

**People v Quiles**

2010 NY Slip Op 34057(U)

August 27, 2010

Supreme Court, Westchester County

Docket Number: 06-1584

Judge: Robert M. DiBella

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

VICTOR QUILES,

-----X  
DIBELLA, J.

**FILED**  
AND  
**ENTERED**  
ON AUG. 27, 2010  
**WESTCHESTER**  
**COUNTY CLERK**

**FILED** DECISION and REPORT  
AUG 27 2010 Ind. No. 06-1584  
Defendant **TIMOTHY C. IBONI**  
**COUNTY CLERK-X**  
**COUNTY OF WESTCHESTER**

By Decision and Order dated June 22, 2010 (See People v. Quiles, 74 A.D.3d 1241; 2010 NY Slip Op. 05590), the Appellate Division, Second Department remitted the instant matter to this court to hear and report on the third step of the *Batson* process with respect to the potential second alternate juror, Kathy Morant.

On July 28, 2010, the court heard oral argument with respect to the issue. On that date, the Assistant District Attorney, Counsel for the defendant and the defendant appeared. See annexed transcript of oral argument.

While the court may not have expressly stated its determination of the third step of the *Batson* issue with regard to Ms. Morant, at that time the court was satisfied that the People's reason for striking Ms. Morant was genuine and not pretextual. The recent oral arguments have not changed the court's feeling about the People's reasons for striking this particular juror.

Ms. Morant indicated during jury selection that "to be honest" her psychology background "probably" would enter into her deliberations. The court questioned and instructed Ms. Morant on this clearly problematic response. The court was ultimately

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satisfied that Ms. Morant could put her particularized knowledge in the field of psychology aside and therefore denied the People's request to excuse Ms. Morant for cause. However, the Assistant District Attorney was not satisfied with Ms. Morant's answers and sought to use a peremptory challenge. Of course, a prosecutor's reasons for the exercise of a peremptory challenge need not rise to the level of justifying a challenge for cause. See People v. Duncan, 177 A.D.2d 187 (4<sup>th</sup> Dept. 1992). Nonetheless, the court questioned the A.D.A. aggressively on this point in order to gauge her commitment to the proffered reason. See T. pp. 323-324. Ultimately, the court was, and remains, satisfied that the People's reason was not pretextual.

This conclusion is supported by a review of the nature of the crimes charged, the particular circumstances of this defendant and the *Batson* process itself.

The defendant was charged with Burglary in the Second Degree (PL §140.25(2)) and Petit Larceny (PL §155.25). From the outset of the jury selection process, the A.D.A. stressed the narrow elements of the crime and her limited burden of proof as to these elements. See T. pp. 162-165 and pp. 292-294. It was anticipated that the jury would hear that the defendant was poor, struggled with drug addiction and only took sunglasses and loose change. Under these circumstances, it would be understandable for prospective jurors to be sympathetic concerning perceived sociological and psychological "causes" for defendant's behavior. Clearly, the People wanted to minimize this possibility. Thus, unlike the circumstances found lacking in People v. Kendall, 27 A.D.3d 355 (1<sup>st</sup> Dept. 2006), here

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the People questioned the prospective jurors on the very subject which formed the basis for their challenge. In addition, the prosecutor adequately related the prospective jurors issue to the particularized facts of this case. See e.g. People v. Pierrot, 289 A.D.2d 511 (2d Dept. 2001). Thus, the proffered reason is reasonable in view of the nature of the crimes charged and the anticipated evidence at trial.

Secondly, and perhaps more importantly, it would be oxymoronic for the People to try to exclude Ms. Morant based on a pretextual reason. With the exception of the prospective jurors, everyone involved in the trial understood that, if convicted of the felony Burglary charge, the People would seek a finding that defendant was a Persistent Violent Felony Offender. This would require a life sentence. In addition, both attorneys complained about the other's use of peremptory challenges from the first prospective juror. The *Batson* process during jury selection was extensive, contentious and clearly bound for appellate review. Under the circumstances presented, the negative consequences of an adverse ruling at either the trial or appellate level would far outweigh any possible benefit. The trial was scheduled to take only two or three days, thus there was no realistic chance that Ms. Morant, the prospective second alternate juror, would ever be substituted into a trial juror role.

In accordance with the foregoing, the court finds that the reason provided by the People for the use of a peremptory challenge to excuse Ms. Morant was genuine and

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based on a legitimate concern as to her ability to decide the case based solely on the evidence and the law.

This constitutes the Decision and Report of the court.

Dated: White Plains, N.Y.  
August 27, 2010

  
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HON. ROBERT DIBELLA, A.J.S.C.

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