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Equal Protection: People v. Rodney

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

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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.

during voir dire in a racially-discriminatory manner.[912] The Appellate Division, Second Department held that the defendant's constitutional rights were violated.[913] The defendant was able to establish a prima facie case demonstrating that the state had exercised its peremptory challenges in a racially-discriminatory manner, and that the state failed to come forward with a race-neutral reason for striking so many "black venirepersons."[914]

The defendant was arrested in a "buy-and-bust" operation after assisting in the sale of crack cocaine to an undercover police officer.[915] After a jury trial in the Supreme Court, Queens County, the defendant was convicted "of criminal sale of a controlled substance in the third degree, criminal possession of a controlled substance in the third degree, and criminal possession of a controlled substance in the seventh degree . . . ."[916] However, it was shown that during the selection of the jury, the prosecutor used a "disproportionately high number of peremptory strikes against black venirepersons . . . ."[917] When questioned about the reasons for striking this group of people, the prosecutor stated that she did not want them on the jury "because they did

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Id.

912. *Rodney*, 192 A.D.2d at 626, 596 N.Y.S.2d at 170.

913. *Id.*

914. *Id.* at 672, 596 N.Y.S.2d at 171 (adopting the three-pronged test set forth by the Supreme Court in Batson v. Kentucky, 476 U.S. 79, 96-97 (1986)). In order for the defendant to establish proof of discriminatory use of the peremptory challenge by the state, "the defendant first must show that he is a member of a cognizable racial group" and that the prosecutor has challenged venire persons that are from the same group. *Batson*, 476 U.S. at 96. Second, the defendant can rely on the fact that peremptory challenges created a jury selection practice that allows "'those to discriminate who are of the mind to discriminate.'" *Id.* (citing Avery v. Georgia, 345 U.S. 559, 562 (1953)). Finally, the defendant must be able to prove that "these facts and any other relevant circumstances raise an inference that the prosecutor" excluded certain people from the jury based on their race. *Id.* "Once the defendant makes a prima facie showing, the burden shifts," and the state must give a race-neutral reason for excluding such jurors. *Id.* at 97.

915. *Rodney*, 192 A.D.2d at 626, 596 N.Y.S.2d at 170.

916. *Id.*

917. *Id.*

not have children."[918] It was then established that some of the white people approved by the prosecutor to sit on the jury also did not have children.[919] To this, the prosecutor "asserted that the challenged black venirepersons did not fit her 'prototype' of the juror she was seeking."[920]

In reaching its decisions on defendant's equal protection claim, the court determined that although a "race-neutral reason [for a peremptory challenge] need not rise to the level required for cause," it is not sufficient for the prosecutor to merely assert good faith and deny discriminatory intent.[921] In support of this contention, the court cited *People v. Bolling*,[922] which recognized that the discriminatory use of a peremptory challenge violates the equal protection clause of the State Constitution.[923] *Bolling* further recognized that "a prosecutor's discriminatory use of peremptory challenges violates [the constitution] not only because it violates the defendant's rights but also because it harms excluded jurors and the community-at-large."[924]

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918. *Id.*

919. *Id.* at 626 , 596 N.Y.S.2d at 170-71.

920. *Id.* at 626-27, 596 N.Y.S.2d at 171.

921. *Id.*; *see also* People v. Dove, 172 A.D.2d 768, 569 N.Y.S.2d 147 (2d Dep't 1991). Prosecutor was not able to recall his "reasons for challenging four black prospective jurors" and merely stated his "general practice" in selecting juries. *Id.* at 769, 569 N.Y.S.2d at 148. The *Dove* court held that "[this] testimony 'amounted to little more than a denial of discriminatory purpose and a general assertion of good faith,' and [therefore] failed to satisfy the People's burden of overcoming the presumption of discrimination found by this court." *Id.* (citation omitted).

922. 79 N.Y.2d 317, 591 N.E.2d 1136, 582 N.Y.S.2d 950 (1992).

923. *Id.* at 320, 591 N.E.2d at 1139, 582 N.Y.S.2d at 953; *see* People v. Kern, 75 N.Y.2d 638, 643, 554 N.E.2d 1235, 1236, 555 N.Y.S.2d 647, 648 (1990). The *Kern* court held that exclusion of "persons of a particular race from service on a criminal jury" through the use of peremptory challenges amounts to racial discrimination which "has no place in our courtrooms, and . . . is prohibited by both the Civil Rights Clause and the Equal Protection Clause of our State Constitution." *Id.*

924. *Bolling*, 79 N.Y.2d at 321, 591 N.E.2d at 1139, 582 N.Y.S.2d at 953; *See also* Batson v. Kentucky, 476 U.S. 79, 86 (1986). Racial discrimination in using peremptory challenges to strike black venire persons "denies [the defendant] the protection that a trial by jury is intended to secure." *Id.* The whole point of a jury is that the defendant be tried by his equals, his peers, the

Furthermore, in *People v. Lavon*,[925] the court held that "'[f]or purposes of equal protection, the constitutional violation of the equal protection clause is the exclusion of *any* blacks [from a jury] solely because of their race.'"[926] In the case at bar, it was irrelevant that the prosecutor allowed some black jurors to remain on the panel, because even one racially motivated peremptory challenge is enough to constitute a violation of the defendant's constitutional rights.[927]

The state law appears to comport with the federal law on this issue. In *Batson v. Kentucky*,[928] the United States Supreme Court held that the Fourteenth Amendment "guarantees the defendant that the State will not exclude members of his race from the jury venire on account of race, . . . or on the false assumption that members of his race as a group are not qualified to serve as jurors."[929] Therefore, the Equal Protection Clauses of the Federal and State Constitutions prohibit the use of racially-discriminatory peremptory challenges by the prosecution in selecting a jury panel.

"persons having the same legal status in society as that which he holds." *Id.*; People v. Jenkins, 75 N.Y.2d 550, 557, 554 N.E.2d 47, 51, 555 N.Y.S.2d 10, 14 (1990). The court held that "[j]ury duty is an important privilege and obligation of citizenship that should not be denied to some citizens simply because of their race." *Id.* at 557-58, 554 N.E.2d at 51, 555 N.Y.S.2d at 14. Furthermore, the court found that "[t]his type of discrimination undermines public confidence in the fairness of our system of justice." *Id.* at 558, 554 N.E.2d at 51, 555 N.Y.S.2d at 14.

925. 166 A.D.2d 670, 561 N.Y.S.2d 258 (2d Dep't 1990), *appeal denied*, 80 N.Y.2d 834, 600 N.E.2d 645, 587 N.Y.S.2d 918 (1992).

926. *Id.* at 670, 561 N.Y.S.2d at 259 (quoting *Jenkins*, 75 N.Y.2d at 559, 554 N.E.2d at 51, 555 N.Y.S.2d at 14).

927. *Rodney*, 192 A.D.2d at 627, 596 N.Y.S.2d at 171.

928. 476 U.S. 79 (1986).

929. *Id.* at 86; *see also* Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991) (applying the *Batson* approach in civil cases).