**SUPREME COURT MINUTES**
**MONDAY, AUGUST 31, 2020**
**SAN FRANCISCO, CALIFORNIA**

**S238544** C075126 Third Appellate District **UNITED AUBURN INDIAN COMMUNITY OF THE AUBURN RANCHERIA v. NEWSOM (GAVIN C.)**

Opinion filed: Judgment affirmed in full

We affirm the judgment of the Court of Appeal.
Majority Opinion by Cuéllar, J.
-- joined by Chin, Corrigan, Kruger, and Fybel*, JJ.
Dissenting Opinion by Cantil-Sakauye, C. J.
-- joined by Liu, J.
* Associate Justice of the Court of Appeal, Fourth Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**S249593** A149918 First Appellate District, Div. 2 **REILLY (KERRIE) v. MARIN HOUSING AUTHORITY**

Opinion filed: Judgment reversed

We reverse the Court of Appeal's judgment and remand the matter for further proceedings consistent with this opinion.
Majority Opinion by Chin, J.
-- joined by Liu, Cuéllar, and Groban, JJ.
Dissenting Opinion by Cantil-Sakauye, C. J.
-- joined by Corrigan and Kruger, JJ.

**S256659** B268380/B271185 Second Appellate District, Div. 8 **HAN (SUNNIE H.) v. HALLBERG, JR., (RICHARD)**

Dismissal order filed

In light of appellants' concession that "[a]n ordinary express trust can be a general partner," respondent's motion to dismiss review, filed on July 27, 2020, is granted. (Cal. Rules of Court, rule 8.528(b).)
The requests for judicial notice, filed November 8, 2019, and February 6, 2020, are dismissed as moot.
Votes: Cantil-Sakauye, C. J., Chin, Corrigan, Liu, Cuéllar, Kruger, and Groban, JJ.

**S262052** B298914 Second Appellate District, Div. 1 **PEOPLE v. TRIPLETT (YOSAYA JOHNSON)**

The petition for review is denied.
Liu, Cuéllar, and Kruger, JJ., are of the opinion the petition should be granted.

Statement by Chief Justice Cantil-Sakauye

This past January, this court created a Jury Selection Work Group to examine and report on issues of discrimination and inclusivity in the selection and composition of juries in California courts. This group, constituted of justices, judges, and attorneys with extensive experience in jury selection, has begun its work and will continue to study and discuss these issues over the months ahead. Their efforts will make an important contribution to the ongoing multibranch assessment of jury selection practices in this state.

Among the subjects before the work group are how *Batson v. Kentucky* (1986) 476 U.S. 79 and *People v. Wheeler* (1978) 22 Cal.3d 258 operate in practice in California. The work group will consider whether modifications to *Batson/Wheeler* - in addition to any that may be adopted before the work group completes its efforts (e.g., Assem. Bill No. 3070 (2019-2020 Reg. Sess.) as amended Aug. 21, 2020) - or other measures are warranted to address impermissible discrimination in jury selection. These issues are important and worthy of close consideration.

The work group was convened for the purpose of obtaining the independent views and judgment of its members. It should be understood that neither the court's denial of review in this case or other cases, nor the views expressed in any separate statement from a denial of review, represent an effort to influence the work group's deliberations by indicating how a justice or justices would decide any of the issues that may be presented. A denial of review does not necessarily convey how the court would resolve the issues raised in a petition for review. (See Cal. Rules of Court, rule 8.500(b).) Review may be denied, for example, when issues or facts in the record beyond those emphasized by a petitioner may make a case a poor vehicle through which to resolve the issue(s) presented for review.

CANTIL-SAKAUYE, C. J.

We Concur:
CORRIGAN, J.
GROBAN, J.

Dissenting Statement by Justice Liu

Defendant Yosaya Johnson Triplett, a 20-year-old Black woman, was convicted at trial and sentenced to an 11-year prison term for the attempted murder of a Black woman and related offenses. The jury venire began in Los Angeles with 40 people, three of whom were Black. Before voir dire, the court excused one Black juror for cause, and the prosecutor exercised his first peremptory strike on another Black juror. Soon after, the prosecutor used his fourth strike to

dismiss Prospective Juror No. 16, the last remaining Black juror.

Triplett objected to the strike of Prospective Juror No. 16 as racially motivated under *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*) and *People v. Wheeler* (1978) 22 Cal.3d 258. The court found a prima facie case of racial discrimination and asked the prosecutor to explain his reasons. The prosecutor said he struck Prospective Juror No. 16 "mostly because of her answer, 'just growing up in L.A.,' she might not be fair."

Earlier, the court had asked each juror, "[D]o you know anybody who has been treated badly by the police or the court?" Prospective Juror No. 16 responded: "Yes. Just growing up in L.A." When asked to elaborate, she explained: "A Black woman in L.A. with young Black brothers, I have been harassed many times" by police. The court and the prosecutor followed up on Prospective Juror No. 16's answers by asking if she could be a fair juror and impartially consider police testimony in Triplett's case despite her personal experiences. Prospective Juror No. 16 repeatedly and unequivocally said yes. Nevertheless, the court accepted the prosecutor's primary reason for striking her, saying, "[A]s the People pointed out, just living in Los Angeles, she would have bias against police officer testimony." According to the court, her experiences with law enforcement were a "very valid race neutral reason[]." Her removal left the venire devoid of Black jurors, and Triplett was convicted by a panel with no Black jurors. The Court of Appeal affirmed.

This case lies in the heartland of the high court's holding in *Batson*: "Exclusion of [B]lack citizens from service as jurors constitutes a primary example of the evil the Fourteenth Amendment was designed to cure," and "the State denies a [B]lack defendant equal protection of the laws when it puts h[er] on trial before a jury from which members of h[er] race have been purposefully excluded." (*Batson, supra*, 476 U.S. at p. 85.) The conclusion reached by the lower courts here - that Prospective Juror No. 16's experience being "harassed many times" by police as "[a] *Black woman* in L.A." constitutes a "very valid *race neutral* reason[]" for her removal (italics added) - is quite troubling. I acknowledge that our precedent may support this ruling. But as this case illustrates, *Batson*'s guarantee rings hollow when it is understood to allow prosecutors to strike Black jurors for reasons that systematically function as proxies for the jurors' race.

Although this issue is on the radar of the Legislature and our recently appointed jury selection work group, it remains an important doctrinal issue that this court should revisit. It is not clear that pending legislation to address this issue would affect cases already tried. (Assem. Bill No. 3070 (2019-2020 Reg. Sess.) § 2, subd. (i), as amended Aug. 21, 2020 ["This section applies in all jury trials in which jury selection begins on or after January 1, 2022."].) And given our usual timeline for disposition of granted cases, our review of this matter would in all likelihood derive the benefit of the jury selection work group's efforts. In light of mounting concerns about the efficacy of *Batson* and distrust of law enforcement and the justice system arising from the experiences of Black Americans, I would grant the petition for review.

I.

Prospective Juror No. 16 grew up in Los Angeles and lived in Leimert Park at the time of the trial. Married without children, she had been a registered nurse for more than eight years and had supervised a hospital emergency department. She said she would not be more sympathetic to someone who was injured and would not vote to convict Triplett unless the charges were proven beyond a reasonable doubt. Prospective Juror No. 16 had never served on a jury and had never been the victim of a crime.

During voir dire, the court listened to Prospective Juror No. 16's responses to its oral questionnaire, and the following colloquy ensued:

"[Prospective Juror No. 16]: I do have contact with law enforcement, both family and friends. [¶] . . . [¶]
"[Court]: The folks you know that work in law enforcement, do you talk to them about their work?
"[Prospective Juror No. 16]: Sometimes.
"[Court]: Is there anything about those conversations which makes you think you cannot judge police officer testimony fairly?
"[Prospective Juror No. 16]: No.
"[Court]: Once again, could you follow my instructions to follow a police officer's testimony the same way you would judge anyone else['s] testimony?
"[Prospective Juror No. 16]: I can."

The court continued:

"[Court]: [Question] 10, people you know who work in law enforcement or the court system.
"[Prospective Juror No. 16]: So a relative that works in law enforcement. I have a cousin who is an officer, and a brother.
"[Court]: [Question] 13 is the one about anybody you know who has been charged with a crime.
"[Prospective Juror No. 16]: Brothers.
"[Court]: "Were the crimes your brothers were charged with similar to the charges in this case, or different?
"[Prospective Juror No. 16]: Similar.
"[Court]: Is there anything about their experiences which makes you think you cannot be a fair juror in this type of case?
"[Prospective Juror No. 16]: No.
"[Court]: We are going to ask you to put aside their experiences, listen to the evidence in this particular trial, make your decision of guilty or not guilty based on the evidence in this case. If I were to give that instruction to you, you could follow that?
"[Prospective Juror No. 16]: Yes.
"[Court]: [Question 14,] do you know anybody who has been treated badly by the police or the court?
"[Prospective Juror No. 16]: Yes. Just growing up in L.A.
"[Court]: You are likely to hear some police officer testimony in this case. Anything about those experiences which would make you think you would have a difficult time judging police officer

testimony fairly?
"[Prospective Juror No. 16]: No."

Later, the prosecutor entered into the following discussion with Prospective Juror No. 16:

"[Prosecutor]: You mentioned your brothers have been charged with similar crimes. Do you know which crimes?
"[Prospective Juror No. 16]: Similar to [Triplett's]. Murder and assault.
"[Prosecutor]: Did you talk to your brothers about what happened with the cases?
"[Prospective Juror No. 16]: (Nodded.)
"[Prosecutor]: When they talked to you, did you get the feeling they were treated fairly or unfairly?
"[Prospective Juror No. 16]: Fairly.
"[Prosecutor]: Is there anything about those cases you believe would make you unfair in this case?
"[Prospective Juror No. 16]: No."

The prosecutor also probed Prospective Juror No. 16's previous experiences with law enforcement and the legal system:

"[Prosecutor]: You said there was a yes answer on the questionnaire. You said just growing up in L.A.
"[Prospective Juror No. 16]: A Black woman in L.A. with young Black brothers, I have been harassed many times.
"[Prosecutor]: By officers?
"[Prospective Juror No. 16]: Yeah.
"[Prosecutor]: Is there anything about those experiences that makes you feel you might be unfair on this jury?
"[Prospective Juror No. 16]: No. It is the good and the bad. I work with a lot of officers at work. I know a lot of people.
"[Prosecutor]: You have seen both sides of officers?
"[Prospective Juror No. 16]: Yeah.
"[Prosecutor]: How long ago was your cousin murdered?
"[Prospective Juror No. 16]: Five or six years ago.
"[Prosecutor]: Was that investigated by [the Los Angeles Police Department]?
"[Prospective Juror No. 16]: No.
"[Prosecutor]: Is there anything about that investigation that might -
"[Prospective Juror No. 16]: No. It is still going on.
"[Prosecutor]: Are there any frustrations with that that might bleed over into LAPD?
"[Prospective Juror No. 16]: No."

The prosecutor did not challenge Prospective Juror No. 16 for cause, nor did the court excuse her on its own motion. (Code Civ. Proc., § 225, subd. (b).) In other words, the record contains no suggestion that Prospective Juror No. 16 possessed "[i]mplied bias" or "[a]ctual bias" against

either party. (*Id.*, subd. (b)(1)(B), (C).)

Near the close of jury selection, the prosecutor used his fourth peremptory strike against Prospective Juror No. 16, the last remaining Black juror. In response to Triplett's *Batson/Wheeler* challenge, the prosecutor offered three reasons for removing her. He began by asserting that although she "had some relatives that were officers," she "grabbed my attention when she said some of her brothers had been charged with similar crimes. That alone made me think I may not want her on the jury . . . . She said she had not talked to her brothers about the court cases or how they turned out. I think she indicated to us the reason - or she could be fair because she had no idea whether they were treated fairly or not. [¶] To me, simply the fact that her brothers have been charged with assault with a deadly weapon and attempted murder is one factor in the back of her mind when she listens to how our officers have investigated this case and whether or not the defendant is guilty in our case."

The prosecutor then stated his principal concern: "What really concerned the People was her answer to the court's question . . . . There are many people who have grown up in L.A. and may feel like they could be fair, could not be fair, based on their experience. Perhaps I haven't practiced here long enough. I never heard a juror say as a response[,] 'I can't be fair just growing up in L.A.' [¶] I understand what she means. When I asked her, she clarified saying she is a Black female. She has been harassed. It sounds like she has seen both the good and bad of society in general. In addition, her cousin was murdered. Apparently, that investigation is still ongoing. [¶] She may be a fair juror. I am not convinced of that mostly because of her answer, "just growing up in L.A.' She might not be fair."

Finally, the prosecutor observed, "[A]lthough it is a smaller reason, great bodily injury is an issue in our case. I know we do have other nurses. Those nurses do not work in the emergency room. This juror is in a position to see injuries that are more like what we are going to see in our case relative to the other nurse who works in the [intensive care unit] or a nurse who works in surgery, which is less of an emergency situation."

In rejecting Triplett's motion, the trial court said: "As to [Prospective Juror No.] 16, as the People pointed out, just living in Los Angeles, she would have bias against police officer testimony. She also indicated she had brothers charged with a similar crime and a cousin who was murdered. In my view, those are also very valid race neutral reasons."

The Court of Appeal affirmed, concluding that the prosecutor's strike against Prospective Juror No. 16 was race-neutral because the record showed "she had 'brothers' who had been charged with crimes similar to the charged crimes in this case. She further stated that she knows people who have been treated badly by the police or courts, and that she has been harassed many times as a Black woman with two young Black brothers. The prosecutor can reasonably infer that a juror with such experiences may be biased against police officers who testify for the prosecution."

II.

The prosecutor's explanations for striking Prospective Juror No. 16 are problematic for several reasons. As I explain, the record shows that the prosecutor repeatedly mischaracterized the juror's voir dire answers. The discrepancies suggest that the prosecutor had in mind a certain narrative about Prospective Juror No. 16 as a Black woman growing up in Los Angeles. Instead of paying attention to what Prospective Juror No. 16 actually said, the prosecutor - whether consciously or not - appeared to mold her answers to fit that narrative.

The prosecutor's principal reason for striking Prospective Juror No. 16 – "[w]hat really concerned the People" - was her response to the question: "Do you know anybody who has been treated badly by the police or the courts?" She replied, "[As a] Black woman in L.A. with young Black brothers. I have been harassed many times" by officers. She then confirmed that despite this harassment, she would be a fair juror because she has witnessed "the good and the bad" of law enforcement by collaborating with police officers through her work as a nurse and having a brother and cousin who are police officers.

When the prosecutor stated the main reason for his peremptory strike, however, he misrepresented her response. The prosecutor told the court that Prospective Juror No. 16 said she " 'can't be fair just growing up in L.A.' " He continued, "I understand what she means. When I asked her, she clarified saying she is a Black female. She has been harassed. . . . I am not convinced of that mostly because of her answer, 'just growing up in L.A.,' she might not be fair." But Prospective Juror No. 16 said no such thing. Her remark – "just growing up in L.A." - was simply a response to the question whether she knew anyone who has been treated badly by the police or courts. At no point did she say she " 'can't be fair' " because of her experiences; in fact, she repeatedly said the opposite. The trial court took the prosecutor's characterization of Prospective Juror No. 16's answer at face value, without checking the record to review what she actually said. The trial court's ruling in this regard should not be accorded deference.

The prosecutor's other stated reasons for striking Prospective Juror No. 16 are also unavailing. While acknowledging that she had a brother and a cousin serving as police officers, the prosecutor's first reason for striking her was that she had brothers who had been charged with similar crimes. He then claimed that Prospective Juror No. 16 "said she had not talked to her brothers about the court cases or how they turned out. I think she indicated to us the reason - or she could be fair because she had no idea whether they were treated fairly or not."

But the prosecutor's characterization is again belied by the record. The exchange actually proceeded as follows:

"[Prosecutor]: Did you talk to your brothers about what happened with the cases?
"[Prospective Juror No. 16]: (Nodded.)
"[Prosecutor]: When they talked to you, did you get the feeling they were treated fairly or unfairly?
"[Prospective Juror No. 16]: Fairly.
"[Prosecutor]: Is there anything about those cases you believe would make you unfair in this case?

"[Prospective Juror No. 16]: No."

As the record shows, the prosecutor was incorrect in stating that Prospective Juror No. 16 "said she had not talked to her brothers about the court cases or how they turned out," and not once did Prospective Juror No. 16 say "she had no idea whether [her brothers] were treated fairly or not." Instead, Prospective Juror No. 16 said she was familiar with her brothers' cases, and she confirmed that they had been treated "[f]airly" by the system and that their cases would not affect her impartial evaluation of Triplett's case. She again underscored that her interactions with the police included both "the good and the bad" because she regularly engages with officers through her work and has relatives in law enforcement. Yet the trial court accepted this reason as race-neutral, again without checking the record or noticing these discrepancies. The trial court's ruling in this regard is likewise not entitled to deference.

The prosecutor's third reason for striking Prospective Juror No. 16 was her job as an emergency room nurse. The prosecutor said this was "a smaller reason," and the trial court did not rely on it in its ruling. The prosecutor acknowledged that he did not strike two non-Black jurors who were nurses but sought to distinguish Prospective Juror No. 16 by noting that the injuries she would see in Triplett's case would be similar to the ones she sees specifically as an emergency room nurse.

But it is not clear that the other two nurses, who worked in an intensive care unit and a surgery unit, respectively, are so easily distinguished, and the prosecutor did not ask either Prospective Juror No. 16 or the other two nurses about the type of injuries they see in their jobs. (See *Miller-El v. Dretke* (2005) 545 U.S. 231, 246 ["[T]he prosecution asked nothing further about the [purported reason], as it probably would have done if the [reason] had actually mattered."]; *id.* at p. 250, fn. 8 ["the failure to ask undermines the persuasiveness of the claimed concern"]; *People v. Gutierrez* (2017) 2 Cal.5th 1150, 1170 [lack of inquiry by the prosecutor "raises a question as to how interested he was in meaningfully examining" the issue proffered as a reason for a contested strike].) Further diminishing the prosecutor's credibility is the fact that he did not attempt to strike Prospective Juror No. 13, a nurse whose father had been convicted of assaulting a police officer. (See *Miller-El*, at p. 241 ["If a prosecutor's proffered reason for striking a [B]lack panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*'s third step."].)

The final reason stated by the prosecutor and cited by the trial court was that Prospective Juror No. 16 had a cousin who was murdered. But when questioned about this, Prospective Juror No. 16 said that the investigation was ongoing and that she had no "frustrations with [the investigation] that might bleed over into LAPD." In any event, this one reason does not substantially negate the considerable suspicion arising from the mischaracterizations underlying the prosecutor's other stated reasons.

III.

Apart from the concerns above, the prosecutor's primary reason for striking Prospective Juror No. 16 raises a deeper issue worthy of our review: Is it truly race-neutral to strike a Black juror for

saying that because of "[j]ust growing up in L.A.," she knew people who had been treated badly by the police or the courts, and that as "[a] Black woman in L.A. with young Black brothers," she had experienced harassment by police? The fact that these everyday experiences of Black Americans are considered legitimate grounds for a peremptory strike - even when a juror unequivocally says she will be fair and follow the law, and even when there is no basis to remove the juror for cause - goes a long way to explaining why *Batson* "has been roundly criticized as ineffectual in addressing the discriminatory use of peremptory challenges during jury selection." (*State v. Holmes* (Conn. 2019) 221 A.3d 407, 411.) It may also help explain why a substantial majority of Americans believe the criminal justice system treats Blacks less fairly than whites. (Horowitz et al., Pew Research Center, Race in America 2019 (Apr. 9, 2019) pp. 11, 46 [84% of Black respondents, 63% of white respondents, and 67% of all respondents in a survey of 6,637 U.S. adults expressed that belief].)

No great sociological inquiry is needed to understand the problematic nature of the strike at issue here. Countless studies show that Black Americans are disproportionately subject to police and court intervention, even when they are no more likely than whites to commit offenses warranting such coercive action. For example, studies show that Black and white Americans use and sell illegal drugs at nearly identical rates. (See, e.g., U.S. Dept. of Health & Human Services, Results from the 2011 National Survey on Drug Use and Health: Summary of National Findings (Sept. 2012) pp. 23-24; Rosenberg et al., *Comparing Black and White Drug Offenders: Implications for Racial Disparities in Criminal Justice and Reentry Policy and Programming* (2016) 47 J. Drug Issues 132, 136.) But "[i]n some states, black men have been admitted to prison on drug charges at rates twenty to fifty times greater than those of white men." (Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010) p. 7; see id. at pp. 5-7 [tracing the historical roots of the disproportionate incarceration of Black Americans to slavery and Jim Crow].)

A 2019 study found that Black drivers in Los Angeles are substantially more likely to be pulled over, searched, and detained or handcuffed by the police than white drivers, even though "whites are more likely to be found with illegal items." (Poston & Chang, *LAPD searches blacks and Latinos more. But they're less likely to have contraband than whites*, L.A. Times (Oct. 8, 2019).) "Of the more than 385,000 drivers and passengers pulled over by the LAPD . . . 27% were black, in a city that is about 9% black." (*Ibid.*) "24% of black drivers and passengers were searched, compared with 16% of Latinos and 5% of whites . . . . [¶] That means a black person in a vehicle was more than four times as likely to be searched by police as a white person, and a Latino was three times as likely." (*Ibid.*) "Blacks and Latinos were more than three times as likely as whites to be removed from the vehicle and twice as likely to either be handcuffed or detained at the curb." (*Ibid.*)

In *People v. Buza* (2018) 4 Cal.5th 658, I observed that the state's retention of DNA collected from felony arrestees "predictably burdens certain groups. African-Americans, who are 6.5 percent of California's population, made up 20.3 percent of adult felony arrestees in 2016. [Citations.] Yet they comprised 24.3 percent of felony arrestees who were released by law enforcement or the prosecuting attorney in 2016 before any court disposition. [Citation.] Non-

Hispanic Whites, by contrast, comprised 31.2 percent of felony arrestees but only 27.0 percent of felony arrestees released by law enforcement or the prosecuting attorney. [Citations.] The fact that felony arrests of African-Americans disproportionately result in no charges or dropped charges means that African-Americans are disproportionately represented among the thousands of DNA profiles that the state has no legal basis for retaining." (*Id.* at p. 698 (dis. opn. of Liu, J.).)

At the same time, Black Americans are often inadequately protected by the police, which also contributes to their negative perceptions of law enforcement and the justice system. This underprotection takes various forms, including "unsolved homicides, permitted open-air drug markets, slow or nonexistent 911 responses, and the tolerance of pervasive, low levels of violence, property crimes, and public disorder." (Natapoff, *Underenforcement* (2006) 75 Fordham L.Rev. 1715, 1723; see Brunson, *Protests focus on over-policing. But under-policing is also deadly.*, Washington Post (June 12, 2020); Kennedy, Race, Crime, and the Law (1997) pp. 29-75.) Between 2008 and 2018, "police in 52 of the nation's largest cities . . . failed to make an arrest in nearly 26,000 killings . . . . In more than 18,600 of those cases, the victim . . . was black. [¶] Black victims, who accounted for the majority of homicides, were the least likely of any racial group to have their killings result in an arrest . . . . While police arrested someone in 63 percent of the killings of white victims, they did so in just 47 percent of those with black victims." (Lowery et al., *Murder with Impunity: An Unequal Justice*, Washington Post (July 25, 2018).) No wonder Black Americans in highly policed communities "characterize police as contradictory - everywhere when surveilling people's everyday activity and nowhere if called upon to respond to serious harm." (Prowse et al., *The State from Below: Distorted Responsiveness in Policed Communities* (2019) 56 Urban Affairs Rev. 1423, 1423.)

Racial disparities in policing also affect children attending public schools. (See *In re A.N.* (2020) 9 Cal.5th 343, 365, 367-369 (conc. opn. of Liu, J.) [discussing the "school-to-prison pipeline" in the context of truancy].) According to the National Juvenile Justice Network, "Black and Latino students [in Los Angeles] are 6 times to 29 times more likely than white students to be ticketed for the same exact behavior." (Community Rights Campaign, Black, Brown, and Over-Policed in L.A. Schools (Oct. 2013) p. 6.) Other studies have shown that Black students are disproportionately punished for low-level offenses based on subjective judgment, such as "disrespect" of authorities, whereas white students "were significantly more likely than [B]lack students to be referred" for more serious and objective offenses like "smoking, leaving without permission, vandalism, and obscene language." (Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment* (2002) 34 Urban Rev. 317, 332, italics omitted.)

Predominantly Black schools are the settings where school resource officers are "most likely . . . to use extreme punitive discipline" that "ignore[s] white rule-breakers, but make[s] an example of African American rule-breakers." (Irwin et al., *The Race to Punish in American Schools: Class and Race Predictors of Punitive School-Crime Control* (2013) 21 Critical Criminology 47, 50.) In light of such disparate treatment by school authorities, minority students are "more likely to hold less positive attitudes toward the police" - a perception that "form[s] quite early in life for many minority youth." (Hurst & Frank, *How kids view cops: The nature of juvenile attitudes*

*toward the police* (2000) 28 J. Crim. Just. 189, 200.)

Such experiences and perceptions continue into adulthood. In a 2020 Kaiser Family Foundation poll, 21 percent of Black adults, compared to 3 percent of whites, reported being a victim of police violence, and 30 percent of Black adults, compared to 3 percent of whites, reported unfair treatment in their interactions with police. (Hamel et al., KFF Health Tracking Poll - June 2020 <https://www.kff.org/dc19429/> [as of Aug. 19, 2020].) In a 2017 survey of 3,453 United States adults by the Harvard School of Public Health, 60 percent of Black respondents, compared to 6 percent of whites, said they or a family member had been unfairly stopped or treated by the police because of their race, and 45 percent of Black respondents, compared to 7 percent of whites, said they or a family member had been treated unfairly by the courts because of their race. (Harvard School of Public Health, Discrimination in America: Experiences and Views of African Americans (Oct. 2017) pp. 1, 8; Harvard School of Public Health, Discrimination in America: Experiences and Views of White Americans (Nov. 2017) p. 11.) According to another recent poll, whereas 42 percent of white adults in America have "a great deal" of confidence that police officers treat Black and white people equally, 48 percent of Black adults have "very little" or "no confidence" at all. (Santhanam, Two-thirds of Black Americans don't trust the police to treat them equally. Most white Americans do, PBS NewsHour (June 5, 2020).)

Against this backdrop, this court has repeatedly upheld peremptory strikes of jurors based on their experiences or perceptions of law enforcement or the courts, even though this disproportionately burdens Black jurors. (See, e.g., *People v. Winbush* (2017) 2 Cal.5th 402, 436-437 ["negative attitude toward law enforcement" or "negative experience with law enforcement" is "a valid basis for exclusion"]; *id.* at p. 439 ["distrust of the criminal justice system is a race-neutral basis for excusal"]; *ibid.* ["Skepticism about the fairness of the criminal justice system to indigents and racial minorities has also been recognized as a valid race-neutral ground for excusing a juror."]; *People v. Melendez* (2016) 2 Cal.5th 1, 18 [Black juror's "distrust of police" and "belie[f that] the criminal justice system had treated [his] brother-in-law unfairly" were race-neutral reasons for excusal]; *People v. Booker* (2011) 51 Cal.4th 141, 167, fn. 13 ["A negative experience with the criminal justice system is a valid neutral reason for a peremptory challenge."]; *People v. Lenix* (2008) 44 Cal.4th 602, 628 [" 'We have repeatedly upheld peremptory challenges made on the basis of a prospective juror's negative experience with law enforcement.' "].) We recently affirmed the death sentence of a Black defendant convicted by a jury with no Black jurors, upholding the prosecutor's use of "peremptory strikes based on [Black] jurors' attitudes toward the O.J. Simpson case," one of the most "racially polarizing" cases in modern times. (*People v. Miles* (2020) 9 Cal.5th 513, 613 (dis. opn. of Liu, J.).)

Nearly three decades ago, in an incident caught on videotape and seen around the world, Rodney King, an unarmed Black man stopped by Los Angeles police after a high-speed chase, was brutally kicked and beaten by four officers while more than a dozen other officers stood by. King suffered "skull fractures, broken bones and teeth, and permanent brain damage" as a result of the beating. (Sastry & Bates, *When LA Erupted in Anger: A Look Back at the Rodney King Riots* (Apr. 26, 2017) NPR.) The four officers were criminally charged with assault and use of excessive force, but a jury that included no African Americans did not return a single guilty

verdict.

Not long afterward, during jury selection in the capital trial of a Black defendant, a Black prospective juror "expressed the view that the criminal justice system sometimes treats citizens unfairly because of race, offering an example: "The first Rodney King trial where the officers were acquitted seemed to be a blatant miscarriage of justice, because the victim . . . was black.' She wrote that 'Blacks, poor people, minorit[ies and] women seem to get harsher treatment than whites, rich people. I've known many studies & research to show this as fact.' On the other hand, she appeared to favor use of the death penalty and consistently acknowledged a juror's duty to consider the evidence fairly and to follow the law as directed by the court." (*People v. Cornwell* (2005) 37 Cal.4th 50, 67-68.) The trial court asked the juror, " 'What do you mean by the injustice that you perceive [in the Rodney King case]?' " (*Id.* at p. 68.) The juror responded: " 'Well, it seemed that even with the major evidence, that having it on videotape there was still some lack of believing that police could treat a black man like that. And then when the trial took place, the first trial they were acquitted, even though almost the whole world saw it happening. And coming from Los Angeles and having had relatives treated like that myself it just - it makes it very very hard to keep trusting.' " (*Ibid.*) This court upheld the prosecutor's strike of this juror, noting that "despite her obvious intelligence and good faith, . . . her express distrust of the criminal justice system and its treatment of African-American defendants" was a race-neutral reason "for any prosecutor to challenge her." (*Id.* at p. 70.)

As it stands, our case law rewards parties who excuse minority jurors based on ostensibly race-neutral justifications that mirror the racial fault lines in society. This approach is not dictated by high court precedent, and it is untenable if our justice system is to garner the trust of all groups in our communities and to provide equal justice under law. "[D]isparate impact should be given appropriate weight in determining whether the prosecutor acted with a forbidden intent . . . ." (*Hernandez v. New York* (1991) 500 U.S. 352, 362 (plur. opn. of Kennedy, J.); see *id.* at p. 379 (dis. opn. of Stevens, J.) ["An explanation that is 'race neutral' on its face is nonetheless unacceptable if it is merely a proxy for a discriminatory practice."]; *id.* at p. 375 (dis. opn. of Blackmun, J.).) "If any explanation, no matter how insubstantial and no matter how great its disparate impact, could rebut a[n] inference of discrimination provided only that the explanation itself was not facially discriminatory, 'the Equal Protection Clause "would be but a vain and illusory requirement." ' " (Id. at p. 377 (dis. opn. of Stevens, J.)

In this case, Prospective Juror No. 16 considered it self-evident that she knew people who had been treated badly by the police or the courts "[j]ust growing up in L.A." and that she has experienced harassment by police as "[a] Black woman in L.A. with young Black brothers." The mistreatment of Black Americans by law enforcement is itself a serious and longstanding problem. Current law then compounds and institutionalizes this problem by permitting the exclusion of Black jurors based on the very mistreatment that they, their friends or family, or members of their community have experienced. And in turn, the conviction of Black defendants by juries from which all Black prospective jurors have been struck further reinforces perceptions of unfairness. In light of this vicious cycle, is it any wonder that so many Black Americans - indeed, so many Americans of all races - have doubts about the fairness of the justice system

when it comes to the treatment of our Black citizens?

"Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process." (*Flowers v. Mississippi* (2019) 588 U.S. __, __ [139 S.Ct. 2228, 2238].) To many people, excluding qualified Black jurors based on their negative experiences with law enforcement or the justice system must seem like adding insult to injury. It has been more than 30 years since this court has found racial discrimination in the peremptory strike of a Black juror. (See *People v. Snow* (1987) 44 Cal.3d 216.) Over the decades, California courts have repeatedly upheld the exclusion of Black jurors for reasons like those at issue here. It is time to reassess whether the law should permit the real-life experiences of our Black citizens to be devalued in this way. At stake is nothing less than "public confidence in the fairness of our system of justice." (*Batson, supra,* 476 U.S. at p. 87.) I would grant the petition for review.

LIU, J.

I Concur:
CUÉLLAR, J.

**S199667** **PEOPLE v. GRAHAM (JAWAUN DEION)**

Extension of time granted

Based upon Supervising Deputy State Public Defender Jolie Lipsig's representation that the appellant's reply brief is anticipated to be filed by January 28, 2021, an extension of time in which to serve and file that brief is granted to October 30, 2020. After that date, only two further extensions totaling about 92 additional days will be granted.
An application to file an overlength brief must be served and filed no later than 60 days before the anticipated filing date. (See Cal. Rules of Court, rule 8.631(d)(1)(A)(ii) & (B)(ii).)

**S201205** **PEOPLE v. MOORE (RYAN T.)**

Extension of time granted

On application of appellant, it is ordered that the time to serve and file appellant's opening brief is extended to October 26, 2020.

**S212477** **PEOPLE v. FRAZIER (TRAVIS) & NOWLIN (KENNETH LEE)**

Extension of time granted

On application of appellant Travis Frazier, it is ordered that the time to serve and file appellant's opening brief is extended to October 20, 2020.

**S212477** **PEOPLE v. FRAZIER (TRAVIS) & NOWLIN (KENNETH LEE)**

Extension of time granted

On application of appellant Kenneth Nowlin, it is ordered that the time to serve and file appellant's opening brief is extended to October 20, 2020.

**S214917** **PEOPLE v. NASO (JOSEPH)**

Extension of time granted

On application of appellant, it is ordered that the time to serve and file appellant's opening brief is extended to October 20, 2020.

**S222615** **PEOPLE v. BELTRAN (FRANCISCO)**

Extension of time granted

On application of appellant, it is ordered that the time to serve and file appellant's opening brief is extended to October 20, 2020.

**S225017** **PEOPLE v. KING (COREY LYNN)**

Extension of time granted

On application of appellant, it is ordered that the time to serve and file appellant's opening brief is extended to October 20, 2020.

**S262081** B277750/B279009/B285904
Second Appellate District, Div. 2 **SIRY INVESTMENT, L.P. v. FARKHONDEHPOUR (SAEED)**

Extension of time granted

On application of appellant and good cause appearing, it is ordered that the time to serve and file the opening brief on the merits is extended to September 30, 2020.

**S263378** C085762 Third Appellate District **STANFORD VINA RANCH IRRIGATION COMPANY v. STATE OF CALIFORNIA**

Extension of time granted

On application of respondent and good cause appearing, it is ordered that the time to serve and file the answer to petition for review is extended to September 4, 2020.
Petitioner will have until September 9, 2020, at 12:00 p.m. to file a reply to answer to petition for review.

**S262716** D076909 Fourth Appellate District, Div. 1 **SCOTT (LIONEL A.) ON H.C.**
Counsel appointment order filed

Upon request of petitioner for appointment of counsel, Steven Schorr is hereby appointed to represent petitioner on the appeal now pending in this court.

**S263034** E071841 Fourth Appellate District, Div. 2 **PEOPLE v. STULTZ (EDWARDO)**

Counsel appointment order filed

Upon request of appellant for appointment of counsel, Jason L. Jones is hereby appointed to represent appellant on the appeal now pending in this court.

**S262348** **RUMERY ON DISCIPLINE**
Order filed – RICHARD GREGORY RUMERY

The order filed on August 19, 2020, signed by Cantil-Sakauye, C. J., is hereby amended as to the State Bar Court number to read as follows:
State Bar Court No. 16-O-16588

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| **A160590** | First Appellate District | **MILLER (BRENDA) v. WORKERS' COMPENSATION APPEALS BOARD** |

The above-entitled matter, now pending in the Court of Appeal, First Appellate District, is transferred to the Court of Appeal, Third Appellate District.