson v. Kentucky*.[896] The prosecutor explained that although the potential juror was "neutral," she was not a "strong" prosecution juror.[897] In addition, the prosecutor failed to point to any facts in support of these feelings.[898] The trial court concluded that the prosecutor provided a race-neutral explanation and thus, excluded the juror.[899] The defendant was subsequently convicted of both charges and appealed.[900]

The Appellate Division, Second Department found that the defendant's right to equal protection had been violated, reasoning that the prosecution failed to provide a race-neutral explanation for its peremptory challenge.[901] The court noted that the

---

891. U.S. CONST. amend. XIV, § 1 ("No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

892. *Peart*, 197 A.D.2d at 599, 602 N.Y.S.2d at 424.

893. *Id.* at 600, 602 N.Y.S.2d at 425.

894. *Id.* at 599, 602 N.Y.S.2d at 424.

895. *Id.*

896. 476 U.S. 79 (1986). In *Batson*, the Supreme Court of the United States held that the Equal Protection Clause of the Federal Constitution prohibits the prosecution from using peremptory challenges for discriminatory purposes. *Id.* at 96. Once the defendant establishes a prima facie case that the prosecution's use of its peremptory challenges is discriminatory, the burden is shifted to the prosecution to present a racially neutral explanation for its challenges. *Id.* at 97.

897. *Peart*, 197 A.D.2d at 599, 602 N.Y.S.2d at 424.

898. *Id.*

899. *Id.* at 600, 602 N.Y.S.2d at 424.

900. *Id.* at 599, 602 N.Y.S.2d at 424.

901. *Id.* at 600, 602 N.Y.S.2d at 424.

prosecution's proffered explanation does not have to rise to the level required for a challenge for "cause."[902] Nevertheless, the prosecutor's burden requires more than a claim of good faith and denial of a discriminatory purpose.[903] Furthermore, the court stated that excluding black veniremen because of their race is constitutionally forbidden.[904]

In reaching its conclusion the court applied the "totality of the circumstance test" and found that the prosecutor's explanation that the excluded juror was "neutral," but not "strong" was not supported by the facts and was thus a mere pretext.[905] To accept

---

902. *Id.* (finding that prosecutor's peremptory challenge was race-neutral where prosecutor explained that it was unclear that prospective jurors would be able to listen and follow an interpreter) (citing People v. Hernandez, 75 N.Y.2d 350, 358, 552 N.E.2d 621, 624-25, 553 N.Y.S.2d 85, 88-89 (1990), *aff'd*, 111 S. Ct. 1859 (1991)).

903. *Id.* at 600, 602 N.Y.S.2d at 424-25 (citing People v. Bolling, 79 N.Y.2d 317, 591 N.E.2d 1136, 582 N.Y.S.2d 950 (1992)). In *Bolling*, one of the defendants established a prima facie case of purposeful racial discrimination in the prosecution's use of its peremptory challenges. 79 N.Y.2d at 325, 591 N.E.2d 1142, 582 N.Y.S.2d at 956. The defendant established that the prosecution had made a disproportionate number of challenges toward African-Americans, and that two of the jurors who were excused had backgrounds in prosecution. *Id.* at 325, 591 N.E.2d at 1141, 582 N.Y.S.2d at 955. However, a second defendant did not establish a prima facie case of discriminatory use of peremptory challenges where the prosecutor exercised three of the four allowable challenges against African-Americans. *Id.* at 325, 591 N.E.2d at 1142, 582 N.Y.S.2d at 956. *See* People v. Rodney, 192 A.D.2d 626, 626, 596 N.Y.S.2d 169, 170 (2d Dep't 1993) (finding that prosecutor failed to offer race-neutral reasons for peremptory challenges where such explanations were inconsistent with her seating of white jurors and where she claimed that those challenged did not fit her prototype); People v. Dove, 172 A.D.2d 768, 769, 569 N.Y.S.2d 147, 148 (2d Dep't 1991) (finding that prosecutor's use of peremptory challenges was racially discriminatory when he was unable to give specific reasons for the challenges).

904. *Peart*, 197 A.D.2d at 600, 602 N.Y.S.2d at 425.

905. *Id.* One of the excluded panel members was a nurse's assistant who had ties with law enforcement employees and who had previously served as a juror in a federal case. *Id.* at 599, 602 N.Y.S.2d at 424. *See* People v. Manuel, 182 A.D.2d 711, 711, 582 N.Y.S.2d 735, 737 (2d Dep't 1992) (finding that the prosecutor's use of peremptory challenges is discriminatory where the explanation for exclusion of black veniremen is inconsistent with the inclusion of white jurors); People v. Benson, 184 A.D.2d 517, 584 N.Y.S.2d

this explanation as race-neutral, the court explained, would be "to accept no reason at all."[906] Therefore, the court held that the prosecutor's use of the peremptory challenge was racially motivated and thus ordered a new trial.[907]

Both the New York state courts and the federal courts interpret their respective Equal Protection Clauses as prohibiting the use of peremptory challenges in racially discriminatory manners.[908] Therefore, in *Peart*, the defendants' equal protection rights pursuant to both constitutions had been violated.

People v. Rodney[909]
(decided April 12, 1993)

The defendant, a black man convicted of possession and sale of a controlled substance, claimed that the State of New York violated the Equal Protection Clause of both the State[910] and Federal[911] Constitutions, by employing its peremptory challenges

---

188, (2d Dep't 1991) (finding that the prosecution's use of its peremptory challenge was racially discriminatory where the explanation for the exclusion was that a black crime victim did not see her perpetrator punished and that her own experience could hinder her from finding that an identification could be made).

906. *Peart*, 197 A.D.2d at 600, 602 N.Y.S.2d at 425.

907. *Id.*

908. Batson v. Kentucky, 476 U.S. 79, 86 (1986) (stating that purposeful racial discrimination in picking a jury violated a defendants right to equal protection that a "trial by jury is intended to secure"); People v. Bolling, 79 N.Y.2d 317, 320, 591 N.E.2d 1136, 1139, 582 N.Y.S.2d 950, 953 (1992) (stating that a prosecutor's use of peremptory challenges in a discriminatory manner violates the Equal Protection Clause not only because it violates the defendant's rights but it also harms the excluded jurors, and the public at large).

909. 192 A.D.2d 626, 596 N.Y.S.2d 169 (2d Dep't 1993).

910. N.Y. CONST. art. I, § 11 ("No person shall be denied the equal protection of the laws of this state or any subdivision thereof.").

911. U.S. CONST. amend. XIV, § 1. Section 1 provides in pertinent part:

> No state shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.