

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BYRON DAVID COLEMAN a/k/a BRYON D.  
COLEMAN,

Defendant-Appellant.

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UNPUBLISHED

February 27, 1998

No. 197256

Genesee Circuit Court

LC No. 96-053966-FC

Before: McDonald, P.J., and Sawyer and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of unarmed robbery, MCL 750.530; MSA 28.798. Defendant pleaded guilty to being an habitual offender, third offense, MCL 769.11; MSA 28.1083. He was sentenced to five to thirty years' imprisonment. Defendant now appeals as of right. We affirm.

First, defendant argues that the trial court abused its discretion in finding that the prosecutor provided a race-neutral reason for dismissing a black juror. We disagree.

In order to challenge a prosecutor's use of peremptory challenges to exclude a certain class of persons from a jury, the defendant has the burden of establishing a prima facie case of purposeful discrimination pursuant to *Batson v Kentucky*, 476 US 79, 96; 106 S Ct 1712; 90 L Ed 2d 69 (1986). To establish a prima facie case, defendant must show that he is a member of a cognizable racial group and that the prosecutor has exercised peremptory challenges to remove from the venire, members of that group. *Id.* Second, defendant is not required to put forth proofs, but can rely on the fact that peremptory challenges constitute a jury selection practice that permits those to discriminate who are of the mind to discriminate. *Id.* Finally, defendant must show that the facts and circumstances raise an inference that the prosecutor used peremptory challenges to exclude jurors on account of their race. *Id.*

Once defendant has established a prima facie case, the burden then shifts to the prosecutor to offer a race-neutral explanation for dismissing black jurors. *Id.* at 97. The prosecutor's race-neutral explanation does not need to rise to the level of a prosecutor's challenge for cause, but

rather must only articulate a race-neutral explanation related to the case to be tried. *People v Howard*, 226 Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 172633 rel'd 11/25/97), slip opinion at 13. Finally, the trial court must determine whether the complaining party carried the burden of proving purposeful discrimination. *Id.* This Court gives great deference to the trial court's findings on this issue because they largely turn on credibility. *People v Barker*, 179 Mich App 702, 706; 446 NW2d 549 (1989).

In the instant case, defendant lodged an objection to the prosecutor's second peremptory challenge used to dismiss a black juror. He argued that the prosecutor used a peremptory challenge to dismiss a black woman who was eminently qualified to sit as a juror in that she had no prior record and did not indicate any biases. The trial court apparently found defendant had presented a prima facie case when it required the prosecutor to present a race-neutral explanation for dismissing the black juror. The prosecutor indicated that based upon the juror's employment, which involved scrutinizing claims of people for Social Security benefits, her job was analogous to that of a juror in that she potentially had to grant or deny claims based upon credibility, which made him uncomfortable. Defendant argues that the prosecutor's reason is not legitimate. However, a party's reason for dismissing a juror does not have to be persuasive or even plausible, but must be race-neutral on its face. *Clarke v K-Mart Corp*, 220 Mich App 381, 384; 559 NW2d 377 (1996). We believe the prosecutor's reason was race-neutral. Moreover, the prosecutor had additional peremptory challenges and there were other black jurors remaining, which mitigate against a finding of purposeful discrimination. *Howard, supra* at 13 n 2. Therefore, we find that the trial court did not abuse its discretion in finding that the prosecutor's explanation for dismissing the black juror was race neutral on its face.

Next, defendant argues that the trial court did not recognize its discretionary authority to sentence defendant as an habitual offender. While the habitual offender act provides that the court "shall" punish a habitual felony offender in accordance with the statute, the Legislature provided that the court "may" sentence the habitual offender to a maximum term which is not more than twice the longest term prescribed by law for a first conviction of that offense or for a lesser term. MCL 769.11; MSA 28.1083; *People v Bewersdorf*, 438 Mich 55, 66; 475 NW2d 231 (1991). Since the language is permissive and not mandatory, enhancement of an offender's sentence is discretionary. *Id.* When a trial court does not fully recognize the discretion it possesses, this Court may remand the case for further consideration so the court may properly exercise the full extent of its discretion. *In re Caldwell*, 225 Mich App 801, 805; 571 NW2d 218 (1997). After reviewing the sentencing transcript, we are not persuaded that the trial court was unaware of its discretionary authority to sentence defendant as an habitual offender. The court initially noted that defendant was facing a maximum of thirty years before imposing its sentence. This Court's statement indicates that the thirty years was not a mandatory sentence.

Affirmed.

/s/ Gary R. McDonald  
/s/ David H. Sawyer  
/s/ Joel P. Hoekstra