

COA Opinion: Unintentional Kent County jury system computer glitch resulted in underrepresentation of African-Americans in jury venires and a Sixth Amendment violation

23. June 2010 By Jason Byrne

On June 22, 2010, the Court of Appeals released Judge Borrello's opinion in *People v. Bryant*, No. 280073, involving a claim that a defendant's Sixth Amendment right to an impartial jury, drawn from a fair cross-section of the community, was violated when his Kent County jury venire of 42 only had one African-American. This argument had been made previously immediately after the defendant's conviction, and the Court of Appeals had remanded the matter for an evidentiary hearing. The trial court conducted such hearings, but found no Sixth Amendment violation and upheld the conviction. The Court of Appeals disagreed, finding an unintentional computer error systematically caused underrepresentation of African-Americans on jury venires, and reversed and remanded the case for a new trial.

There was no dispute that the group alleged to have been excluded from jury service was "distinctive" within the community. Thus, in order to make a prima facie showing of a violation, the defendant had to show that the representation of African-Americans in venires is not fair and reasonable in relation to their proportion in the community, and that the underrepresentation was due to systematic exclusion. The Court found that both tests were met.

First, it examined the various approved methods for determining proportional representation, and concluded that in a case like this where African-Americans make up a relatively small percentage of the population, it was appropriate to use a method which measured the diminished likelihood that members of the underrepresented group, compared to the entire population, will be called for jury duty. There was testimony at the evidentiary hearing that this disparity was approximately 73%, which was substantially higher than percentages in other cases which found underrepresentation.

Next, the Court concluded that this underrepresentation was systematic, but unintentional. The evidence showed that a computer glitch (from late 2001 to summer 2002) caused over-selection in zip codes with small minority populations, and under-selection in zip codes with large minority populations. Even though the glitch appeared unintentional, the Court of Appeals noted that intent is not required for a finding of systematic underrepresentation.

Thus, the Court concluded that there was a prima facie showing of a Sixth Amendment violation, and that the burden then shifted to the State to show a significant state interest in the aspects of the jury selection system

that caused the underrepresentation. The State did not even try to defend the computer error under that standard. Thus, the Court of Appeals found the Sixth Amendment was violated and remanded the case for a new trial.