

# Washington judges must presume racial bias in verdicts when claimed

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By Lawrence Wilson | The Center Square contributor

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The Washington State Supreme Court Building in Olympia, Washington  
By Tim Gruver / The Center Square

(The Center Square) — Judges must presume that racial bias was a factor in a jury's decision in a civil suit when one litigant makes that claim, according to a Washington Supreme Court ruling, placing the burden of proof on the opposing party to show that racial bias did affect the outcome.

The ruling was handed down in October in a liability lawsuit brought by an African-American woman who claimed her injury from a car accident aggravated her symptoms from Tourette's Syndrome. The plaintiff had sought \$3.5 million in damages. The defendant had admitted fault in the accident.

When the jury found for the plaintiff but granted only \$9,200 in damages, she appealed the award, presenting arguments to demonstrate that racial bias influenced the decision.

Cited as evidence of racial bias were statements by the defendant's lawyer that seemed to indicate racial stereotyping, including describing the defendant as "confrontational" and "combative," her suggestion that the defendant was interested only in a financial windfall, and that the defendant's witnesses, who were all black family members and friends, were "inherently biased" and seemed to have been coached to give identical testimony.

Also, the jury asked that Henderson leave the courtroom before they re-entered to deliver their verdict.

Writing for the majority, Justice Raquel Montoya-Lewis stated, "Counsel's comments during cross-examination and closing arguments that drew on racial stereotypes, along with the jury's astonishingly small award and the request to remove Henderson from the courtroom, support the conclusion that appeals to racial bias affected the verdict."

In summary, Montoya-Lewis wrote, drawing on a recent Washington Supreme Court decision, "When a new trial is sought on the ground that racial bias affected the verdict, the facts must be viewed through the lens of an objective observer who is aware 'that implicit, institutional, and unconscious biases, in addition to purposeful discrimination, have influenced jury verdicts in Washington State.'"

She added, "In a hearing based on prima facie evidence that racial bias possibly affected the verdict, the court must presume that it did and the party seeking to uphold the verdict must prove how it did not. If they cannot prove that racial bias was not a factor, that verdict is fundamentally incompatible with substantial justice."

Seattle Attorney Mark Lamb called it “a very unusual decision” on KIRO News Radio. “The presumption is going to be that you are biased, you are racist. The burden is on the party that effectively won at trial.”

Justices Sheryl Gordon McCloud and Barbara Madsen offered a concurring opinion questioning the characterization of some of the defense statements as racially biased.

The justices also concluded that Superior Court Judge Melinda Young should have taken action against the defense for withholding evidence from Henderson’s attorney before the trial, which may have been a factor in the jury’s decision.