RENDERED: May 23, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001228-MR

JOHNNY PEARTREE — APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 01-CR-00081

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BAKER, GUIDUGLI, AND KNOPF, JUDGES.

KNOPF, JUDGE. Johnny Peartree appeals from a judgment and sentence of the Henderson Circuit Court convicting him of nine counts of Complicity to Second Degree Forgery[1]. The jury fixed his sentence at one year on each count and recommended that the sentences run concurrently. On April 29, 2002, the trial court entered a judgment of conviction and sentence. Peartree was sentenced to one year on each count and the sentences were

[1] Kentucky Revised Statutes (KRS) 502.020 and 516.030.

ordered to run concurrently, for a total of one year to serve. Peartree raises only one issue on appeal – that the trial court erred in denying his motion for mistrial based on the exclusion of African-American jurors. We affirm.

After the parties made their preemptory strikes, defense counsel informed the trial court that the prosecution had struck two of three African-Americans on the jury venire. The prosecutor informed the court that he struck one juror because he had represented her mother in a divorce from her father and that he had prosecuted her father for failure to pay child support. The prosecutor stated that the second juror was struck because she was young and unmarried and that this juror also appeared uninterested in the proceedings.[2] Defense counsel brought to the court's attention that a white member of the venire was warned about being inattentive because he was reading a book during the selection process, but was not struck. To support his claim that his strikes were race-neutral, the prosecutor stated that he had not struck a third African-American juror. The trial court then made further inquiry of the prosecutor as to whether his reasons were race-neutral. Based on the prosecutor's further assurances that he had not

[2] The prosecutor stated that this juror appeared to be sleeping. The trial court stated that, while it had not observed the juror sleeping, it had noticed that the juror was uninterested and did not want to be there.

struck the two jurors based on their race, the trial court denied the motion to dismiss.

Batson v. Kentucky[3] outlines the three-step process for evaluating claims that peremptory challenges have been used to strike jurors on the basis of race in a manner violating the Equal Protection Clause: 1) the defendant must make a prima facie showing that the peremptory challenges are based on race; 2) if the requisite showing is made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question; 3) the trial court must then determine whether the defendant has carried his burden of proving purposeful discrimination.[4]

"The trial court may accept at face value the explanation given by the prosecutor depending upon the demeanor and credibility of the prosecutor."[5] As with the state of mind of a juror, evaluation of the prosecutor's state of mind, as well as the proffered reasons for the peremptory challenge, lies

[3] 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

[4] Id.

[5] Commonwealth v. Snodgrass, Ky., 831 S.W.2d 176, 179 (1992).

"peculiarly within a trial judge's province."[6] The trial court's findings must be accepted unless they are clearly erroneous.[7]

Peartree relies primarily on the Kentucky Supreme Court's application of Batson in Washington v. Commonwealth.[8] We agree with the Commonwealth that Washington is factually distinguishable. In Washington, the Court was disturbed by the fact that when the issue of racial bias was first raised, the prosecutor stated that he did not strike the only African-American juror. After it was shown that the prosecutor had indeed struck the juror, the trial court specifically found that the prosecutor's subsequent explanations were disingenuous, and yet, later accepted those same explanations as being race-neutral.

In the case sub judice, the prosecutor was aware that he had struck the two jurors and immediately proffered race-neutral reasons for striking them. As to the first juror, the prosecutor expressed concern over his involvement in the family divorce and the later prosecution of the juror's father. As to the second juror, not only did the prosecutor state that he struck her and two other jurors because they were young and

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[6] Id. (citing Hernandez v. New York, 500 U.S. 352, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991)).

[7] Stanford v. Commonwealth, Ky., 793 S.W.2d 112, 114 (1990).

[8] Ky., 34 S.W.3d 376, 378 (2000).

unmarried, he also stated that this juror appeared to be uninterested. While the Washington court was concerned about the prosecutor's claim to have struck a juror because of inattentiveness without directing any specific questions to that juror, in the case sub judice, the trial court stated that it had also observed the juror and agreed that she appeared uninterested. The trial court then made further inquiry into the prosecutor's offered reasons before denying the motion to dismiss.

In Washington, the Kentucky Supreme Court did not adopt the bright-line rule that Peartree asks this Court to adopt: that potential jurors, whom the prosecutor claims to be either biased or inattentive must be questioned by the prosecutor as to their bias or interest in the case, prior to the prosecutor exercising preemptory challenges. In Gamble v. Commonwealth[9] the Supreme Court reaffirmed the holding in Snodgrass that such an inquiry is not required before exercising a preemptory challenge.[10] The Washington Court specifically stated that, "Batson was not intended to remove all prosecutorial discretion in peremptory strikes, but rather to eliminate the odious practice of eliminating potential jurors

[9] Ky., 34 S.W.3d 376 (2002).

[10] Id. at 372 (citing Snodgrass, 831 S.W.2d at 179).

simply because of race."[11] What is required is that the prosecutor have a good-faith, race-neutral reason for striking the juror and can articulate the reason to the trial court in a race-neutral manner.[12] The trial court must then make factual findings as to whether the proffered reasons are race-neutral and not pretextual. Here, the trial court did so. As such, the findings of the trial court were not clearly erroneous.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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[11] Washington, 34 S.W.3d at 379.

[12] Snodgrass, 831 S.W.2d at 179.