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**RACE NEUTRAL JURY SELECTION**  
**By Ted Babbitt**

State v. Neil, 457 So. 2d 481 (1984) is the seminal case on race neutral selection of a jury in Florida. The procedure to be followed by both Court and counsel is set forth in King v. Byrd, 716 So. 2d 831 (Fla. 4<sup>th</sup> DCA 1998).

Lower court Federal decisions on any subject are not binding on Florida Courts. Raymond James Fin. Services v. Saldukas, 896 So. 2d 707, 710 (Fla. 2005). On the other hand, decisions of the United States Supreme Court are binding on all Courts including Florida state courts. Two recent decisions of the United States Supreme Court on the issue of race neutral jury selection must be considered by Florida Courts in making determinations on this question.

In 2005, the Supreme Court decided Miller-El v. Dretke, 545 U.S. 231, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (2005) and recently the Court decided Snyder v. Louisiana, 128 S. Ct. 1203 (2008).

Both cases discuss the landmark case of Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed.2d 69 (1986). That case set up a three step process for determining whether or not a peremptory challenge was impermissibly based on race. Under Batson, the moving party must make a prima facia case showing that the peremptory challenge was based upon race and if that is done, the party supporting the challenge must offer a race neutral reason for striking the juror. The trial judge must then make a determination as

to whether there has been a sufficient showing of purposeful discrimination, in which case the challenge must be disallowed.

It is clear that the United States Constitution absolutely forbids striking even a single prospective juror on the basis of discrimination. The Snyder Court so held at Page 1208 basing its conclusion upon numerous Federal circuit court cases. In the Miller-El v. Dretke case, supra, the Supreme Court held that when a trial court considers objections alleging lack of race neutrality, all of the circumstances surrounding the issue of racial animosity have to be considered by the trial court and subsequently by the appellate court. Every Court considering this question has held that the trial judge is in the best possible position to determine the credibility of the attorney seeking to support the challenge. In fact, credibility is the key issue as to whether the trial court accepts or rejects the race neutral reason offered by the challenger. In the Snyder case, the Supreme Court did not deviate from that position. Indeed the Court points out those factors such as the demeanor of the attorney exercising the challenge, and the demeanor of the juror all invoke subjective determinations making the trial court's first hand observations of tremendous importance.

Nevertheless, there must be some showing that the trial judge carefully considered the issue of the challenger's credibility in light of all of all the circumstances before a race neutral reason can be accepted.

In Snyder, supra, the juror in question was a student teacher, who like the defendant, was African American. In exercising the peremptory challenge, the prosecutor used as race neutral reasons, first that the juror appeared nervous

and second that he was a student teacher who indicated he was worried about missing class by virtue of his participation in the trial. The trial judge failed to articulate any reasoning for its conclusion that the challenge would be allowed. The Supreme Court found that when the trial judge simply allowed the challenge without explanation, rather than making a finding on the record concerning the juror's demeanor, that there was insufficient evidence to support the proposition that the juror was, in fact, nervous and thus, that alone, failed to establish a sufficient race neutral reason for accepting the challenge.

On the second issue as to the alleged concern of the juror about missing class, the Supreme Court pointed out that contact was made with the juror's dean who assured the Court that this would not interfere with the student's studies and the prosecutor never inquired further as to whether that relieved the juror's concern. The Court also pointed out that there were numerous white jurors who exercised a great deal more concern about the conflicts they faced if forced to serve on the jury, yet the prosecutor never exercised a peremptory challenge as to any of those white jurors. The Supreme Court thus concluded that neither explanation met the standard necessary in order to be considered reasonable reasons for exercising a preemptory challenge apart from that of race. The resulting first degree murder verdict and sentence of death were reversed by the Court.

Our jury system is at the heart of our constitutional government. Ensuring that a jury is both representative and free of bias is the single most important plank upon which that government is built. Racial discrimination should not be

tolerated in any form but the Courts should be ever vigilant that it does not raise its ugly head to prevent a fair trial in any forum. The cited cases are intended to ensure that juries are picked without regard to race, color, creed or gender and are a reminder to our trial judges to be ever vigilant to enforce the mandate of our constitution.

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