STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 24, 2004
v	No. 243414 Wayne Circuit Court
GEORGE RUFFIN, Defendant-Appellant.	LC No. 01-013593 AFTER REMAND

Before: Cavanagh, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions defendant for second-degree murder, MCL 750.317; felon in possession of a firearm, MCL 750.224f; and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to concurrent prison terms of twenty-two to fifty years for the murder conviction and forty to sixty months for the felon in possession conviction, to be served consecutive to a two-year term for the felony-firearm conviction.

Previously, in *People v George Ruffin*, unpublished opinion of the Court of Appeals, issued March 9, 2004 (Docket No. 243414), we remanded to the trial court for an evidentiary hearing to determine if a record may be adequately reconstructed to enable the trial court to properly apply the three-step analysis required by *Batson*.[1] After our review of the transcript of the hearing on remand, we affirm defendant's convictions.

Pursuant to *Batson*, resolution of a claim that a party is using a peremptory challenge in a discriminatory manner consists of three steps. First, the opponent of the peremptory strike must make a prima facie case of purposeful discrimination. To establish a prima facie case of purposeful discrimination, the opponent of a peremptory challenge must make a prima facie case of racial discrimination by "show[ing] that members of a cognizable racial group are peremptorily being removed from the jury pool" and by "articulat[ing] facts to establish an inference that the right to remove jurors peremptorily is being used to exclude one or more potential jurors from the jury on the basis of race." *People v Bell (On Rehearing)*, 259 Mich App

[1] *Kentucky v Batson*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986).

583, 591-592; 675 NW2d 894 (2003), lv grt 470 Mich 870 (2004). As is the case here, the issue may be raised by the trial court sua sponte. *Id*. at 587.

The trial court expressed on remand that it found an established pattern of strikes made in relation to the racial identities of other members of the jury pool. The record reflects that before the trial court denied defendant's peremptory challenges, defendant had exercised six peremptory challenges, which he acknowledges were used to excuse five Caucasian and one African-American venirepersons. Because the excused African-American venireperson was a police officer who was both married and related to other police officers, defendant's use of a peremptory strike against that individual would not necessarily negate a suspicion that defendant's use of peremptory challenges to remove Caucasian jurors was racially motivated, as the trial court determined. We conclude that a prima facie case of purposeful discrimination has been established.

Second, the prima facie case established, the burden of production shifts to the proponent of the strike to state a race-neutral reason for the strike. Third, if a race-neutral reason is provided, then the court must decide whether the opponent of the strike proved purposeful discrimination. *Bell, supra* at 590. As noted in our previous opinion, "[r]emand is particularly appropriate here because the record suggests that pertinent discussions concerning this issue occurred during side bar conferences that were not transcribed but may be recalled by the parties or the court following remand." *Ruffin, supra* at 4 n 1.

The record of the remand proceedings reflects that neither the defense attorney or the prosecutor could recall the conversation that occurred at the bench conference. However, when the prosecutor prompted the trial court to recall the bench conference, it responded:

> I certainly do. Because after the challenge was made I called up to explain that look, you can't do this. You cannot excuse jurors for racial reasons.
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> * * *
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> Now, in this case I called him up and we discussed it and I said, Mr. Harris you cannot do that and he stated, "my client is entitled to a racially balanced jury." Those are the words and the court could see it. It was so obvious that people were being excused, that there was no logical reason that I could see that the juror was challenged except in an attempt to get as many black jurors on the jury as possible. My understanding of the law is that the prosecutor can't do that, the defense attorney can't do that. And that's why the court disallowed the challenging.
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> I do remember because I only had about two, about two cases I had where I did that. . . .
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> * * *
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> And his words again, were, "My client is entitled to a racially balanced jury." And I think that shows racial reasons for excusing the jurors and that's why I disallowed it.

The prosecutor then asked the trial court if it could "recall any other reason that Mr. Harris expressed for wanting any of the jurors." The trial court responded, "[n]one. It was obvious, that's why I made the ruling. It was obvious, you know, no subtlety about it. But that's what happened."

We agree with the trial court that defendant failed to state a race-neutral reason for the strike. "Since the trial judge's findings in the context under consideration here largely will turn on evaluation of credibility, a reviewing court ordinarily should give those findings great deference." *Kentucky v Batson*, 476 US 79, 98 n 20; 106 S Ct 1712; 90 L Ed 2d 69 (1986), citing *Anderson v Bessemer City*, 470 US 564, 573, 105 S Ct 1504, 1511, 84 L Ed 2d 518 (1985). The trial court's finding that defense counsel's explanation that "[m]y client is entitled to a racially balanced jury," was not a race-neutral reason for the strike is clearly not an abuse of discretion. Therefore, because defense counsel's strikes were racially motivated, the trial court properly denied defendant's preemptory strikes in this regard.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Brian K. Zahra