

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
August 14, 2012

v

CHRISTOPHER JEROME BELVIN,
Defendant-Appellant.

No. 305805
Saginaw Circuit Court
LC No. 10-034296-FH

Before: SAAD, P.J., and SAWYER and CAVANAGH, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of two counts of breaking and entering a vehicle, contrary to MCL 750.356(a)(3). Defendant was sentenced to two years' probation. As a condition of probation, defendant was ordered to serve one year in jail. He was awarded 95 days' jail credit. We affirm.

After an investigation, defendant was arrested and charged with the theft of an alternator and a truck battery. During jury voir dire, the prosecutor used his first peremptory strike to excuse juror 64. The prosecutor next peremptorily struck juror 66 and then juror 65. The jury was sworn and a recess was taken. Once the jury had been excused, defense counsel objected to the peremptory strike of juror 64, the only African-American on the panel. The prosecutor explained that juror 64 was peremptorily struck because the prosecutor was attempting to dismiss "as many of the young people as I could," and because the juror had not disclosed a past conviction on the jury questionnaire. The court denied defendant's challenge.

Our approach to this issue is guided by the three-step test addressed in *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed2d 69 (1986). As explained in *People v Knight*, 473 Mich 324, 345; 701 NW2d 715 (2005),

[i]f the first step is at issue (whether the opponent of the challenge has satisfied his burden of demonstrating a prima facie case of discrimination), we review the trial court's underlying factual findings for clear error, and we review questions of law de novo. If *Batson's* second step is implicated (whether the proponent of the peremptory challenge articulates a race-neutral explanation as a matter of law), we review the proffered explanation de novo. Finally, if the third step is at issue (the trial court's determinations whether the race-neutral explanation is a pretext

and whether the opponent of the challenge has proved purposeful discrimination), we review the trial court's ruling for clear error.

Under the first step of the *Batson* test, a defendant must establish a prima facie case of discrimination.

To establish such a case, the defendant first must show that he is a member of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race. Second, the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits "those to discriminate who are of a mind to discriminate." Finally, the defendant must show that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race. This combination of factors in the empaneling of the petit jury, as in the selection of the venire, raises the necessary inference of purposeful discrimination. [*Batson*, 476 US at 96 (citations omitted).]

The record shows that both defendant and juror 64 are African-American.¹ On whether the circumstances raise an inference of discrimination, *People v Williams*, 174 Mich App 132, 136; 435 NW2d 469 (1989), stated "that courts faced with a prosecutor who uses his peremptory challenges to obtain an all-white jury tend to infer discriminatory intent . . . , while those faced with prosecutors who allow some blacks to remain do not." The facts show that after juror 64 was struck, the entire jury was non-African-American. Thus, a prima facie case of racial discrimination in the jury selection case was made.

"The second step of this process does not demand an explanation that is persuasive, or even plausible. ' . . . [T]he issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral.'" *Purkett v Elem*, 514 US 765, 767-768; 115 S Ct 1769; 131 L Ed 2d 834 (1995), quoting *Hernandez v New York*, 500 US 352, 360; 111 S Ct 1859; 114 L Ed 2d 395 (1991) (plurality opinion). The record clearly shows that the prosecutor gave the non-racial reasons of the juror's age and non-disclosure of past crimes as his grounds for exercising the peremptory strike.

The third step concerns an evaluation of whether the reasons given in step two are a mere pretext for racial selection. *Id.* at 768. "At that stage, implausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination." *Id.* To aid appellate review, *Knight* "strongly urge[d] our courts to *clearly* articulate their findings and conclusions on

¹ While not at issue here, it should be noted that a peremptory strike based on race is equally impermissible even if the juror is of a different race than the defendant. See *Powers v Ohio*, 499 US 400; 111 S Ct 1364; 113 L Ed 411 (1991).

the record.” *Knight*, 473 Mich at 339 (emphasis in original). Here, the trial judge did not document its consideration of the *Batson* three-step test.

In ruling on defendant’s challenge, the court stated only the following: “Well, I’ll note that you’ve indicated some non-racial reasons for excluding the juror. I’ll find that to be a valid reason at this point.” The stated reasons given by the prosecutor for striking juror 64 are race neutral, and the record does not establish that they are “implausible or fantastic.” The trial court accepted the prosecutor’s explanation, and we are not persuaded to do otherwise.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Mark J. Cavanagh