

03-6539 JOHNSON v. CALIFORNIA

Ruling below: California Supreme Court, 71 P.3d 270

QUESTIONS PRESENTED:

~~(1) Did the California Supreme Court violate the rule of *Batson v. Kentucky*, 476 U.S. 79 (1986) and the equal protection clause when it declared that the threshold for a prima facie case of racial discrimination in jury selection is proof that it is "more likely than not" that discrimination occurred, which test presents a much higher and more difficult threshold to reach than the standard established by this Court in *Batson*, namely, that a prima facie case is shown when there is an "inference" of discrimination?~~

~~(2) In a criminal case where the prosecutor peremptorily challenged all three black prospective jurors, leaving Petitioner, a black man, to be tried by a jury with no black jurors, did the California Supreme Court violate *Batson* when it held that the challenges to all three black jurors, did not present even an inference of racial discrimination, which is necessary to establish a prima facie case?~~

~~(3) Did the California Supreme Court violate the Constitution when it refused to apply comparative juror analysis -- namely, comparing answers given on voir dire by minority jurors who were challenged with the answers given to the same questions by white jurors who were accepted -- in determining whether the claimed reasons for challenging the minority jurors were pretextual?~~

~~(4) Is not this Court's recent opinion in *Miller El v. Cockrell*, 537 U.S. 322, 154 L.Ed.2d 931, 123 S.Ct. 1029 (2003), which expressly approves comparative juror analysis, retroactively applicable to a case on direct appeal, pursuant to *Griffith v. Kentucky*, 479 U.S. 314, 93 L.Ed.2d 649 (1987), or, instead, is the state court free to ignore *Miller El*, and to refuse to apply comparative juror analysis, and to refuse to determine if claimed reasons for challenges to minority jurors are pretextual?~~

CERT. GRANTED: 12/1/03

Limited to the following question:

Whether to establish a prima facie case under *Batson v. Kentucky*, 476 U.S. 79 (1986), the objector must show that it is more likely than not the other party's peremptory challenges, if unexplained, were based on impermissible group bias?