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Equal Protection

However, the court reversed the lower court's findings with regard to the removal of the second female juror.[401] The prosecutor's explanation, namely, that the juror would be inadequate because she worked as a monitor technician, did not rebut defendant's prima facie case of purposeful discrimination.[402] The prosecutor made no connection to this juror's employment and any adverse observations the prosecutor made during this juror's questioning. Rather, "the proffered reason was grounded in a stereotype of dubious validity, and there is no evidence that the prospective juror possessed the qualities supposedly inherent in that stereotype."[403]

The dissent in *Duncan* contended that the defendant never preserved his claim for appellate review.[404] Specifically the dissent stated that the defendant never met his burden of proving a *Batson* violation.[405] Under this view, the mere fact that the two Black jurors were peremptorily challenged does not amount to a prima facie showing that the prosecutor's challenges were racially motivated. Therefore, the dissent would have affirmed the lower court's ruling.

In conclusion, it is clear that a prosecutor's use of race-based peremptory challenges during jury selection violates the criminal defendant's equal protection rights under the state and federal constitutions.

People v. Eastman[406]
(Decided March 13, 1992)

Defendant claimed that his right to equal protection under both the state[407] and federal[408] constitutions violated because the

401. *Duncan*, 177 A.D.2d at 194-95, 582 N.Y.S.2d at 851-52.
402. *Id.* at 194, 582 N.Y.S.2d at 851.
403. *Id.* at 195, 582 N.Y.S.2d at 852.
404. *Id.* (Pine, J., dissenting).
405. *Id.* at 196, 582 N.Y.S.2d at 853 (Pine, J., dissenting).
406. 181 A.D.2d 1050, 582 N.Y.S.2d 586 (4th Dep't 1992).
407. N.Y. CONST. art. I, § 11.
408. U.S. CONST. amend. XIV, § 1, cl. 3.

"predicate felony offender statute, Penal Law section 70.06,[409] is unconstitutional as applied" since the law permits the imposition of an enhanced sentence where defendant was convicted of a prior non-Penal Law felony and thereafter convicted of a Penal Law felony, but not if the convictions occurred in the reverse order.[410] The appellate division, fourth department, rejected that contention and held that the Penal Law, as applied, was constitutional and did not violate the equal protection clause at the state or federal level.[411]

Defendant was first convicted of felony drunk driving as defined by Vehicle and Traffic Law (VTL) section 1192.[412] He was subsequently convicted of robbery in the third degree, a felony as defined by Penal Law.[413]

In affirming his conviction, the court concluded that the definition of a predicate felony conviction "must be viewed as signifying that the conviction of *any* felony in [New York State], including those defined in the Vehicle and Traffic Law, may serve as a predicate felony conviction."[414] Furthermore, the court found that the enhanced sentence for second felony offenders, is based upon the nature of the "second felony, not upon the order of conviction."[415]

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409. N.Y. PENAL LAW § 70.06 (McKinney 1992). Section 70.06 states in part:

> 1. Definition of second felony offender.
> (a) A second felony offender is a person, other than a second violent felony offender as described in section 70.04, who stands convicted of a felony defined in this chapter, other than a class A-1 felony, after having previously been subjected to one or more predicate felony convictions as defined in paragraph (b) of this subdivision.

Id.

410. *Id.*

411. *Eastman*, at 1050-51, 582 N.Y.S.2d 586-87.

412. N.Y. VEH. & TRAF. LAW § 1192 (McKinney Supp. 1992).

413. *Id.*

414. *Id.* at 1051, 582 N.Y.S.2d at 586-87 (quoting People v. Clearwater, 98 A.D.2d 912, 913, 470 N.Y.S.2d 934, 935 (3d Dep't 1983)) (emphasis added).

415. *Id.* at 1051, 582 N.Y.S.2d at 587 (quoting *Clearwater*, 98 A.D.2d at 913, 470 N.Y.S.2d at 936).

In support of its determination, the court relied upon *People v. Clearwater*,[416] in which the court held that a felony violation under VTL section 1192 can serve as a predicate felony for the sentencing of a repeat felony offender who is subsequently convicted of a felony under the Penal Law.[417] The court found nothing irrational about the application of the law.[418] It explained that the legislature could reasonably conclude that "harsher sentences are justified for those convicted of such felonies who have also previously been convicted of any felony, but that harsher treatment is not warranted for those convicted of [subsequent] felonies defined outside the Penal Law."[419]

The *Eastman* court also referred to *Dillard v. LaVallee*,[420] where the Second Circuit held that Penal Law section 70.06 did not violate the Fourteenth Amendment because there was "'some rational basis for the statutory distinctions made.'"[421] The facts in *Dillard* were substantially similar to those in *Clearwater*. The defendant's first conviction was for drunk driving and his second for robbery.[422] The Second Circuit found that "[t]he New York legislature could rationally decide that robbery in the first degree is a more serious crime than driving while intoxicated and classify the former as a Penal Law Felony."[423] In addition, the court noted that the legislature could also rationally decide that the enhancement of the sentence of a second felony offender "is a permissible sanction against committing crimes of increasing seriousness."[424]

In conclusion, as long as the New York legislature is found to have a rational basis for the application of its statute, any facial inconsistencies in the application of that statute will not be a vio-

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416. 98 A.D.2d 912, 470 N.Y.S.2d 934 (3d Dep't 1983).
417. *Id.* at 913, 470 N.Y.S.2d at 935.
418. *Id.*
419. *Id.* at 913, 470 N.Y.S.2d at 936.
420. 559 F.2d 873 (2d Cir. 1977).
421. *Id.* at 874 (quoting Marshall v. United States, 414 U.S. 417, 422 (1974)).
422. *Id.*
423. *Id.* at 875.
424. *Id.*

lation of the defendant's equal protection rights. If the defendant commits felonies of increasing violence, then he or she will be subject to an enhanced sentence as a form of deterrent punishment.

Intrastate Trucking Corporation v. White[425]
(decided July 14, 1992)

See case discussion under DUE PROCESS (*supra* page 785). The court found that Vehicle and Traffic Law section 385(15)[426] which contains a grandfather clause permitting the issuance of "divisible load overweight permits" to vehicles registered before January 1, 1986, did not violate defendant's equal protection rights because "the legislation and regulatory scheme are rationally related to the achievement of the governmental purpose of reducing the overall weight of vehicles traveling on State highways."[427]

Treichler v. Niagara-Wheatfield Central School District[428]
(Decided Nov. 18, 1992)

See case discussion under DUE PROCESS (*supra* page 788). The court found that article 19 of the Real Property Tax Law,[429] which permits a school district to adopt a dual tax rate for all parcels within its boundaries, differentiating between homestead and non-homestead property, did not violate the plaintiffs' equal protection rights because the homestead/non-homestead classification was reasonable in that it maintained the "de facto tax structure" that assured "stability in the relative tax burdens of

425. 185 A.D.2d 697, 586 N.Y.S.2d 65 (4th Dep't 1992).
426. N.Y. VEH. & TRAF. LAW § 385(15) (McKinney Supp. 1992).
427. *Intrastate Trucking Corp.*, 185 A.D.2d at 698, 586 N.Y.S.2d at 66.
428. 184 A.D.2d 1, 590 N.Y.S.2d 954 (4th Dep't 1992).
429. N.Y. REAL PROP. TAX LAW §§ 1901-1905 (McKinney 1989).