NO. COA06-915

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

STATE OF NORTH CAROLINA

v. Craven County
Nos. 04CRS56425
05CRS005662

SEAN RAYDELL MEDLEY

Appeal by defendant from judgments entered 26 January 2006 by Judge Benjamin G. Alford in Craven County Superior Court. Heard in the Court of Appeals 2 April 2007.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Richard G. Sowerby, for the State.

Adrian M. Lapas for defendant-appellant.

HUNTER, Judge.

Defendant appeals from judgments imposed on convictions by a jury of possession of drug paraphernalia and trafficking in cocaine. After a careful review, we find no error.

The sole issue before us is whether the court erred by overruling defendant's objection to the State's use of its peremptory challenges to exclude jurors of African-American descent.

The record shows that defendant is of African-American descent. During jury selection, of the twelve jurors originally called into the box, only one was of African-American descent.

This juror was excused and replaced by another person of African-American descent. The second African-American juror was also excused. At the conclusion of jury selection, without any other African-American jurors having been seated, defendant moved pursuant to *Batson v. Kentucky*, 476 U.S. 79, 90 L. Ed. 2d 69 (1986), to challenge the jury's racial composition. Finding defendant had made a *prima facie* showing of racial discrimination by the prosecutor in her exercise of peremptory challenges to these jurors, the court inquired of the prosecutor as to her reasons for challenging them. The prosecutor responded that the juror seated second stated she has a cousin who has pending drug charges and she is worried about the outcome of those charges. The prosecutor responded that the first juror stated she knew defendant from her church. The court found that the reasons given by the prosecutor were nonracial and not pretextual. The court accordingly denied defendant's motion.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution forbids the State from using peremptory challenges for racially discriminatory reasons. *Batson*, 476 U.S. at 89, 90 L. Ed. 2d at 83. Likewise, Article I, Section 26 of the North Carolina Constitution bans such discrimination. *State v. Nicholson*, 355 N.C. 1, 21, 558 S.E.2d 109, 124, *cert. denied*, 537 U.S. 845, 154 L. Ed. 2d 71 (2002). The following three-part test must be employed in analyzing a claim that the State impermissibly excluded jurors on the basis of race: (1) the defendant must establish a *prima facie* case that the State exercised a race-based

peremptory challenge; (2) if the defendant makes the requisite showing, the burden then shifts to the State to demonstrate a facially valid and race-neutral explanation for the peremptory challenge; and (3) the trial court must determine whether the defendant has proved purposeful discrimination. *State v. Barden*, 356 N.C. 316, 342, 572 S.E.2d 108, 126 (2002), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074 (2003).

"Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Hernandez v. New York*, 500 U.S. 352, 360, 114 L. Ed. 2d 395, 406 (1991). Because the trial court's findings as to race neutrality and purposeful discrimination depend largely upon the trial judge's evaluation of credibility, these findings are to be given great deference. *State v. Bonnett*, 348 N.C. 417, 433, 502 S.E.2d 563, 575 (1998), *cert. denied*, 525 U.S. 1124, 142 L. Ed. 2d 907 (1999). Accordingly, the trial court's finding as to intentional discrimination will not be disturbed absent manifest error. *State v. Cummings*, 346 N.C. 291, 309, 488 S.E.2d 550, 561 (1997), *cert. denied*, 522 U.S. 1092, 139 L. Ed. 2d 873 (1998).

Defendant only brings forward the issue of discharge of the second juror, and thus is deemed to have abandoned the issue of discharge of the first juror who knew defendant from church. He argues the court should not have permitted the discharge of the juror because nothing established that the juror could not be fair and impartial.

Defendant's argument is without merit. "A defendant is not

entitled to any particular juror. His right to challenge is not a right to select but to reject a juror." *State v. Harris*, 338 N.C. 211, 227, 449 S.E.2d 462, 470 (1994). A peremptory challenge is one "which may be made or omitted according to the judgment, will, or caprice of the party" exercising the challenge. *State v. Smith*, 291 N.C. 505, 526, 231 S.E.2d 663, 676 (1977). "So long as the motive does not appear to be racial discrimination," a peremptory challenge may be exercised for any reason, even a hunch. *State v. Porter*, 326 N.C. 489, 498, 391 S.E.2d 144, 151 (1990). Here, that a juror might feel uncomfortable sitting on the jury because of the juror's worry about her cousin facing a similar charge is a valid and legitimate concern regardless of the juror's race. We conclude the peremptory challenge of this juror is race neutral and not purposefully discriminatory.

We hold the court did not err by overruling defendant's objection to the prosecutor's exercise of the peremptory challenges.

No error.

Chief Judge MARTIN and Judge McGEE concur.

Report per Rule 30(e).