NO. COA06-1203

NORTH CAROLINA COURT OF APPEALS

Filed: 3 July 2007

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 01 CRS 54637
DRELLCO LAMONT HUNTER 05 CRS 55219

Appeal by defendant from judgments entered 8 December 2005 by Judge Yvonne Mims Evans in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 May 2007.

Attorney General Roy Cooper, by Assistant Attorney General Joan M. Cunningham, for the State.

Parish & Cooke, by James R. Parish, for defendant.

LEVINSON, Judge.

Drellco Lamont Hunter (defendant) appeals judgments entered upon his convictions for second degree murder and possession of a handgun by a felon. We find no error.

The pertinent facts may be summarized as follows: On 23 May 2001 defendant searched for Jarvis McKinley Thompson (Thompson) because he believed that Thompson had broken into his home and stolen money from his girlfriend's purse. Between 3:30 p.m. and 4:30 p.m. the same day, defendant drove to the residence of Patricia McFadden Barnes (Barnes). He stopped his vehicle; left the driver side door open and the car in the middle of the street;

and asked to speak to the "lady of the house." Barnes asked him to step inside of her home. Barnes knew defendant only as "Poo." In a loud voice, spitting as he talked, defendant told Barnes that "[Thompson] was going to get dealt with" because somebody broke into his house. Defendant also stated that if Barnes continued to have Thompson at her house, "someone there could get hurt."

Later the same day, defendant picked up Chris Southern (Southern), Laron Branham (Branham) and another individual known as "Baby" in his Isuzu Rodeo vehicle and asked Southern to take him to Thompson's house. When they arrived at Thompson's house, Southern went to the door and asked for Thompson. When Thompson came to the door, Southern told him "Poo" wanted to "give him some work," meaning to buy narcotics. Thompson went back into the house; returned outside; and got in the car. The group drove to another section of Charlotte and pulled behind "Lil Ron's" house. Everyone exited the vehicle except Thompson. Southern observed defendant retrieve a gun from behind the back seat of the Rodeo. Defendant and Thompson then left in the Rodeo. Defendant later returned by himself, and told Southern he had "left him [Thompson] leaking," meaning he had killed him.

Quentin Dozier testified that he was selling drugs on 21 May 2001 when defendant pulled up with Thompson, Southern and "Baby." Defendant approached Dozier and said he was "fixing to handle his business." The men shook hands, and defendant left in the Rodeo. When defendant returned a couple hours thereafter, he told Dozier he shot and killed Thompson. Dozier further testified that

defendant told him no one would find the body and that there was no blood that linked him to the killing.

Two days later, on 25 May 2001, the Charlotte-Mecklenburg Police Department received an anonymous call regarding a body located on railroad tracks. Detective Henson discovered a body, later identified as Thompson, lying to the right of the railroad tracks in a weeded area.

On 26 May 2001, Dr. James Michael Sullivan (Sullivan), forensic pathologist and medical examiner for Mecklenburg County, conducted an autopsy on Thompson. Sullivan discovered three gunshot wounds to Thompson, one in each wrist and one to his head. The shot to the head was the cause of death. Sullivan estimated he had been dead for one to three days.

Henson determined that Carita Evans Gist's name appeared with defendant's name on the title for the Rodeo. On 30 May 2001 between 10:00 p.m. - 11:00 p.m., Henson put out an all points bulletin (APB) for the Rodeo. At 11:25 p.m. on the same evening, the vehicle was observed by an officer on a public street; it was being driven by defendant. The vehicle was seized at that time and towed to the police department. A later search of the vehicle revealed a .38 revolver in a compartment behind the driver's seat; this revolver was the firearm used in the killing of Thompson.

Defendant was convicted of second degree murder and possession of a firearm by a felon. Defendant now appeals.

Defendant first contends that the trial court erred by proceeding to trial on the charge of possession of a handgun by a

felon during the same week in which he was arraigned, in violation of N.C. Gen. Stat. § 15A-943(b) (2005). He asserts that the trial court committed reversible error *per se* because it arraigned defendant on 31 October 2005 on the charge of possession of a firearm by a felon and then, over his objection, proceeded to trial on that charge on 1 November 2005. In response, the State argues that defendant waived his right not to be tried on 1 November 2005 by failing to request a formal arraignment within 21 days after service of the bill of indictment. *See* N.C. Gen. Stat. § 15A-941(d)(2005) ("If the defendant does not file a written request for arraignment, then the court shall enter a not guilty plea on behalf of the defendant."). These specific facts and arguments were addressed by this Court in *State v. Lane*, 163 N.C. App. 495, 594 S.E.2d 107 (2004). Consistent with this binding precedent, we overrule this assignment of error.

Defendant next contends that the trial court violated his constitutional rights under the Fourteenth Amendment to the federal constitution and Article I of the North Carolina Constitution by denying his objections to three of the State's peremptory challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79, 90 L. Ed. 2d 69 (1986).[1] We disagree.

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[1] The record on appeal includes three "Potential Juror Questionnaires" for the three jurors who are the subject of defendant's *Batson* challenges. These questionnaires include a variety of educational, professional and personal information. On the first page of each questionnaire is a representation that, "Your answers will not be public knowledge, but will be given to the parties in the case for which you are being considered a juror." No effort has been made to conceal the contents of these documents from public view by means of seeking an order sealing

Racial discrimination in the exercise of peremptory challenges is barred by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *Batson*, 476 U.S. at 89, 90 L. Ed. 2d at 83. In *Batson*, the United States 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. . . . First, the defendant must make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race. 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. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination.

Hernandez v. New York, 500 U.S. 352, 358-59, 114 L. Ed. 2d 395, 405 (1991) (citations omitted). In reviewing a court's determination that defendant failed to make out a *prima facie* case, this Court must evaluate numerous relevant factors, including:

> (1) the characteristic in question of the defendant, the victim and any key witnesses;
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> (2) questions and comments made by the prosecutor during jury selection which tend to support or contradict an inference of discrimination based upon the characteristic in question;
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> (3) the frequent exercise of peremptory challenges to prospective jurors with the

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them; or by substituting pseudonyms or other indicia for their actual names; or by entering into limited stipulations to obviate the need of including these questionnaires in the record. Images of each page of these twelve-page questionnaires, like every document associated with appeals to this Court, are now available online to anyone. This Court, by order entered 25 June 2007, sealed these documents and removed them from public view.

> characteristic in question that tends to establish a pattern, or the use of a disproportionate number of peremptory challenges against venire members with the characteristic in question;
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> (4) whether the State exercised all of its peremptory challenges; and
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> (5) the ultimate makeup of the jury in light of the characteristic in question.

State v. Wiggins, 159 N.C. App. 252, 263, 584 S.E.2d 303, 312 (2003). Because the trial court is in the best position to determine whether circumstances support an inference of purposeful discrimination, this Court will not disturb its determination absent clear error. *State v. Thomas*, 350 N.C. 315, 332, 514 S.E.2d 486, 497 (1999). Moreover:

> Once a prosecutor has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing becomes moot. Therefore, the only issue for us to determine is whether the trial court correctly concluded that the prosecutor had not intentionally discriminated. Since the trial court is in the best position to assess the prosecutor's credibility, we will not overturn its determination absent clear error.

State v. Williams, 355 N.C. 501, 551, 565 S.E.2d 609, 638-39 (2002) (internal quotation marks omitted).

In the instant case, the record reveals that defense counsel argued that Jurors A, B and C were excluded from the jury pool solely on the basis of race in violation of *Batson*. We address these three prospective jurors in turn.

As to juror A, the trial court found no evidence of racial motivation to support a prima facie case of discrimination. After defendant made his *Batson* motion, the trial court denied the same and noted that, "[t]he Court does not see a pattern yet." The record reveals that, at the conclusion of the second day of *voir dire*, the State exercised its first peremptory challenges, removing from the jury panel two white jurors and one African-American female juror, Juror A. Two of the jurors the State passed to the defendant at the same time were African-American female jurors. Defendant objected to the excusal of Juror A, claiming this constituted a "pattern and practice" of excusing African-American jurors. The State responded that "one [juror] is not a pattern" and that he had excused twice as many whites as African-Americans. We conclude the trial court did not err by concluding defendant failed to show a prima facie case as required by *Batson* as regards Juror A. *See, e.g., State v. Walls*, 342 N.C. 1, 36, 463 S.E.2d 738, 755 (1995) (no prima facie showing where prosecution excused ten potential jurors, seven of whom were African American), and *State v. Beach*, 333 N.C. 733, 740, 430 S.E.2d 248, 252 (1993) (peremptory challenge of sixty three percent of African-American jurors does not by itself make a prima facie case of discrimination).

With respect to Jurors B and C, the trial court held that defendant made a prima facie showing of discrimination on the basis of race, but otherwise overruled defendant's objections to the State's exercise of peremptory challenges.

As regards Juror B, the prosecutor told the trial court that he was excused because he would be susceptible to believe that some of the State's witnesses might lie because, as Juror B explained, his son was falsely implicated by drug dealers. Defense counsel remarked that impeaching the testimony of State's witnesses by suggesting the testimony was given to garner favor was a primary defense tactic. We conclude, as to Juror B, that the court did not err by concluding that the State provided a race-neutral reason for its peremptory challenge, and that defendant did not prove purposeful discrimination.

As regards Juror C, the prosecutor informed the trial court that he was concerned that, at age 28, the juror relied on her mother to keep track of her jury summons, and that Juror C had contradicted herself on whether she could remain focused as a juror while also working a night shift. As the State's rationale for excusal of Juror C "was based on race-neutral reasons that were clearly supported by the individual jurors' responses during voir dire[,]" the relevant assignments of error are overruled. *See State v. Robinson*, 336 N.C. 78, 99, 443 S.E.2d 306, 315 (1994).

Defendant next contends that the trial court erred by refusing his request to elicit, on cross-examination of Carita Evans Gist, evidence of bias on her part, specifically that Gist was upset and angry when she learned defendant was unfaithful during a prior dating relationship. Defendant contends the evidence could have suggested a motive on her part to fabricate testimony that defendant "made his living as a drug dealer" and that "he was

accused of shooting somebody and that she was aware of a gun in his Isuzu." We conclude any error in excluding Gist's examination, if any, did not prejudice the outcome of the trial.

The scope of cross-examination is within the discretion of the trial court. *State v. Forte*, 360 N.C. 427, 442-43, 629 S.E.2d 137, 147 (citing *State v. Williams*, 279 N.C. 663, 675, 185 S.E.2d 174, 181 (1971)), *cert. denied*, __ U.S. __, 166 L. Ed. 2d 413 (2006). Where "[a] defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." N.C. Gen. Stat. § 15A-1443(a)(2005).

Here, defendant had a full opportunity to cross examine Gist notwithstanding the trial court's exclusion of certain questions that could have elicited testimony reflecting on her credibility. Moreover, defendant elicited testimony from Gist that suggested she could have had reasons to be untruthful, specifically that she was "frustrated" when her relationship with defendant ended, and was "upset" because of unpaid bills for the Rodeo. In addition, the evidence as regards the material facts showing defendant perpetrated the killing of Thompson were largely uncontradicted: defendant verbalized an intention to harm Thompson; numerous witnesses established that Thompson was last seen with defendant; the firearm in the Rodeo was used in the killing; the condition of the body confirmed that the killing could have occurred during the

time when Thompson was last seen with defendant; and defendant made inculpatory statements concerning the killing. Even assuming *arguendo* the trial court erred by prohibiting defendant from eliciting additional testimony that could have reflected on Gist's credibility, the jury would not have reached a different result. This assignment of error is therefore overruled.

Finally, defendant argues that the trial court erred by violating his rights under the Fourth Amendment to the United States Constitution by denying his motion to suppress the .38 revolver discovered in the Rodeo vehicle. Defendant asserts that, under *Georgia v. Randolph,* 547 U.S. 103, 164 L. Ed. 2d 208 (2006), valid consent to search had to be obtained from both he and the other individual who held title to the vehicle.[2] Defendant reasons that, because he did not give consent, and only the other titled owner did, the .38 revolver discovered in the vehicle must be suppressed. We need not address defendant's argument, as the trial court's order must be sustained regardless of whether the principles set forth in *Randolph* apply to vehicles.

A warrant is not required to perform a lawful search of a vehicle on a public road when there is probable cause for the search. *State v. Earhart*, 134 N.C. App. 130, 133, 516 S.E.2d 883, 886 (1999). "[T]here is no requirement that the warrantless search

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[2] In *Randolph*, the United States Supreme Court held that "a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident." *Randolph*, 547 U.S. at __, 164 L.Ed.2d at 226.

of a vehicle occur contemporaneously with its lawful seizure." *United States v. Johns*, 469 U.S. 478, 484, 83 L. Ed. 2d 890, 896 (1985)("[T]he officers acted permissibly by waiting until they returned to DEA headquarters before they searched the vehicles and removed their contents."). A search by law enforcement is therefore permissible even after a car has been seized and taken into police custody.

When evaluating a trial court's ruling on a motion to suppress, the standard of review is whether the court's findings of fact are supported by competent evidence and whether those findings of fact support the trial court's conclusions of law. *State v. Downing*, 169 N.C. App. 790, 793, 613 S.E.2d 35, 38 (2005). Findings of fact that are supported by competent evidence are conclusive on appeal, *State v. Wilson*, 155 N.C. App. 89, 93-94, 574 S.E.2d 93, 97 (2002), and conclusions of law "'must be legally correct, reflecting a correct application of applicable legal principles to the facts found,'" *State v. Barden*, 356 N.C. 316, 332, 572 S.E.2d 108, 121 (2002)(quoting *State v. Fernandez*, 346 N.C. 1, 11, 484 S.E.2d 350, 357 (1997)).

Here, the trial court found, in pertinent part, that:

> 2. At 5:15 p.m. on Friday, May 25, 2001, Detective Henson was called to a homicide scene at 1500 Tarheel Road in Charlotte. A body was found lying near railroad tracks. Detective Henson arrived at the scene at 5:47 p.m. The victim was a male wearing blue jeans, tee shirt, and tennis shoes. The clothes were thoroughly wet, but not muddy. The body showed signs of early decomposition, suggesting to Detective Henson that the body had been in that location for 24-48 hours. There were wounds to the head and arm of the

corpse. There were also tire marks at the location.

3. Once the body was turned over, the pockets were searched and a driver's license was found. The driver's license identified Jarvis McKinley Thompson. Detective Henson asked a uniformed officer to look into missing persons' reports. Mr. Thompson was listed as a missing person.

. . . .

5. Ms. Stradford last saw the deceased on Wednesday, May 23. They planned to meet again later that day. She talked with him by phone and was to come to his home around 5 p.m. She did arrive in the late afternoon only to learn from Walter Ray that Jarvis Thompson had left just moments earlier. Mr. Ray said that Jarvis left with someone and said he'd return in about one hour. Mr. Thompson never returned on Wednesday, May 23, 2001.

6. Mr. Ray lived in the same residence as Jarvis Thompson and his mother, Lydia Thompson. Mr. Ray returned from school on the afternoon of May 23 around 5:40 or 5:50 p.m. Jarvis was at home playing a video game. Mr. Ray went upstairs, put his books down, and used the bathroom. While in the bathroom, someone came to the apartment and talked to Jarvis. Jarvis left. Mr. Ray could not identify the person with whom he left.

7. Ms. Stradford told Detective Henson about rumors she'd heard of T.J.'s being shot somewhere off Highway 16 and that a person named “Poo” might be responsible. One of the people providing information was Shanta McFadden. Ms. Stradford and a friend, Kisha Hunter, took Detective Henson to Shanta McFadden's home.

8. Ms. McFadden, her mother, Patricia McFadden Barnes, and sister, Monique Beasley, each gave statements to police that a person they knew as “Poo” had come to Ms. Barnes' home at 608 Seldon Drive on May 23, 2001, in the afternoon between 4 and 5 p.m. Poo drove by the home several times that afternoon in a car, described as a red or burgundy Jeep Rodeo with

> tinted windows, before suddenly stopping and demanding to speak with the woman of the house (Ms. Barnes). This person known to them as "Poo" was identified by Ms. Barnes and Ms. Beasley from a photographic line-up as Drellco Hunter. Poo demanded to know where he could find J.T. He stated repeatedly that T.J would be "dealt with." Poo accused J.T. of robbing Poo's girlfriend's home some weeks earlier.
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> 9. Poo left after the residents at 608 Seldon Drive told him to leave.
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> 10. A vehicle described as a burgundy Isuzu Rodeo with dark tinted windows was seen at the apartment complex where Jarvis Thompson lived on the afternoon of May 23, 2001, between 6 and 6:30 p.m. A man got out of the vehicle, went to an apartment, knocked, and a man came outside. The two went back to the vehicle and talked.
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> . . . .
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> 12. At 10:47 p.m. on May 30, 2001, based on the information gathered, police issued an APB for the 1997 burgundy Isuzu Rodeo registered to Drellco Hunter and Carita Evans. A vehicle matching the description was stopped by a uniformed officer at 11:25 p.m. the same night. Drellco Hunter was driving the vehicle. The vehicle was seized from Mr. Hunter and he was permitted to leave.

These findings of fact are not challenged as unsupported by the evidence at the suppression hearing, and they are therefore binding on this Court. Additionally, we observe the following circumstances surrounding the stop, seizure and search of the Rodeo that were revealed during the suppression hearing: (1) defendant drove the Rodeo in front of Barnes' house on Seldon Drive before he stopped and insisted that Thompson would be "dealt with"; (2) several witnesses identified defendant as the person who drove the Rodeo, stopped at Barnes' house, and threatened to kill Thompson;

(3) Thompson's body, discovered two days thereafter, was decomposing; and (4) Henson opined that Thompson was likely killed one to three days before the body was discovered.

On this record, we conclude the officers had probable cause to seize and search the vehicle. The facts and circumstances warranted an officer, acting with reasonable caution, to believe that evidence of criminal wrongdoing was likely inside the Rodeo. We observe that the trial court ruled that (1) the police had probable cause to seize and hold the vehicle until either consent was given or a warrant obtained; (2) there were no Constitutional violations because one of the two owners of the vehicle gave consent to search; and (3) there were no violations as a consequence of the stop of defendant or the seizure or search of the vehicle. Because the trial court reached the correct result in denying defendant's motion to suppress, we need not disturb the ruling even though we conclude there were no Constitutional violations on different grounds, specifically that the officers had probable cause to search the vehicle. *See State v. Austin*, 320 N.C. 276, 290, 357 S.E.2d 641, 650 (1987) ("A correct decision of a lower court will not be disturbed on review simply because an insufficient or superfluous reason is assigned. The question for review is whether the ruling of the trial court was correct and not whether the reason given therefor is sound or tenable."). Therefore, because we conclude that probable cause existed to search the automobile, we need not reach the issue of consent,

which was relied upon by the trial court. This assignment of error is overruled.

No error.

Judges McGEE and JACKSON concur.

Report per Rule 30(e).