

## VOIR DIRE RACIAL BIAS

The recent case of Young v State, 744 So.2d 1077 (Fla. 4<sup>th</sup> DCA 1999) reviews and clarifies the law concerning the necessity for race neutral peremptory challenges.

The seminal case in the country on this subject was State v Neil, 457 So.2d 481 (Fla. 1984). There the Florida Supreme Court held that where an objection is made that a peremptory challenge had been exercised solely on the basis of race, the objecting party is required to demonstrate both that the challenged venireman was a member of a distinct racial group and that there was a strong likelihood that the prospective juror had been challenged solely because of race. The Court held that the Judge must then determine whether there is a substantial likelihood that race is the motivating factor and, if so, the burden shifts to the exercising party to show reasons other than race for the exclusion.

Neil was modified in State v Slappy, 522 So.2d 18 (Fla. 1988) which held that any doubt as to whether the objecting party had met the initial burden of proof should be resolved in favor of that party and further stating:

[T]he issue is not whether several jurors have been excused because of their race, but

whether any juror has been so excused, independent of any other. This is so because the striking of a single black juror for a racial

reason violates the Equal Protection Clause, even where other black jurors are seated, and even when there are valid reasons for the striking of some black jurors.

The Court in Slappy required an evaluation by the trial judge as to the truthfulness of the reason given for the strike and required the Court to determine whether the reasoning was both neutral and reasonable and not a pretext. In making that determination, several factors were listed for potential examination.

(1) alleged group bias not shown to be shared by the juror in question, (2) failure to examine the juror or perfunctory examination, assuming neither the trial court nor opposing counsel had questioned the juror, (3) singling the juror out for special questioning designed to evoke a certain response, (4) the prosecutor's reason is unrelated to the facts of the case, and (5) a challenge based on reasons equally applicable to juror [sic] who were not challenged.

The Court further held that if any of those five factors were present and the exercising party failed to offer a convincing rebuttal then the alleged neutral reasoning should be held by the Court to be a pretext.

In Melbourne v State, 679 So.2d 759 (Fla. 1996), the Supreme Court receded in part from Slappy. There the Court held that the procedure for

raising the race neutral issue is that a timely objection must be made showing that the venireman is a member of a distinct racial group and asking that the striking party give the reason for the strike. The Court is then required to ask for the race neutral explanation. That explanation having been given it then becomes the Court's responsibility, based upon all the circumstances surrounding the strike, including the racial makeup of the venire, to determine whether the alleged race neutral reasoning is pretextual and, if so, to deny the strike.

The most significant holding of Young v State is its near complete reliance on the discretion of the trial court in making these determinations. The Court held:

. . . a trial judge's ruling on the 'genuineness' of a peremptory challenge 'will be affirmed on appeal unless clearly erroneous' . . . . 'we must necessarily rely on the inherent fairness and color blindness of our trial judges who are on the scene and who themselves get a 'feel' for what is going on in the jury selection process.' . . . . Since Melbourne, both the supreme court and this court have acknowledged and upheld the trial court's broad discretion in ruling on the exercise of peremptory challenges. (Citing cases.) Where we have reversed the trial court's decision, the trial court's assessment of credibility was severely compromised by an inaccurate recollection of the questioning during voir dire.

In Young, the appellate court recognized that the trial court is in a far superior position to make the necessary determinations inherent in a Neil challenge. The Court specifically held that the trial judge does not need to articulate its thought process on these issues. Young, id., at 1083. The trial court, being present and in the midst of all of the circumstances surrounding the voir dire, is given almost exclusive determination of these issues.

As the Court stated at Page 1084:

As an appellate court, we must rely on the superior vantage point of the experienced trial judge, 'who can consider the demeanor of those involved and can get a feel for what is going on in the jury selection process.'

Exercising peremptory challenges where race is an issue requires that the parties follow strict guidelines with respect to the procedure utilized. If that procedure is followed, the trial court is granted broad discretion in analyzing the validity or lack of validity of such an objection.