

7/16/01 (See Per Curiam on Rehearing - News Release #62)

SUPREME COURT OF LOUISIANA

No. 99-KA-0991

STATE OF LOUISIANA

Versus

CEDRIC JACOBS

LEMMON, J., Dissenting from the Denial of the Application for Rehearing

On application for rehearing, defendant is correct that the trial judge erred in ruling that the Batson objection was untimely as to the first three black jurors struck by the prosecutor's peremptory challenges. The objections were made timely before the entire jury was sworn.

The application for rehearing is also correct that this court's opinion on original hearing improperly questioned the ability of the trial judge to fashion a remedy if the judge had found the defense established a prima facie case and the judge had required and rejected race-neutral reasons. The remedy of disallowing the challenges and reinstating the improperly challenged jurors was not available to the trial judge when the first Batson objection was made. However, if the judge had required race-neutral explanations and rejected them, he could have invoked the alternative remedy of discharging the entire panel and selecting a new jury from a different venire. Batson v. Kentucky, 476 U.S. 79, 99 n. 24 (1986).

The majority of this court nevertheless rejects the rehearing application on the basis that the trial judge properly found that the defense did not establish a prima facie case of discrimination. At the point that the defense entered the first Batson objection, the prosecutor had struck all four black prospective jurors (one of whom was backstruck).¹ These bare statistics raise a significant inference of discrimination that

¹The prosecutor offered reasons for striking the fourth black juror, and the judge, without ruling on whether there was a prima facie case, accepted these reasons. However, the

requires rebuttal.²

The better procedure would have been for the trial judge to require the prosecutor to explain on the record, in the second Batson step, why this statistical evidence did not indicate racial discrimination, and then perform the third Batson step of accepting or rejecting, on the entire record, the reasons proffered by the prosecutor. Under the procedure approved by this court, the trial judge relieved the prosecutor of the burden of explaining why he struck four consecutive blacks from the venire and effectively telescoped the three-step Batson procedure into one step, without involving the prosecutor whose intention was at issue.

While the majority might be correct as a pure question of law, the fairness of the procedure approved by the majority is questionable in a system that already places almost unlimited discretion in the trial judge in accepting or rejecting a prosecutor's race-neutral reasons for challenges. To insure fairness, I would grant rehearing in part and remand the case to the trial court to conduct a hearing for the purpose of requiring the prosecutor to offer race-neutral reasons for challenging prospective jurors Eaglin, Miller and Garrett, and of ruling on the proffered reasons.

prosecutor did not offer reasons for striking the first three because the prosecutor did not have his notes in court with him at the time. The judge then stated he would not require reasons because the defense had not established a prima facie case.

²The prosecutor ultimately struck nine of eleven blacks in the qualified venire. One black was struck by the defense, and one served on the jury. The prosecutor also used his two alternate peremptory challenges to remove blacks.