

An executive director of an equal housing opportunity organization was the leader of a sit-in at the offices of a real estate management company. The protest was designed to call attention to the company's racially discriminatory rental practices. When police demanded that the director desist from trespassing on the company's property, she refused and was arrested.

In the director's trial for trespass, the prosecution peremptorily excused all nonwhites from the jury, arguing to the court that even though the director was white, minority groups would automatically support her because of her fight against racism in housing accommodations.

The director is convicted of trespass by an all-white jury and appeals, claiming a violation of her constitutional rights.

How will the court likely rule on appeal?

- A. Affirm the conviction, because peremptory challenge of the nonwhites did not deny the director the right to an impartial jury.
- B. Affirm the conviction, because the director was not a member of the class discriminated against.
- C. Reverse the conviction, because racially based peremptory challenges violate equal protection of the law.
- D. Reverse the conviction, because the director was denied the right to have her case heard by a fair cross section of the community.

Explanation:

Jury panel challenges

Peremptory Disqualify potential juror for *any* reason except discrimination based on race, ethnicity, or sex

For cause Disqualify potential juror for a *stated* reason for believing juror cannot be fair or impartial (eg, bias, prejudice, past experience)

A **peremptory challenge** is an objection to a potential juror that can be raised without any reason or explanation during the jury-selection process. However, the prosecution's use of peremptory challenges must comply with the Fourteenth Amendment **equal protection clause**, which prohibits striking potential jurors based solely on their **race, ethnicity, or sex**. To successfully contest a peremptory challenge on equal protections grounds (*Batson* challenge) and receive a new trial on appeal:

the defendant must establish a *prima facie* case of **discrimination** (eg, the prosecution used peremptory challenges to strike only female jurors)

the prosecution may then provide a sufficiently **neutral reason** for the peremptory challenges (eg, the strikes were based on age, not gender) *and*

if it does so, the defendant must then prove **intentional discrimination**—that the prosecution's reasoning is insufficient or implausible (eg, the prosecution purportedly struck a 21-year-old woman due to her age but did not strike a 21-year-old man).

Here, the prosecution used its peremptory challenges to strike all nonwhites from the jury (*prima facie* racial discrimination). The prosecution explained that it did so because it believed minority groups would automatically support the director due to her civil rights background (non-neutral reason). Therefore, the prosecution's strikes violated the equal protection clause and the appellate court will likely reverse the director's conviction.

(Choice A) Under the Sixth Amendment, a criminal defendant must be tried by an impartial jury that can decide the case on the evidence presented—not personal biases. Here, there is no evidence that the all-white jury was biased when it convicted the director, so the prosecution's peremptory challenges of all nonwhites did not violate her right to an impartial jury. However, her conviction can still be reversed on equal protection grounds.

(Choice B) A defendant can make a *Batson* challenge even if he/she is not a member of the class of stricken jurors. Therefore, the fact that the director is white and the stricken jurors are nonwhite does not prevent the appellate court from holding that the peremptory challenges violated the director's right to equal protection.

(Choice D) The Sixth Amendment requirement that a jury be drawn from a fair cross section of the community applies to the composition of the *jury venire* (the panel of citizens

from which a jury is selected)—not the *empaneled jury* (citizens selected from the jury venire to hear the case).

Educational objective:

Peremptory challenges can be used to strike potential jurors without any reason or explanation, unless they are used to exclude potential jurors based solely on their race, ethnicity, or sex.

References

U.S. Const. amend. IV § 1 (equal protection clause).

Batson v. Kentucky, 476 U.S. 79, 89 (1986) (holding that peremptory challenges cannot be used to strike jurors based on their race).

Powers v. Ohio, 499 U.S. 400, 409 (1991) (explaining that peremptory challenges cannot be used to strike jurors based on race even if defendant and stricken jurors are different races).

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