

**Summary of SC89315, *Doris Kesler-Ferguson and Boyd Ferguson v. Hy-Vee, Inc.***

Appeal from the circuit court of Jackson County, the Honorable Marco Roldan.

**Attorneys:** Kesler-Ferguson was represented by Mark G. Arnold of Husch Blackwell Sanders LLP in St. Louis and Joshua M. Ellwanger and Kathryn G. Lee of Husch Blackwell Sanders LLP in Kansas City. Hy-Vee was represented by Charles H. McKenzie and Louis C. Accurso of the Accurso Law Firm in Kansas City.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** In a slip-and-fall case filed by an injured woman against a grocery store, the trial court sustained the woman's challenge, under *Batson v. Kentucky*, 476 U.S. 79 (1986), to the store's attempt to remove a black potential juror from the jury pool. In a 7-0 decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirmed the circuit court's decision, finding the circuit court acted within its discretion in sustaining the *Batson* challenge.

**Facts:** Doris Kesler-Ferguson sued Hy-Vee, Inc., for negligence and premises liability after breaking her hip when she slipped and fell at a Hy-Vee grocery store. Hy-Vee used all three of its peremptory strikes to remove three black individuals from the jury pool. Kesler-Ferguson's attorney raised a *Batson* challenge, arguing Hy-Vee's peremptory strikes were racially motivated. The circuit court overruled the challenge as to two potential jurors but sustained the challenge for the third potential juror, who ultimately served on the jury. The jury entered its verdict against Hy-Vee, which appeals.

**AFFIRMED.**

**Court en banc holds:** Although Hy-Vee may have stated a race-neutral reason to strike the juror, it is in the trial court's discretion to determine whether an allegedly race-neutral explanation is mere pretext for discrimination. The trial court is in the best position to make determinations regarding credibility. A trial court may consider the credibility and demeanor of reasons offered for an allegedly race-neutral strike and may choose to disbelieve the offered reasons. Here, the trial court considered Hy-Vee's explanation, rejected it as mere pretext and properly acted within its discretion in sustaining the *Batson* challenge.