STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 1, 2009
v	No. 287141 Kent Circuit Court
CHARLES EUGENE PORTER, Defendant-Appellant.	LC No. 06-005240-FC

Before: Talbot, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

After a jury trial, defendant Charles Eugene Porter was convicted of one count of second-degree criminal sexual conduct, MCL 750.520c(1)(f) (personal injury to the victim). Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to 10 to 50 years' imprisonment. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

During voir dire, the prosecutor exercised two peremptory challenges to dismiss the only two black members of the jury array. Defendant, who is also black, objected and raised a *Batson*[1] challenge, arguing that the prosecutor dismissed the two black venirepersons solely on the basis of race. The prosecutor offered a race-neutral explanation for dismissing each of the potential jurors, and the trial court found that the explanations did not amount to pretext. Consequently, it denied defendant's *Batson* challenge. On appeal, defendant argues that the trial

[1] *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986). In *Batson*, *supra*, the United States Supreme Court established a three-factor test to determine whether a peremptory challenge violates the Equal Protection Clause. *People v Knight*, 473 Mich 324, 336; 701 NW2d 715 (2005), citing *Batson*, *supra* at 96-98. First, the party challenging the peremptory dismissal must make a prima facie showing of discrimination. *Id.* Second, if the challenger establishes a prima facie showing of discrimination, the burden shifts to the party exercising the peremptory challenge to articulate a race-neutral explanation for the strike. *Id.* at 337. Finally, "if the proponent provides a race-neutral explanation as a matter of law, the trial court must then determine whether the race-neutral explanation is a pretext and whether the opponent of the challenge has proved purposeful discrimination." *Id.* at 337-338.

court erred in finding that the prosecutor's proffered explanation for exercising the peremptory challenges did not amount to pretext. We disagree.

"Under the Equal Protection Clause of the Fourteenth Amendment, a party may not exercise a peremptory challenge to remove a prospective juror solely on the basis of the person's race." *People v Knight*, 473 Mich 324, 335; 701 NW2d 715 (2005). The applicable standard of review for a *Batson* challenge depends on which portion of the three-factor test articulated in *Batson* is at issue. *Knight*, *supra* at 338. In this case, only the third factor, whether the prosecutor's proffered race-neutral explanation is a pretext and whether the party opposed to the challenge proved purposeful discrimination, is at issue. We review the trial court's findings with regard to this issue for clear error. *Knight*, *supra* at 345.

In this case, we need not address whether the trial court improperly failed to apply the first *Batson* factor because the trial court did not clearly err in ultimately concluding that the prosecutor's race-neutral explanations for dismissing the jurors was not pretext.[2] The prosecutor explained that she dismissed one juror because of his dissatisfaction with the outcome of a civil case in which he was involved, because of his belief that he was treated unfairly, and because he indicated that he may have a negative opinion of the court system in general depending on the case. These reasons were unrelated to the juror's race, and the prosecution had legitimate concern that this juror may have held animosity toward the court system in general that could have interfered with his duty to serve as a fair and impartial juror.

With regard to the second juror, the prosecutor indicated that she excused the potential juror for several reasons, including 1) that juror's indication that her past experience working with juveniles at a detention center, where many of the young people made false accusations of sexual abuse, would cause her to discredit the testimony of an alleged victim of sexual assault; 2) the juror's statement that she was a good decision maker except for certain things, such as painting and interior decorating, combined with her indication that her husband would not agree she was a good decision maker; 3) the juror's assertion that she was displeased with the authorities' response to alleged sexual abuse involving her niece; and 4) the juror's assertion that she would have a problem with the trial court's instruction that a conviction may be based on the testimony of a single witness. None of these reasons related to the juror's race, and they gave the prosecutor legitimate concern that the juror may have had a predisposed bias against the prosecution in this sexual assault case.

In sum, the trial court did not err in concluding that the prosecution's proffered explanation for dismissing these jurors did not amount to pretext, and in ultimately finding that defendant failed to show purposeful discrimination.[3]

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[2] Defendant acknowledges that the prosecutor offered race-neutral explanations for striking the jurors, satisfying the second *Batson* factor.

[3] We also reject defendant's insinuation that simply because Kent County is traditionally thought to have a "socially conservative composition," the people of Kent County are racist and would convict a black man simply because of the color of his skin. Not only is such an insinuation meritless, but also it perpetrates the very bias that defendant purportedly seeks to avoid: that

(continued…)

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis

(…continued)

individuals who fit into a broad racial and cultural demographic would automatically act in a certain way *because* they are members of that demographic.