

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-000940-MR

TYRONE EUBANKS

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE WILLIAM R. HARRIS, JUDGE
ACTION NO. 00-CR-00089

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE. Appellant Tyrone Eubanks appeals his conviction in the Simpson Circuit Court for one count of manslaughter in the first degree. On appeal, appellant argues that the trial court should have granted his motion for judgment notwithstanding the verdict because all of the evidence showed that he was privileged to act in self-protection. In addition, appellant alleges errors in the composition of the jury.

Finally, appellant argues that the Commonwealth was allowed to introduce prejudicial evidence concerning the police investigation. We have examined these claims of error and we affirm.

Appellant first argues that the trial court should have granted his motion for judgment notwithstanding the verdict (JNOV) pursuant to RCr 10.24 after the jury found him guilty of manslaughter in the first degree. A motion for JNOV raises the single question of whether the evidence is sufficient to sustain a conviction. Commonwealth v. Bailey, Ky., 71 S.W.3d 73, 75 (2002). Appellant argues that he should not have been convicted of manslaughter in the first degree because the evidence showed that the victim was the aggressor and that appellant was acting in self-defense. Additionally, appellant argues that the trial court abused its discretion in refusing to consider additional evidence at the sentencing hearing offered to assist the court in ruling on the motion.

Appellant asserts that it was uncontradicted that he had the right to act in self-defense. The evidence appellant points to was that after he had been pushed down by David Rainey and couldn't move, Rainey turned to Braxton Holcomb and indicated that he wanted Braxton to give him something to make appellant "talk." Appellant testified that he had seen the outline of a gun in Braxton's pocket. When Rainey began walking

toward Braxton, appellant fired at Rainey five times. Rainey was unarmed.

The use of physical force by a defendant upon another is justifiable when the defendant believes that such force is necessary to protect himself against the use or imminent use of unlawful physical force by another person. KRS 503.050(1). A person has the right to use deadly physical force in self-defense only when he believes such force is necessary to protect himself against death, serious physical injury, kidnapping or sexual intercourse compelled by force or threat. KRS 503.050(2). The jury was instructed on self protection, but rejected the defense in finding appellant guilty of manslaughter in the first degree.

The Commonwealth introduced evidence from witnesses that the victim was unarmed. The Commonwealth introduced the statement appellant gave to police the day of the shooting in which he failed to assert that he believed Rainey was about to arm himself. In this case, we agree that it was a jury question as to whether there was an imminent threat of force to appellant so that he could have reasonably believed that deadly force was warranted. Moreover, there was sufficient evidence to support the jury's finding appellant guilty of manslaughter in the first degree. Therefore, the trial court correctly denied the motion for JNOV.

Furthermore, we agree that appellant had no basis for attempting to introduce new evidence to support his motion for JNOV. New evidence may be raised as a ground for a motion for new trial pursuant to RCr 10.02, Carwile v. Commonwealth, Ky. App., 694 S.W.2d 469 (1985), but there is no basis for introducing new evidence as part of a JNOV. We regard a trial court's ruling on a JNOV as based on the evidence before the jury. RCr 10.02.

Next, appellant argues that the trial court should have granted a mistrial because the Commonwealth improperly used its peremptory challenges to remove black jurors. Appellant cites the Commonwealth's use of a peremptory challenge to strike Juror Vicky Goodnight from the venire. The United States Supreme Court outlined a three-step process for evaluating claims that prospective jurors were stricken on the basis of race in violation of the Equal Protection Clause. Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).

First, the defendant must make a prima facie showing of racial bias for the peremptory challenge. Second, if the requisite showing has been made, the burden shifts to the Commonwealth to articulate "clear and reasonably specific" race-neutral reasons for its use of a peremptory challenge. While the reasons need not rise to the level justifying a challenge for cause, "self-serving explanations based on intuition or disclaimer of discriminatory motive" are insufficient. Finally, the trial court has the duty to evaluate the credibility of the

proffered reasons and determine if the defendant has established purposeful discrimination.

Gamble v. Commonwealth, Ky., 68 S.W.3d 367, 371 (2002) (citing Batson; citations omitted). In order to permit the questioned challenge, the trial judge must conclude that the proffered reasons are, first, neutral and reasonable, and second, not a pretext. Id.

The Commonwealth stated as its reasons for excluding Juror Goodnight that the lead investigating officer in the case had arrested and led the prosecution of her husband some years before, and the Commonwealth believed this would prejudice her against law enforcement. During the voir dire questioning, moreover, the Commonwealth asked if anyone on the panel had been personally charged with a crime or had a member of their family charged before with a crime. Juror Goodnight did not respond to this line of questioning. In addition, the Commonwealth noted the fact that Juror Goodnight was acquainted with appellant and the victim in the case, and the Commonwealth inferred from the way she responded to questions about the victim that she had formed a negative opinion of him. The trial court found these reasons to be a sufficiently race-neutral explanation for the peremptory challenge. Following the peremptory strike of Juror Goodnight, there were no black jurors on the jury.

We conclude that the trial court properly found a sufficient race-neutral basis for the peremptory strike. Appellant argues that he was not made aware of the situation involving the prosecution of Goodnight's husband, and so was not given a chance to "rehabilitate" the juror during voir dire. We find no duty under the Batson framework to allow a defendant to try to reinstate a juror who was struck by the prosecution for what was found to be a race-neutral reason. Batson is not intended to remove all prosecutorial discretion in peremptory strikes, or to ensure a particular racial composition on a jury, but rather is designed to end the "odious practice" of eliminating potential jurors simply because of race. Washington v. Commonwealth, Ky., 34 S.W.3d 376 (2000).

Next, appellant argues that he was denied a fair trial by an impartial jury when a juror was improperly struck for cause. During the voir dire by the Commonwealth, the prosecutor asked if any of the venire knew Donovan Bell, a witness who had been subpoenaed to testify in the case. Juror Carver stated that she knew him, and that he was her nephew. The prosecutor asked if his testifying would affect how she judged the case. Juror Carver responded that she didn't know. The trial court asked her if she could weigh his testimony the same as that of other witnesses. Before she could answer, the Commonwealth asked to approach the bench. At the bench, the prosecutor

stated that he expected the evidence to show that Donovan Bell "supplied the murder weapon" to appellant. Defense counsel objected to striking the juror, but said that appellant's testimony might also be that Donovan Bell supplied the gun used in the shooting. The trial court determined that the juror should be excused for cause.

On appeal, appellant argues that it was error to release the juror because acquaintance with a participant in the trial does not require that a challenge for cause be granted. We agree with the trial court that there was a basis to excuse the juror based on more than mere knowledge of a witness. A court may imply bias from a close relationship, be it familial, financial or situational, of a juror with respect to any of the parties, counsel, victims or witnesses. Bowling v. Commonwealth, Ky., 942 S.W.2d 293 (1997). A trial court has considerable discretion to determine whether a juror should be stricken for cause; unless it was clearly erroneous, the exercise of such discretion is a judicial prerogative and is not subject to review by an appellate court. Scruggs v. Commonwealth, Ky., 566 S.W.2d 405, 410 (1978), cert. denied, 439 U.S. 928, 99 S. Ct. 314, 58 L. Ed. 2d 321 (1978).

In this case, Juror Carver never asserted that she could be impartial, but immediately expressed uncertainty. Moreover, during voir dire Juror Carver was apparently unaware

of the role her nephew allegedly played in the offense at trial. The court could properly infer that the juror may not be able to decide the case according to the law given her close familial relationship with a witness, her hesitancy to claim lack of bias, and the fact that her nephew may have been implicated by any guilty verdict. Furthermore, the trial court was not required to obtain more information from the juror in this instance before making its decision. We find no error.

Finally, appellant argues that he was denied a fair trial when the police captain was permitted to testify to the number of "man-hours" required to search for the weapon appellant told police he discarded after the shooting. Appellant argues that this evidence served only to confuse the issues before the jury by shifting focus to the impact of appellant's statements on the local public weal. We do not find that the testimony was prejudicial. Ostensibly, the purpose of the police officer's testimony was to show that the weapon was not found despite a thorough search. We believe that such evidence would be considered erroneous only if it was implied to the jury that they should convict because of the expense of the investigation. No such implication was made here. The comment was isolated and the Commonwealth did not comment further on the amount of police investigation in this case. Therefore, we find no error.

For the foregoing reasons, we affirm appellant's conviction in the Simpson Circuit Court for manslaughter in the first degree.

ALL CONCUR.

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