

EXCLUDING PROSPECTIVE JURORS ON THE BASIS OF SEXUAL ORIENTATION VIOLATES *BATSON/WHEELER*; MIXED-MOTIVE ANALYSIS APPLIES TO THE CONSTITUTIONALITY OF A PEREMPTORY STRIKE WHERE A PARTY GIVES BOTH NEUTRAL AND NON-NEUTRAL REASONS FOR EXERCISING A STRIKE

People v. Douglas - Filed Apr. 11, 2017, in C072881 (3 DCA) (Cert. Part. Pub.) [2017 WL 1325849; 2017 Cal.App.Lexis 330].

Facts: During jury selection, the prosecutor exercised peremptory challenges against two gay jurors, and defs. made a *Wheeler* motion. The prosecutor offered neutral reasons for striking the two jurors: one was close friends with an Assistant Public Defender; the other gave one word answers and had an unfavorable demeanor. However, the prosecutor concluded his explanation by stating that, as openly gay men, the two jurors might be biased against his main witness, who had visited a gay male prostitute but lied about it to police and who was not otherwise living an openly gay lifestyle. The trial court expressly credited the prosecutor's first two reasons but did not address the third reason when it denied the motion.

Held: (1.) Excluding prospective jurors on the basis of sexual orientation runs afoul of *Batson/Wheeler*. (2.) When a party gives both nondiscriminatory and discriminatory reasons for exercising a peremptory strike, the trial court must engage in a "mixed motive or dual motivation analysis" wherein the challenged party must establish that the strike would have been exercised on the basis of the neutral reason and in the absence of discriminatory motive.

YOLO COUNTY - ATTEMPTED SECOND DEGREE ROBBERY; ASSAULT WITH A SEMIAUTOMATIC FIREARM; SHOOTING AT AN OCCUPIED MOTOR VEHICLE; DRAWING OR EXHIBITING A FIREARM AGAINST A PERSON IN A MOTOR VEHICLE; AND CARRYING A LOADED FIREARM WITH INTENT TO COMMIT A FELONY WITH FIREARM ENHANCEMENTS - CONDITIONALLY REVERSED AND REMANDED FOR FURTHER HEARING ON THE *BATSON/WHEELER* MOTION

SA2013308174 - [REDACTED]

[REDACTED]

[REDACTED]