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Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000254-MR

JUANA COURTNEY

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT
HONORABLE TIMOTHY A. LANGFORD, JUDGE
ACTION NO. 08-CR-00035

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON AND CLAYTON, JUDGES; BUCKINGHAM, SENIOR JUDGE.

CLAYTON, JUDGE: Juana Courtney appeals from a conviction, entered upon a jury verdict, for second-degree manslaughter and tampering with physical evidence. Courtney asserts that the trial court erred by not allowing relevant evidence about James L. Courtney, the victim, into evidence and that the Commonwealth violated *Batson v. Kentucky* in its exercise of peremptory

challenges. *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). After our review, we affirm.

James Courtney was shot and killed in Fulton County, Kentucky, on November 10, 2007. On June 12, 2008, the Fulton County Grand Jury indicted Juana Courtney for murder under KRS 507.020 and tampering with physical evidence under KRS 524.100. The indictment charged that Juana shot and killed James.

The jury trial began on December 8, 2008, and concluded three days later. On the morning of the trial, the trial court addressed several motions *in limine*. The motion relevant to this appeal was made by the Commonwealth. It moved to exclude any mention at trial of James's purported involvement with the Hell's Angels. The Commonwealth argued that this information was not relevant to whether Juana shot and killed James and that any mention of this information might unduly prejudice the jury. Juana countered that an inability to present this evidence would harm her defense.

After arguments, the trial court held that Juana had not provided any proof that James was actually a member of the Hell's Angels and that a stigma was associated with the Hell's Angels. Thus, the trial court granted the Commonwealth's motion and ruled that James's association with the Hell's Angels was not relevant to the issue at hand and would be extremely prejudicial to the Commonwealth's case.

Next, the parties conducted jury selection. Following voir dire, Juana raised a *Batson* challenge based on the Commonwealth's use of its peremptory challenges to exclude three African-American jurors. The Commonwealth then articulated its reasons for striking these three jurors. First, the Commonwealth explained that two of the three potential jurors had not been paying attention during voir dire and refused to look at its attorney. As to the third juror, the Commonwealth said that it had prosecuted two of his family members. It provided the names of the two family members and their relationship to the potential juror. At this point, the trial court overruled Juana's *Batson* objection and stated that the Commonwealth had given race-neutral reasons for the use of its peremptory challenges.

Subsequently, the Commonwealth raised a *Batson* objection to Juana's use of peremptory challenges because she used peremptory challenges to exclude six white males from the jury. Juana's attorney explained in reference to one potential juror that he had a bad feeling about the guy. He used his peremptory challenge for that reason. After observing the similarity between the two parties' *Batson* objections, the trial court overruled all the *Batson* objections.

At the conclusion of the guilt phase, Juana was convicted of the lesser included charge of second-degree manslaughter and tampering with physical evidence. During the penalty phase, Juana was able to testify about James's alleged membership in the Hell's Angels. Thereafter, the jury recommended a sentence of ten years on the manslaughter charge and five years on the tampering

with physical evidence charge. The sentences were to run consecutively for a total of fifteen years in prison. This appeal follows.

The basis for Juana's appeal is twofold. First, Juana maintains that the trial court erred by excluding evidence to support her defense. She maintains that telling the jury about James's membership in the Hell's Angels was crucial to her defense. Second, Juana contends that the trial court erred in overruling her *Batson* objections because the Commonwealth did not provide an adequate race-neutral explanation for its peremptory challenges.

We will first address whether the trial court erred by excluding evidence during the guilt phase of the trial about James's alleged membership in the Hell's Angels. It is a well-settled principle of Kentucky law that a trial court ruling with respect to the admission of evidence will not be reversed absent an abuse of discretion. *Simpson v. Com.*, 889 S.W.2d 781 (Ky. 1994). Consequently, this Court's standard of review for the admission of evidence is whether the trial court abused its discretion. *Com. v. English*, 993 S.W.2d 941, 945 (Ky. 1999). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Id.* This error was preserved by defense counsel's objection to the prosecutor's motion in limine to exclude evidence about James's alleged membership in the Hell's Angels.

The "accused in a criminal trial [is entitled] to due process [which] is, in essence, the right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038, 1045, 35 L.Ed 2d 297

(1973). This right, often referred to as the “right to present a defense,” is firmly ingrained in Kentucky law. *Rogers v. Commonwealth*, 86 S.W.3d 29, 39-40 (Ky. 2002). Moreover, “[a]n exclusion of evidence will almost invariably be declared unconstitutional when it ‘significantly undermine[s] the fundamental elements of [a] defendant’s defense.’” *Beaty v. Com.*, 125 S.W.3d 196, 206-07 (Ky. 2003), citing *U. S. v. Scheffer*, 523 U.S. 303, 315, 118 S.Ct. 1261, 1267-68, 140 L.Ed.2d 413 (1998). Furthermore, case law instructs that “[i]t is crucial to a defendant’s fundamental right to due process that he be allowed to develop and present any exculpatory evidence in his own defense, and we reject any alternative that would imperil that right.” *McGregor v. Hines*, 995 S.W.2d 384, 388 (Ky. 1999). And “[a] trial court may only infringe upon this right when the defense theory is ‘unsupported,’ ‘speculat[ive],’ and ‘far-fetched’ and could thereby confuse or mislead the jury.” *Beaty*, 125 S.W.3d at 207 (internal citation and quotation omitted).

Here, Juana’s argument, that the trial court’s refusal to allow her to discuss her late husband’s association with the Hells’ Angels seriously undermined her defense and denied her constitutional right to a proper defense, is “unsupported, speculative, and far-fetched.” *Id.* Juana was on trial for shooting her husband. Juana maintains that she fled and hid because of fear concerning her husband’s associates in the Hell’s Angels. She does not demonstrate, however, that this fear of her husband’s associates has any relevance to the shooting. Without providing this nexus, Juana cannot demonstrate the crucial nature of this

evidence to her defense. While it may be conceded that it has some significance to the reason that Juana left the scene of the crime or was segregated in prison, Juana still provides no direct connection between James's alleged Hell's Angels membership and her defense.

Furthermore, Juana was permitted during the trial to present evidence of James's prior bad acts. For example, Juana presented witnesses who described violent acts by James. Moreover, when Juana introduced to the jury pictures of James at the time of his death, he was wearing clothing bearing the Hell's Angels logos. According to her counsel, this insignia is extremely common, and thus, the jury did have some awareness of a possible connection between James and the Hell's Angels. In fact, the only thing that the trial court excluded was mention that James was a member of the Hell's Angels. In sum, a review of the record shows that Juana was able to present thorough and substantial evidence that James was a violent, intimidating person and that she feared for her life. But Juana did not provide any essential nexus between James's alleged Hell's Angels membership and her defense.

Notably, a criminal defendants' due process rights are not violated by every limitation placed on the admissibility of evidence. *Id.* at 208. In these circumstances, we cannot presume that the exclusion of this particular evidence "significantly undermine[d] fundamental elements of the defendant's defense" so as to merit a reversal here. *Id.* at 207. Hence, we hold that the trial court did not abuse its discretion by excluding this evidence.

We will next address Juana's claim that the trial court erred when it overruled her *Batson* objections because she maintains that the Commonwealth did not provide an adequate race-neutral explanation for its peremptory challenges. After selection of the jury, Juana properly raised *Batson* objections. She noted that the jury venire had three African-American members and the prosecution struck all three members.

On appellate review, a trial court's denial of "a *Batson* challenge will not be reversed unless clearly erroneous." *Washington v. Com.*, 34 S.W.3d 376, 379-380 (Ky. 2000). Moreover, Kentucky jurisprudence informs that "[b]ecause the trial court is the best 'judge' of the Commonwealth's motives in exercising its peremptory strikes, great deference is given to the court's ruling." *Gray v. Com.*, 203 S.W.3d 679, 691 (Ky. 2006) (citing *Wells v. Com.*, 892 S.W.2d 299, 303 (Ky. 1995)). So that, in essence, a trial court's *Batson* finding is akin to a finding of fact, and is granted appropriate deference. *Rodgers v. Com.*, 285 S.W.3d 740, 757 (Ky. 2009).

In *Batson*, the U.S. Supreme Court outlined a three-step process for evaluating claims that a prosecutor has used peremptory challenges in a manner violating the Equal Protection Clause. *Batson*, 476 U.S. at 96-98. First, the defendant must make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race. *Id.* at 96-97. Second, if the requisite showing has been made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. *Id.* Finally, the trial court

must determine whether the defendant has carried his burden of proving purposeful discrimination. *Id.* at 98. To summarize, a trial court's finding will not be found clearly erroneous if the court properly determined that the striking party articulated a race-neutral explanation for the exercising the strike.

So turning to the three-step process, the preliminary issue of whether Juana established a prima facie case of discrimination under *Batson* is moot since the Commonwealth responded to her *Batson* challenge and offered race-neutral explanations for its peremptory challenges, which the trial judge accepted. Thus, the question for this Court is whether the trial judge correctly ascertained that the Commonwealth's explanation for the peremptory strikes of three African-American jurors was race-neutral or whether it was clear error for the trial court to accept the Commonwealth's reasons for the peremptory strikes as race-neutral.

For one juror, the Commonwealth stated that it had previously prosecuted two of that juror's relatives. After inquiry by the court, the Commonwealth further provided that it had prosecuted two brothers of the potential juror. The trial court accepted this answer as a race-neutral one. In *Saylor v. Com.*, 144 S.W.3d 812, 816 (Ky. 2004), the Kentucky Supreme Court said that it was not clear error for the trial judge to accept the previous prosecution of relatives as a race-neutral reason for peremptory strikes. Thus, bolstered by this holding and its commonsense implication, we do not find that the trial court committed error in accepting the Commonwealth's explanation as a race-neutral for this juror.

For Juana's *Batson* challenge for the remaining two jurors, we turn to the second step of the *Batson* analysis wherein the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. The Commonwealth submitted that its race-neutral reason for using the peremptory challenges was based on the fact that the potential jurors had not been paying attention during voir dire and refused to look at its attorney. The third and final step in the analysis is for the trial court to assess the plausibility of the prosecutor's explanations in light of all relevant evidence and determine whether the proffered reasons are legitimate or simply pretextual for discrimination against the targeted class. In light of all relevant evidence, it is reasonable to conclude that the Commonwealth did in fact strike these two jurors due to their inattentiveness. In addition, these two jurors were struck along with, and for the same reason as, a white juror. And the trial court carefully considered the explanation noting that it had no reason to disbelieve the Commonwealth Attorney's explanation. In *Snodgrass*, the Kentucky Supreme Court explicitly held:

The trial court may accept at face value the explanation given by the prosecutor depending upon the demeanor and credibility of the prosecutor.

Com. v. Snodgrass, 831 S.W.2d 176, 179 (Ky. 1992), *citing Stanford v. Com.*, 793 S.W.2d 112 (Ky. 1990). Thus, we conclude that the trial court did not abuse its discretion in concluding that the Commonwealth's proffered reasons were legitimate.

While the rationale behind *Batson* was to eliminate the repulsive practice of eliminating potential jurors simply because of race, *Batson* did not “remove all prosecutorial discretion in peremptory strikes.” *Washington*, 34 S.W.3d at 379. Accordingly, in the situation herein, we find that the Commonwealth's reasons for striking the three jurors were race-neutral reasons and resulted from the prosecutorial discretion underlying peremptory challenges. Further, we note that a trial judge's findings in this context largely turn on an evaluation of credibility and are given great deference by a reviewing court. *Stanford*, 793 S.W.2d at 114. Hence, we do not find that the trial court erred in its determination that the Commonwealth’s proffered reasons for the peremptory strikes were race-neutral, and therefore, affirm its ruling.

For the foregoing reasons the judgment of the Fulton Circuit Court is affirmed.

ALL CONCUR.

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