

MSC Opinion: Pellegrino v. Ampco System Parking

29. June 2010 By John Bursch

A trial court may not deny a party the use of a peremptory challenge on the basis of the court's desire to attain a racially proportionate jury, because the selection of jurors based on race violates the equal-protection guarantees of the federal and state constitutions. So held the Michigan Supreme Court in *Pellegrino v. Ampco System Parking*, No. 137111, setting aside a \$14.9 million jury verdict and remanding for a new trial.

On April 7, 2003, Anthony Pellegrino and his wife were riding in an airport shuttle van operated by Ampco when the van swerved on ice and hit a concrete barrier. Anthony sustained serious injuries and his wife was killed. He filed a third-party no-fault action against Ampco, which conceded liability, leaving for trial only the question of damages.

Before voir dire, the trial judge announced his goal to have a jury "that represented the racial composition of this country." When Ampco's counsel sought to strike an African-American woman from the jury because she had been widowed two times and was in the process of grieving over the death of her mother, the trial judge denied the peremptory challenge, later explaining that "until either removed from the bench by the disciplinary committee or ordered to have a new trial, I am going to seek to have this proportional representation on the juries that hear cases in this court. . . . I'm going to do it until I'm ordered not to do it and then when I'm ordered not to do it, then I'll have to decide what's next for me."

The Supreme Court has now ordered the trial court "not to do it," concluding that the trial judge's race-based selection of a jury violated the Michigan and federal constitutions. The Court also dictated that the new trial take place before a different judge, and it referred the trial judge to the Judicial Tenure Commission "to investigate whether judicial misconduct has occurred." Justice Markman authored the majority opinion, joined by Chief Justice Kelly and Justices Cavanagh, Corrigan, and Young. Justice Weaver, joined by Justice Hathaway, dissented, stating her belief that leave to appeal was improvidently granted, and disagreeing with the majority's discussion regarding possible referral of the trial judge to the Judicial Tenure Commission.