

**: ANOKA COUNTY JUDICIAL TRAINING UPDATE :****JURY SELECTION 'BATSON' CHALLENGE**

QUESTION: YOU'RE IN THE MIDDLE OF JURY SELECTION WHEN DEFENSE COUNSEL RAISES A 'BATSON' CHALLENGE AGAINST ONE OF THE STATE'S PEREMPTORY STRIKES. YOU DON'T HAVE TIME TO RESEARCH THE BATSON ELEMENTS. WHAT THREE-STEP ANALYSIS MUST YOU FOLLOW IN ORDER TO RULE ON THE CHALLENGE?

The Batson Rule: Neither the state nor the defendant may make peremptory challenges that are racially motivated. Purported racial discrimination in jury selection violates defendants' and jurors' right to equal protection of the laws. *Batson v. Kentucky*, 476 U.S. 79 (1986); *Georgia v. McCollum*, 505 U.S. 42 (1992).

- 1) **Caution:** If the District Court erroneously denies a defendant's peremptory challenge, defendant is automatically entitled to a new trial! Although federal law does not require automatic reversal, the Minnesota Supreme Court has adopted a more restrictive rule mandating "automatic reversal". *State v. Campbell*, 772 N.W.2d 858 (Mn App. 2009).

THREE STEP ANALYSES: In *Batson*, the Supreme Court established a three-step process to analyze whether a peremptory challenge was racially motivated. *See also Minn. R.Crim. P. 26.02, Subd. 7.*

- 1) **FIRST:** the objecting party must establish a prima facie case of purposeful discrimination showing that a member of a racial group has been peremptorily excluded from the jury and that the case's circumstances indicate that race prompted the exclusion.
- 2) **SECOND:** if the party objecting to the strike establishes a prima facie case, then the proponent of the strike must provide a race-neutral explanation.
 - a) The explanation given need not be "persuasive or even plausible" and that absent an inherent discriminatory intent it will be considered race-neutral.
 - i) For example: juror appeared less engaged; appeared to favor the state and/or the defense; involvement or relative's involvement in law enforcement; preoccupation and anxiety about possible job loss and finances; lack of education, demeanor and tone; reluctance to sit in judgment were all race neutral reasons.
 - b) **THIRD:** the court must determine whether the opponent of the strike has proven purposeful discrimination. This requires the objecting party to show both that the race-neutral reason was pre-textual and that the real reason for the strike was the prospective juror's race.
 - i) Sometimes the best evidence of the intent of the attorney exercising a strike is that attorney's demeanor. It is true that the court's disbelief of the race-neutral reasons put forward by the striking party might build upon the facts establishing the prima facie case to convince the court that intentional discrimination has occurred.
 - ii) **Note on Juror Demeanor:** Where the explanation for a peremptory challenge is based on a prospective juror's demeanor, the judge should take into account, among other things, any observations of the juror that the judge was able to make during the voir dire; however, a demeanor-based explanation need not be rejected if the judge did not personally observe or cannot recall the juror's demeanor. *Thaler v. Haynes*, 1305 S.Ct. 1171 (2010).