

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D14206  
C/cb

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Submitted - February 8, 2007

WILLIAM F. MASTRO, J.P.  
MARK C. DILLON  
EDWARD D. CARNI  
RUTH C. BALKIN, JJ.

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2004-08821

DECISION & ORDER

The People, etc., respondent,  
v Vayola London, appellant.

(Ind. No. 2742N-03)

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Martin Geduldig, Hicksville, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Ilisa T. Fleisher and Cristin N. Connell of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Weinberg, J.), rendered October 8, 2004, convicting her of assault in the second degree and resisting arrest, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, she was provided with meaningful representation of counsel (*see People v Henry*, 95 NY2d 563; *People v Benevento*, 91 NY2d 708). The defense counsel, an experienced attorney, was vigorous in his representation of the defendant. He pursued both a justification defense and a battered woman's defense. The defense counsel's choice of expert, a tactical decision, did not constitute ineffective assistance. Furthermore, the County Court providently exercised its discretion in denying the defendant's application to adjourn the trial (*see People v Spears*, 64 NY2d 698; *People v Coward*, 292 AD2d 630).

The defendant's *Batson* challenge (*see Batson v Kentucky*, 476 US 79) was properly denied, as she failed to make the requisite prima facie showing of discrimination. In order to establish a prima facie case of discrimination in the selection of jurors under *Batson*, a defendant asserting a

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claim must show that the exercise of peremptory challenges by the prosecution removes one or more members of a cognizable racial group from the venire and that facts and other relevant circumstances support a finding that the use of these peremptory challenges excludes potential jurors because of their race (*see People v Brown*, 97 NY2d 500, 507). The mere fact that the prosecutor exercised 5 out of 12 peremptory challenges against Hispanic or African-American women was insufficient to establish a pattern of purposeful exclusion sufficient to raise an inference of racial discrimination (*see People v Brown, supra* at 507; *People v Fryar*, 29 AD3d 919, 920; *People v Stanley*, 292 AD2d 472, 473; *People v Harrison*, 272 AD2d 554; *People v Phillips*, 259 AD2d 565). Since the defendant did not establish the requisite pattern of discrimination, the burden never shifted to the prosecutor to come forward with a race-neutral explanation for her peremptory challenges (*see People v Brown*, 97 NY2d 500, 507). In several instances where the prosecutor did provide an explanation, although not required, the reasons proffered were race-neutral.

The defendant's remaining contentions are unpreserved for appellate review and, in any event, are without merit.

MASTRO, J.P., DILLON, CARNI and BALKIN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court