

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

RONNIE GARRETT,

Defendant-Appellee.

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UNPUBLISHED

February 7, 2003

No. 228653

Wayne Circuit Court

LC No. 97-003229

ON REMAND

Before: Neff, P.J., and Wilder and Cooper, JJ.

Wilder, J., (*concurring*).

In this Court's April 29, 2002 order, we remanded for new trial in part because the cumulative effect of trial counsel's ineffective representation was such that defendant was denied a fair trial, and there was a reasonable probability that but for the cumulative effect of counsel's errors the outcome of the trial would have been different. I concurred in the result of that order, and concur again in the majority's conclusion that even if counsel's failure to request an all-Detroit jury did not prejudice defendant to the extent that he was denied a fair trial, the cumulative effect of the errors in this case warrants reversal. Nevertheless, on the principal question that is the subject of the remand order of the Supreme Court, why it constituted ineffective assistance of counsel to fail to demand an all-Detroit jury, I cannot join in the majority's analysis.

On this record, I conclude that there is an insufficient basis to find that defense counsel's failure to request an all-Detroit jury deprived defendant of a fair trial. Here, the record does not reveal the *actual* racial composition of the jury that convicted defendant in this case. Rather, the only evidence of the racial composition of juries in Detroit and Wayne County was the generalized testimony offered by defendant's criminal defense expert who opined that Detroit juries were seventy-five percent African American, whereas Wayne County juries were twenty-five percent African American. If we accept for purposes of defendant's ineffective assistance of counsel claim that this evidence is true, we must conclude that the jury in this case was not devoid of African American jurors.

As noted by the majority, defense counsel testified that in his experience "persons who are of the same racial group as the defendant are in a better position to identify racial characteristics within their own race." However, defense counsel did not testify (and neither did defendant's expert) that persons in the same racial group as defendant would be in a better

position to identify racial characteristics within their own race, and be able to recognize the potential difficulty of cross-racial identification, *only* if they comprised the majority of the jurors called upon to consider this evidence. Thus, even accepting the asserted premise as true, nothing precluded the African Americans on the jury in this case from understanding the phenomenon of the difficulty of cross-racial identification and, if they accepted this phenomenon as true and applicable to this case, refusing to vote to convict the defendant in this case.

In our system of jurisprudence, one juror has the power to prevent a unanimous verdict resulting in a defendant's conviction. None of the jurors in this case, including the African American jurors, exercised that right. I would find that nothing in the record supports the conclusion that there was a reasonable *probability* that because of the cross-racial identification issue asserted by defendant, a jury comprised of a majority of African Americans was more likely to vote differently than the jury in this case did. As such, I do not join in this part of the majority's opinion.

/s/ Kurtis T. Wilder