

**CALIFORNIA SUPREME COURT**

**OPINIONS**

**THE TRIAL COURT'S DENIAL OF DEFS.' *BATSON/WHEELER* MOTION WAS UNSUPPORTED BY THE RECORD; COMPARATIVE JUROR ANALYSIS IS REQUIRED ON APPEAL, OVERRULING *PEOPLE v. JOHNSON* (1989) 47 Cal.3d 1194**

**People v. Gutierrez, et al.** - Filed June 1, 2017, in S224724 [2017 WL 2375542; 2017 Cal.Lexis 3975].

**Facts:** During jury selection in an attempted murder trial, the prosecutor exercised 10 peremptory challenges against Hispanic jurors out of 16 peremptory challenges used during the week-long voir dire. Following defs.' *Batson/Wheeler* motion, the trial court found the prosecutor's reasons to be credible and denied defs.' motion. Despite refusing to engage in comparative juror analysis on appeal, the Court of Appeal affirmed the trial court's denial of the motion.

**Held: (1.)** The trial court's denial of defs.' *Batson/Wheeler* motion was unreasonable and unsupported by the record where the prosecutor's justification was inherently implausible and the trial court did not explain the reason for accepting the justification. Court and counsel have a role to play in building a record worthy of deference. **(2.)** The Court of Appeal erred in refusing to undertake comparative juror analysis for the first time on appeal, overruling any inconsistency in *People v. Johnson* (1989) 47 Cal.3d 1194.

KERN COUNTY - ATTEMPTED MURDER; ASSAULT W/ FIREARM; CRIMINAL STREET GANG - REVERSED  
SA2012307318 - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]