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Recent Developments: Hernandez v. State: When Requested by Counsel, Trial Court Must Ask Specific Voir Dire Questions Regarding Potential Racial Bias

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Hernandez v. State

When Requested by Counsel, Trial Court Must Ask Specific Voir Dire Questions Regarding Potential Racial Bias

By Akia Fox

The Court of Appeals of Maryland held that even in the absence of evidence suggesting potential bias, the trial court must ask specific voir dire questions regarding racial bias when requested to do so by counsel. *Hernandez v. State*, 357 Md. 204, 742 A.2d 952 (1999). The court opined that a trial court's refusal to racially particularize a voir dire question at the request of counsel constituted reversible error. In so holding, the court of appeals unequivocally stated that a showing of "special circumstances" of the likelihood of racial bias among the jurors is not a prerequisite to receive racially specific voir dire questions.

Petitioner, Jorge Hernandez ("Hernandez"), a Hispanic, was convicted in the Circuit Court for Montgomery County of child abuse and second-degree rape. At trial, Hernandez testified in Spanish through an interpreter. The state proved that Hernandez had vaginal intercourse with the nine year old Hispanic daughter of the woman with whom he lived.

During the voir dire process, the defense counsel requested a racially specific voir dire question. Instead of Hernandez's proposed voir dire question, the court stated to prospective jurors that "they should be as free as humanly possible from prejudice, sympathy, and preconceived ideas for or against either party." The court refused to racially particularize the question, even after the prosecution urged it to do so.

After his conviction, Hernandez's motion for a new trial was denied. Hernandez appealed to the Court of Special Appeals of Maryland. The court of special appeals affirmed the lower court's ruling. Hernandez sought a writ of certiorari, which was granted by the Court of Appeals of Maryland.

The court of appeals began its analysis by considering the development of federal law on voir dire pertaining to racial prejudices. *Hernandez v. State*, 357 Md. 204, 742 A.2d 952 (1999). The court found that in the early stages of addressing this issue, the United States Supreme Court regarded racially specific voir dire questions as being essential to the adherence of our criminal justice system's notions of fairness and justice. *Hernandez*, 357 Md. at 211, 742 A.2d at 955 (citing *Aldridge v. United States*, 283 U.S. 308, 310 (1931)). In *Aldridge*, the Court reversed a lower court's criminal conviction of an African-American man based upon the lower court's refusal of the defendant's request for a voir dire question regarding race. *Id.* at 210, 742 A.2d at 955. In its holding, the United States Supreme Court noted that the "essential demands of fairness required the trial court to propound the requested questions in light of the non-remote possibility of disqualifying prejudice in the individual members of the jury." *Id.* at 211, 742 A.2d at 955 (quoting *Aldridge*, 283 U.S. at 310).

In examining later decisions of the Supreme Court, the Court of Appeals of Maryland found that the Court abandoned its earlier liberal application of racially specific voir dire questions. *Id.* at 211, 742 A.2d at 955. In *Ristaino v. Ross*, 424 U.S. 589 (1976), the Supreme Court upheld the conviction of an African-American defendant for assault and battery and armed robbery of a Caucasian security guard, even after the trial court's refusal of defendant's voir dire request. In its holding, the *Ristaino* Court concluded that racially specific voir dire questions are only appropriate in circumstances in which there is a "constitutionally significant likelihood that, absent questioning about racial prejudice, the jurors would not be as indifferent as they stand unsworne." *Id.* at 219, 742 A.2d at 956 (quoting *Ristaino*, 424 U.S. at 598). In analyzing the Supreme Court's reasoning for requiring the "special circumstances" standard, the Court of Appeals of Maryland concluded that the Court

must view racial prejudice as a "latent attitude that becomes effective only under particular, racially charged circumstances." *Id.* at 213, 742 A.2d at 956.

The court of appeals further examined *Rosales-Lopez v. United States*, where a plurality of the Court added another dimension to the "special circumstances" standard. *Id.* at 213, 742 A.2d at 957 (citing *Rosales-Lopez v. United States*, 451 U.S. 182 (1981)). In that case, the Court noted that only in cases that dealt with violent interracial crime would there exist circumstances that would warrant racially specific voir dire questioning. *Id.* at 214, 742 A.2d at 957. The *Rosales-Lopez* court reasoned that in the absence of this standard, there would be an impression that "justice in a court of law may turn upon the pigmentation of skin (or) the accident of birth." *Id.* (quoting *Rosales*, 451 U.S. at 190, (quoting *Ristaino*, 424 U.S. at 596)). Therefore, under current federal law, a trial court's refusal to propound racially specific voir dire questions in the absence of racially charged circumstances does not constitute reversible error.

In examining Maryland law on this issue, the Court of Appeals of Maryland found that in its most recent decision, they rejected the narrow federal position. *Id.* at 214, 742 A.2d at 957 (citing to *Hill v. State*, 339 Md. 275, 661 A.2d 1164 (1995)). The court of appeals rejected prior federal precedent based upon the U.S. Supreme Court's reasoning in *Ristaino*: "the States are free to allow or require voir dire questions not demanded by the U.S. Constitution." *Id.* at 218, 742 A.2d at 959 (quoting *Ristaino*, 424 U.S. at 594).

In *Hill*, the court of appeals embraced the *Aldridge* decision, thus characterizing a trial court's failure to propound requested voir dire questions as reversible error, even in the absence of a showing of potential juror bias. *Id.* at 219, 742 A.2d at 960. The court further reasoned that allowing per se racial voir dire questions would strengthen the criminal justice system by: (a) acknowledging that racial prejudice is a reality; (b) creating an impression that racial prejudice will not be tolerated; and (c) alleviating the need for trial judges to search the record for facts amounting to "special circumstances." *Id.* at 221, 742 A.2d at 960-61.

In finding *Hill* controlling, the court of appeals ruled that Hernandez was entitled to a racially specific voir dire question. *Id.* at 223, 742 A.2d at 962. In so holding, the court explained that its decision applies to any defendant who requests race specific voir dire questions, regardless of their own race. *Id.* at 225, 742 A.2d at 963. The court further noted that when a trial court is faced with a defendant who has improperly requested voir dire questions, it is incumbent upon the court to submit a question related to race on its own motion. *Id.* at 224, 742 A.2d at 962. In light of the trial court's refusal to propound racially specific voir dire questions, as specifically requested by the defendant, the Court of Appeals of Maryland ordered a new trial. *Id.* at 231, 742 A.2d at 967.

The Court of Appeals of Maryland's ruling reflects the effect of potential racial prejudice upon an accused's right to a fair trial as a primary, rather than secondary, concern of the courts. In light of this decision, Maryland practitioners need to be aware that, other than a simple request, there does not exist any prerequisite to receiving racially specific voir dire questions for their clients. Although per se racially specific voir dire questions will not eliminate the racial prejudices that inherently exist in our system, the court of appeals's approach will help to combat these prejudices.