

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

**SUPREME COURT OF THE UNITED STATES**

## Syllabus

JOHNSON *v.* CALIFORNIACERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA,  
FIRST APPELLATE DISTRICT

No. 04–6964. Argued April 18, 2005—Decided June 13, 2005

Petitioner Johnson, a black man, was convicted in a California state court of assaulting and murdering a white child. During jury selection, a number of prospective jurors were removed for cause until 43 eligible jurors remained, three of whom were black. The prosecutor used 3 of his 12 peremptory challenges to remove the prospective black jurors, resulting in an all-white jury. Defense counsel objected to those strikes on the ground that they were unconstitutionally based on race. The trial judge did not ask the prosecutor to explain his strikes, but instead simply found that petitioner had failed to establish a prima facie case of purposeful discrimination under the governing state precedent, *People v. Wheeler*, which required a showing of a strong likelihood that the exercise of peremptory challenges was based on group bias. The judge explained that, although the case was close, his review of the record convinced him that the prosecutor's strikes could be justified by race-neutral reasons. The California Court of Appeal set aside the conviction, but the State Supreme Court reinstated it, stressing that *Batson v. Kentucky*, 476 U. S. 79, permits state courts to establish the standards used to evaluate the sufficiency of prima facie cases of purposeful discrimination in jury selection. Reviewing *Batson*, *Wheeler*, and their progeny, the court concluded that *Wheeler*'s "strong likelihood" standard is entirely consistent with *Batson*. Under *Batson*, the court held, a state court may require the objector to present not merely enough evidence to permit an inference that discrimination has occurred, but sufficiently strong evidence to establish that the challenges, if not explained, were more likely than not based on race. Applying that standard, the court acknowledged that the exclusion of all three black prospective jurors looked suspicious, but deferred to the trial judge's ruling.

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*Held:* California’s “more likely than not” standard is an inappropriate yardstick by which to measure the sufficiency of a prima facie case of purposeful discrimination in jury selection. This narrow but important issue concerns the scope of the first of three steps *Batson* enumerated: (1) Once the defendant has made out a prima facie case and (2) the State has satisfied its burden to offer permissible race-neutral justifications for the strikes, *e.g.*, 476 U. S., at 94, then (3) the trial court must decide whether the defendant has proved purposeful racial discrimination, *Purkett v. Elem*, 514 U. S. 765. *Batson* does not permit California to require at step one that the objector show that it is more likely than not the other party’s peremptory challenges, if unexplained, were based on impermissible group bias. The *Batson* Court held that a prima facie case can be made out by offering a wide variety of evidence, so long as the sum of the proffered facts gives “rise to an inference of discriminatory purpose.” 476 U. S., at 94. The Court explained that to establish a prima facie case, the defendant must show that his membership in a cognizable racial group, the prosecutor’s exercise of peremptory challenges to remove members of that group, the indisputable fact that such challenges permit those inclined to discriminate to do so, and any other relevant circumstances raise an inference that the prosecutor excluded venire members on account of race. *Id.*, at 96. The Court assumed that the trial judge would have the benefit of all relevant circumstances, including the prosecutor’s explanation, before deciding whether it was more likely than not that the peremptory challenge was improperly motivated. The Court did not intend the first step to be so onerous that a defendant would have to persuade the judge—on the basis of all the facts, some of which are impossible for the defendant to know with certainty—that the challenge was more likely than not the product of purposeful discrimination. Instead, a defendant satisfies *Batson*’s first step requirements by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred. The facts of this case illustrate that California’s standard is at odds with the prima facie inquiry mandated by *Batson*. The permissible inferences of discrimination, which caused the trial judge to comment that the case was close and the California Supreme Court to acknowledge that it was suspicious that all three black prospective jurors were removed, were sufficient to establish a prima facie case. Pp. 10–11.

Reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a concurring opinion. THOMAS, J., filed a dissenting opinion.