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Equal Protection

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regulation that is challenged on equal protection grounds.⁶⁴³

SUPREME COURT

WESTCHESTER COUNTY

People v. Green⁶⁴⁴
(decided October 3, 1990)

Defendant was accused of unauthorized use of a vehicle in the second degree, two counts of criminal possession of stolen property in the fourth degree and unlawful possession of marijuana. During jury selection, the prosecutor peremptorily challenged a prospective juror who was deaf. When questioned by the trial judge as to why the prospective juror was being challenged, the prosecutor responded that he had no other reason other than the prospective juror's deafness. The court rejected the prosecutor's explanation and permitted the prospective juror to be sworn and seated among the other accepted jurors.⁶⁴⁵

The county court held that the state constitution's equal protection clause⁶⁴⁶ prohibits the use of peremptory challenges based solely upon a person's deafness.⁶⁴⁷

In *People v. Guzman*,⁶⁴⁸ the court of appeals held that a prospective juror who was also deaf could not be challenged for cause.⁶⁴⁹ In the case at bar, the court believed that *Guzman* should be extended to peremptory challenges. The court began its analysis by observing that the state constitutional civil rights clause was inapplicable in this case because being deaf was not an

643. For a discussion of the federal equal protection doctrine, see *supra* notes 454-57 and accompanying text.

644. 148 Misc. 2d 666, 561 N.Y.S.2d 130 (County Ct. Westchester County 1990).

645. *Id.* at 667, 561 N.Y.S.2d at 131.

646. N.Y. CONST. art. I, § 11.

647. *Green*, 148 Misc. 2d at 667, 561 N.Y.S.2d at 133.

648. 76 N.Y.2d 1, 555 N.E.2d 259, 556 N.Y.S.2d 7 (1990).

649. *Id.* at 3, 555 N.E.2d at 260, 556 N.Y.S.2d at 10; see N.Y. CRIM. PROC. LAW § 270.20 (McKinney 1982 & Supp. 1991).

enunciated classification listed in the provision.⁶⁵⁰ The court, however, found that the equal protection clause was applicable in this case because the prospective juror was excluded for no reason other than her impaired hearing.

Applying the clause, the court noted that to withstand an equal protection challenge, the prosecutor must offer at least a rational reason⁶⁵¹ for excluding the prospective juror solely on the basis of her hearing impairment. Since New York State offers deaf people an interpreter to accurately translate by use of "signed English,"⁶⁵² the court found that there was no rational reason for excluding the juror and thereby ruled that such a challenge would violate "the juror's right to equal protection under the State Constitution."⁶⁵³ *Green* represents a further extension of "Batson-like"⁶⁵⁴ protection under the state constitution.⁶⁵⁵ In

650. *Green*, 148 Misc. 2d at 668, 561 N.Y.S.2d at 132.

651. *Id.* at 669, 561 N.Y.S.2d at 132. The court avoided addressing the issue of whether hearing impaired people might constitute a suspect classification and thus invoke the strict scrutiny standard of review. *Id.* The court also avoided the issue of determining whether a strict scrutiny standard would be applicable in instances where the individual's fundamental right to serve on a jury was being violated. *Id.*

652. See N.Y. JUD. LAW § 390 (McKinney 1983).

653. *Green*, 148 Misc. 2d at 669, 561 N.Y.S.2d at 133. The court also found that its ruling comported with a federal law that prohibits certain instances of disability related discrimination. *Id.* at 670, 561 N.Y.S.2d at 133 (citing 42 U.S.C.A. § 12101-213 (U.S.C.A. Supp. 1991)).

This act declares that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C.A. § 12132 (U.S.C.A. Supp. 1991).

654. *Batson v. Kentucky*, 476 U.S. 79 (1986).

655. *Green*, 142 Misc. 2d at 669, 561 N.Y.S.2d at 133. Other New York State courts have extended *Batson*, under the state's equal protection clause, as prohibiting other forms of discriminatory peremptory challenges. See *People v. Kern*, 75 N.Y.2d 638, 643, 554 N.E.2d 1235, 1236, 555 N.Y.S.2d 647, 648 (1990) (race based peremptory challenges exercised by the defense); *People v. Irizarry*, 165 A.D.2d 715, 716, 560 N.Y.S.2d 279, 280 (1st Dep't 1990) (gender based peremptory challenges); *People v. Kagan*, 101 Misc. 2d 274, 277, 420 N.Y.S.2d 987, 989 (Sup. Ct. New York County 1979) (peremptory challenges exercised to exclude prospective jurors solely on the

Batson v. Kentucky, the United States Supreme Court held that the equal protection clause under the Federal Constitution prohibits the prosecution from exercising peremptory challenges solely on the basis of race.⁶⁵⁶ In *People v. Kern*,⁶⁵⁷ the court of appeals extended *Batson* under the state constitution as prohibiting such challenges by the defense. Neither the Supreme Court nor the New York Court of Appeals, however, has decided whether *Batson* protection should be applied to other classifications, such as the one in *Green*.

basis of their sex, color, creed, ethnic group or national origin).

656. *Batson*, 476 U.S. at 89.

657. See *supra* notes 387-410 and accompanying text for discussion of *People v. Kern*, 75 N.Y.2d 638, 554 N.E.2d 1235, 555 N.Y.S.2d 647 (1990).