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Summarizing recent significant
New York appellate cases

When a criminal defendant raises a *Batson* challenge to the prosecution's use of a peremptory challenge to strike a potential juror of color from the jury, what steps must the trial courts follow to determine whether the peremptory was based in invidious racial discrimination or the People had race-neutral reasons for the strike? The Third Department took a close look at the analysis required under *Batson* and gave the bench and bar a helpful explanation of its requirements. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

FIRST DEPARTMENT

CIVIL PROCEDURE, CIVIL RIGHTS, INJUNCTIVE RELIEF

R.C. v City of New York, 2024 NY Slip Op 03017 (1st Dept June 04, 2024)

Issue: **May a court issue permanent injunctive relief when a party has sought preliminary injunctive relief prior to summary judgment or trial?**

Facts: Plaintiffs brought a class action alleging that the New York City Police Department has been violating New York's statutes requiring the sealing of certain arrest information. In particular, the "New York sealing statutes . . . require that upon the favorable termination of a criminal proceeding or a noncriminal conviction, unless the government demonstrates to the satisfaction of the court that the interests of justice require otherwise, 'arrest information,' including photos, palm and fingerprints of arrestees, and official records and papers relating to an arrest or prosecution, will be 'sealed and not made available' to any person or public or private agency, subject to six statutorily enumerated exceptions (Criminal Procedure Law §§ 160.50, 160.55)." Petitioners moved for a preliminary injunction, and Supreme Court granted the motion and directed "the NYPD to submit to plaintiffs and the court a 'plan to comply with this order as it relates to the cessation of use of sealed arrest information for investigatory purposes unless an unsealing order has been obtained . . . or an exception to the sealing statutes applies." The NYPD submitted a plan "that would limit its ability to use sealed records for investigatory purposes but would allow continued use of the records for non-investigatory purposes such as overseeing conduct of officers, deriving aggregate data, and returning arrestees' property upon their release. Plaintiffs advocated for a more comprehensive plan that was not limited to remedying violations of the Sealing Statutes and that addressed any potential use of the sealed records." Supreme Court rejected the NYPD's plan and adopted the Plaintiffs', and implemented the plan on a permanent basis. The NYPD appealed.

Holding: The First Department reversed, holding that Supreme Court "prematurely issu[ed] an overbroad permanent injunction without first making a final determination on the merits of the claim after a trial or summary judgment motion . . . The Implementing Order contains no language suggesting that it is meant to be an interim measure while the court develops the record in advance of a motion for summary judgment or trial. On the contrary, the Implementing Order's language demonstrates that it is meant to be the permanent solution to NYPD's violations of the Sealing Statutes. Rather than maintaining the status quo, it contains over 50 paragraphs of directives that compel the NYPD to permanently change the way it manages its records. The Implementing Order contains final compliance timelines for the NYPD that do not contemplate any further relief being granted by the court. The Order also directs the NYPD to perform actions indefinitely into the future." The Court explained, "courts may not issue permanent injunctions before trial or a motion for summary judgment. Moreover, it is well established that courts may not issue an injunction that is preliminary in name but permanent in effect before a determination on the merits. While there is a limited exception to these rules when there are no further issues to be resolved and further proceedings would be wasteful, the exception does not apply where there are still numerous factual issues to be determined." That wasn't the case here, where there were numerous fact issues still left to be resolved.

"Supreme Court also erred by issuing an overbroad permanent injunction that goes beyond the relief requested by plaintiffs. Injunctive relief must be narrowly tailored to address the specific unlawful activity giving rise to plaintiffs' injury. Moreover, injunctive relief should be limited to the relief requested by the moving party. Plaintiffs sought an order prohibiting the NYPD from providing its personnel with access to sealed arrest information for law enforcement purposes. Supreme Court was therefore limited to issuing an injunction that remedied the NYPD's violations of the Sealing Statutes, and it lacked the authority to order a plan that addresses what other purposes the sealed records can be used for, such as complying with local laws concerning the aggregation of data or accessing sealed records to address officer misconduct." The First Department thus remanded to Supreme Court to "engage in fact-finding to develop a record that will enable it to make a determination on the merits of the claim. The court must make factual determinations to evaluate the NYPD's practices concerning sealed records and determine the full extent of the NYPD's violations of the Sealing Statutes. After the court has

properly developed the record, the parties may move for summary judgment or proceed to trial. Only then may the court issue another permanent injunction."

SECOND DEPARTMENT

CIVIL PROCEDURE

Javaherforoush v Hawkins, 2024 NY Slip Op 03035 (2d Dept June 5, 2024)

Issue: **May the failure to assemble a proper record on appeal lead to the dismissal of the appeal?**

Facts: After the plaintiff commenced a malicious prosecution and abuse of process action in Supreme Court, the matter was transferred to County Court and proceeded to trial. The jury found in the plaintiff's favor. County Court then set aside a portion of the damages awarded, and the case was retried. Following entry of an amended judgment, the defendants appealed to the Appellate Division.

Holding: The Second Department dismissed the appeal. Although the defendants appealed from a proper paper, the defendants appealed to the wrong court. Appeals from County Court in the Ninth and Tenth Judicial Districts go to the Appellate Term, not to the Second Department. The Court has power to transfer appeals taken to the wrong court, but declined to exercise that power because the defendants failed to prepare a proper record on appeal under CPLR 5526. In particular, the Court noted, "the record on appeal assembled by the defendants failed to include any exhibits from the second trial, included only some of the exhibits from the first trial, and included exhibits that were misnumbered and, in some instances, illegible. Under the circumstances, the record is inadequate to enable an appellate court to render an informed determination, and thus, we dismiss the appeal."

THIRD DEPARTMENT

FAMILY LAW, PARENTING TIME

Matter of Theressa M. v Gaddiel M., 2024 NY Slip Op 03115 (3d Dept June 6, 2024)

Issue: **Can Family Court delegate to the custodial parent the authority to determine the non-custodial parent's parenting time?**

Facts: After the mother filed a petition to modify the custodial arrangement to have sole legal and physical custody of the children, Family Court held a hearing and granted the parties joint legal custody with the mother having primary physical custody and final decision-making authority. Notably, however, Family Court "provided the mother with the 'sole discretion . . . to determine the parenting time the father will have.' Family Court's ensuing written order in January 2023 memorialized that determination and provided that the father 'shall have parenting time with the children at such times and places and under such conditions determined by the mother.'" The father appealed.

Holding: The Third Department reversed, holding that Family Court improperly delegated authority to determine the father's parenting time to the mother. The Court explained, "[u]nless parenting time is inimical to the children's welfare, the court is required to structure a schedule which results in frequent and regular access by the noncustodial parent. In so doing, the court cannot delegate its authority to determine parenting time to either a parent or a child." Although the mother suggested a visitation plan that could potentially work, the Third Department, noting the passage of time and the insufficiency of the appellate record, remitted the case "to Family Court for a hearing to promptly determine whether parenting time with the father would be detrimental to the children and, if not, for a further determination as to 'the type of parenting time warranted by the record evidence (e.g., therapeutic visitation, supervised parenting time, unsupervised parenting time, etc.), the amount, duration and location of such parenting time (e.g., a graduated schedule, overnight parenting, etc.) and any other provisions that would develop and/or promote a healthy and meaningful relationship between the father and the child[ren] (e.g., reasonable phone/video contact, written communication, etc.).'"

CRIMINAL LAW, PEREMPTORY CHALLENGE TO JUROR

People v Cruz, 2024 NY Slip Op 03108 (3d Dept June 6, 2024)

Issue: **What must a criminal defendant show to succeed on a *Batson* challenge to the People's use of a peremptory challenge on a juror who was the only person of color on the panel of potential jurors?**

Facts: The defendant was charged with rape in the first and second degrees, among other crimes, and was convicted following a jury trial. During the course of seating a jury for the trial, the People used a peremptory challenge on a potential juror who appeared to be the only person of color on the panel. Defendant's counsel objected under *Batson v Kentucky* (476 US 79 [1986]), arguing that the People's use of the peremptory challenge was discriminatory. The trial court overruled the objection, holding that the defendant did not raise an inference of discrimination in the first step of the *Batson* analysis.

Holding: The Third Department held that the trial court failed to conduct a proper *Batson* analysis, and thus held its decision on the appeal in abeyance and remitted to the trial court to conduct the proper inquiry. As the Court explained, the United States Supreme Court's

Batson analysis is designed to help "eradicate racial discrimination' in the jury selection process" and requires the trial courts to go through three steps to determine if "peremptory challenges are impermissibly based on invidious discrimination." First, "the party raising a *Batson* challenge bears the burden of establishing a prima facie case of discrimination in the exercise of peremptory challenges . . . [A] party meets its burden when the totality of the relevant facts gives rise to an inference of discriminatory purpose. Once a prima facie case of discrimination has been established, the burden shifts, at step two, to the nonmoving party to offer a facially neutral explanation for each suspect challenge. At the third step, the burden shifts back to the moving party to prove purposeful discrimination and the trial court must determine whether the proffered reasons are pretextual. While the step-two determination focuses only on the facial neutrality of the explanation, the step-three determination is a question of fact, focused on the credibility of the race-neutral reasons, and it is incumbent on the moving party to make a record that would support a finding of pretext at step three."

To conduct a proper *Batson* analysis, the Court emphasized, the trial court must evaluate each of these steps, and here the trial court, by erroneously concluding that the defendant failed at the first step, did not conduct the proper inquiry. When the defendant's counsel raised the *Batson* challenge by asserting that "this juror was 'a person of color' and 'didn't say a word' during voir dire," the trial court asked the People to put their race-neutral reason for the challenge on the record. The People responded that "he was challenging the juror because 'he seemed to be meek. He was laughing . . . inappropriately,' and stating, 'I think, . . . this is a serious case. And I don't know if he can take this seriously.'" The Court never then proceeded to the third step to allow the defendant to make a factual record concerning whether this reason was a pretext for discrimination. Since the third step of the analysis is factual and no record was made, the Court remanded to the trial court to complete that analysis and determine, in the first instance, whether the People's race-neutral reasons for the peremptory challenge were mere pretext for discrimination.

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