Affirmed and Memorandum Opinion filed December 2, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00172-CR

CHARLES SCOTT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 262nd District Court
Harris County, Texas
Trial Court Cause No. 1133006

MEMORANDUM OPINION

A jury found appellant guilty of capital murder. On February 20, 2009, the trial court sentenced appellant to confinement for life without parole in the Institutional Division of the Texas Department of Criminal Justice. No motion for new trial was filed. Appellant filed a timely notice of appeal.

In his sole issue, appellant asserts that the trial court reversibly erred in denying him a remedy for the State's use of a peremptory strike to exclude a potential juror on account of race. *See Batson v. Kentucky*, 476 U.S. 79, 86, 106 S.Ct. 1712, 1717 (1986). Appellant asserts the trial court made a factual finding that the State had provided no race

neutral reasons for the exclusion of one of the potential jurors. Therefore, appellant claims the trial court reversibly erred in failing to provide any relief for the State's discriminatory use of its peremptory strike.

After the names of the jurors to be seated were announced, appellant's counsel objected to the composition of the jury, stating that he had a *Batson* motion concerning the State's use of a peremptory challenge to one of the prospective jurors. Counsel argued that exclusion of the juror was based on race and asked the State to explain its reasons for the strike. The prosecutor explained that the juror in question was struck not because of her race, but for the following reasons: (1) she was a school teacher; (2) her husband was employed by what appeared to be a religious organization; (3) she made little eye contact with the prosecutor during voir dire and did not seem to pay attention to the discussion of important legal issues. After the prosecutor recited her reasons for the strike, appellant did not rebut the State's proffered race-neutral reasons. The original reporter's record reflected that the court then stated, "I find those are *not* race neutral reasons for a strike." (emphasis supplied). The trial court then denied appellant's request to either dismiss the entire panel or seat the juror in question.[1]

After appellant filed his brief, this court granted the State's request to abate the appeal to correct an inaccuracy in the reporter's record. At the abatement hearing, the trial court considered affidavits from appellant's trial counsel, the court reporter, the prosecutor and the trial judge, in which each affiant stated that the court ruled that the State's reasons were race neutral. In addition, the court listened to the audio recording from the trial proceedings. The trial court determined that the reporter's record contained a typographical error, erroneously inserting the word "not", and ordered the court reporter to

[1] If the trial court determines that the State exercised a peremptory challenge for the purpose of excluding a person from the jury on the basis of his race, the court shall call a new array. Tex. Code Crim. Proc. Ann. art. 35.261(b). This remedy is not exclusive, however. When a *Batson* challenge is sustained, the trial court may, in its discretion, "fashion a remedy consistent with *Batson* and its progeny." *State ex rel. Curry v. Bowman*, 885 S.W.2d 421, 424-25 (Tex. Crim. App. 1993). The court may disallow the State's challenge and seat the stricken venire member on the jury. *Id.* at 425.

correct the record. The court reporter then filed a corrected reporter's record reflecting what the trial court actually uttered in response to the *Batson* challenge, "I find those are race neutral reasons for a strike."

The State then filed its brief, arguing that appellant's sole issue had been rendered moot by correction to the reporter's record. *See Rocha v. State* , 16 S.W.3d 1, 10 (Tex. Crim. App. 2000) (finding appellant's claim that the trial court erred in failing to file written findings of fact and conclusion of law was rendered moot by the trial court's filing the findings pursuant to a remand order). Appellant has not responded to State's brief.

We agree that appellant's issue as briefed has been rendered moot.[2] However, to the extent appellant asserts that the trial court erred in denying his *Batson* challenge, we have reviewed the record and find no error. When reviewing a *Batson* challenge, an appellate court examines the record in the light most favorable to the trial court's ruling and reverses only when the ruling is clearly erroneous. *Young v. State*, 283 S.W.3d 854, 866 (Tex. Crim. App. 2009). A ruling is clearly erroneous when, after searching the record, an appellate court is left with the definite and firm conviction that the trial court made a mistake. *Hill v. State*, 827 S.W.2d 860, 865 (Tex. Crim. App. 1992).

The defendant must prove by a preponderance of the evidence that the allegations of purposeful discrimination were true in fact and that the prosecutor's reasons were merely a sham or pretext. *Watkins v. State*, 245 S.W.3d 444, 451-52 (Tex. Crim. App. 2008). A reason is deemed race-neutral if no discriminatory intent is inherent in the explanation given. *Purkett v. Elem*, 514 U.S. 765, 768, 115 S.Ct. 1769, 1771 (1995); *Guzman v. State*, 85 S.W.3d 242, 246 (Tex. Crim. App. 2002). The State's proffered reasons for its strikes have been found race-neutral. *See Whitsey v. State*, 796 S.W.2d 707, 726 (Tex. Crim. App. 1987) (relative's employment); *Harris v. State*, 996 S.W.2d 232, 235 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (occupation); *Anderson v. State*, 758 S.W.2d 676, 680 (Tex. App.—Fort Worth 1988, pet. ref'd) (lack of eye contact). Moreover, the

[2] Appellant has not briefed the merits of his *Batson* challenge.

trial court was in the best position to evaluate whether the prosecutor's reasons were a pretext. *See Gibson v. State*, 144 S.W.3d 530, 534 (Tex. Crim. App. 2004). The trial court's ruling that the reasons for the State's strike were race-neutral is supported by the record and is not clearly erroneous.

Accordingly, the judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Yates and Seymore.
Do Not Publish — Tex. R. App. P. 47.2(b).