Affirmed and Opinion filed March 9, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00129-CR

KENNETH RAY CARTER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Cause No. 758,185

O P I N I O N

Appellant was convicted by a jury of delivery of cocaine; the conviction was enhanced by two prior felony convictions. The trial court sentenced him to twelve years in prison. In a single point of error Carter contends that the trial court erred in overruling his challenge to the seating of the jury because the state struck veniremember Daniel Amare solely because of his race, in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). We affirm.

The fifty-person venire summoned for Carter's trial included ten African-Americans. Two, including Amare, were struck by the state; one was struck by the defense; and four were removed by agreement. No African-Americans served on the jury. Appellant challenged the jury on *Batson* grounds.

The trial court initially found that appellant presented a *prima facie* case of discrimination; after hearing the prosecutor's explanation and argument the court overruled the challenge.

When reviewing a *Batson* challenge, we engage in a three-step process. First, the opponent of a peremptory challenge must make out a prima facie case of racial discrimination. *Purkett v. Elem,* 514 U.S. 765, 767, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995). Then, the proponent of the strike must come forward with a race-neutral reason for the challenge. *Id*. at 767. Finally, if a race-neutral reason is given, the opponent of the strike shoulders the burden of proving intentional discrimination. *Id*. For the purpose of step two, a reason is deemed race-neutral so long as no discriminatory intent is inherent in the explanation given, even if the explanation is fantastic or implausible. *Id*. at 768. "What is meant by a 'legitimate reason' is not a reason that makes sense, but a reason that does not deny equal protection." *Id*. at 769. Whether the trial judge believes a proffered race-neutral reason is a step-three inquiry, and the opponent of the strike bears the burden of showing that the reason offered is merely a pretext for discrimination. *Id*. We consider this evidence in the light most favorable to the trial court's ruling, and will reverse only if the ruling is clearly erroneous. *Tennard v. State*, 802 S.W.2d 678, 680 (Tex. Crim. App. 1990); *Woods v. State*, 801 S.W.2d 932, 935 (Tex. App.–Austin 1990, pet. ref'd).

The trial court initially found that appellant had met his burden of showing a *prima facie* case. The prosecutor then said she struck Amare because

> . . . from all of the questions that the defense asked and held back his head and a look that I perceived as of concern or cautious consideration in the examples that I was giving. I am not going to say disagreement because he never shook his head "no" but it was definitely a receptive nod that the defense received. He also made the same indications during the Court's explanation after we were given our strike list. [Amare] held his posture, was in the same manner as it was during my voir dire. And therefore, I felt that he was most receptive to the defense's rendition or the way the case was presented; and he stated on his juror form that he's only been employed for one year, with what appears to be a home health-care nurse job. And that gave me some concern.

The prosecutor also said she struck two white jurors for striking similarly unreceptive poses.

Parties in their exercise of preemptory strikes are entitled to follow a legitimate "hunch" based on a juror's appearance, as long as the hunch is not based on characteristics peculiar to a certain race. *State*

v. Elem, 747 S.W.2d 772, 775 (Mo. App. 1988), *aff'd sub nom. Purkett v. Elem*, 514 U.S. 769 (1995). A juror's general demeanor can be a sufficient race-neutral explanation for striking a juror. *Yarborough v. State*, 947 S.W.2d 892, 895-896 (Tex. Crim. App. 1997).

Appellant argues that we must reverse on *Batson* grounds because no questions were directed at Amare. We disagree. In cases reversed because of the State's failure to establish the legitimacy of its explanations through voir dire questions, at least one of two other factors has existed 1) the legitimacy of the State's apprehension was not obvious and 2) there was other evidence of disparate treatment. *Chambers v. State*, 866 S.W.2d 9, 24-25 (Tex. Crim. App. 1993). Here the state's explanation of questionable body language and short-term employment history show a legitimate concern on the part of the state.

Based on this record, we cannot say the trial court's decision in overruling appellant's *Batson* challenge was clearly erroneous. The judgment of the trial court is therefore affirmed.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed March 9, 2000.
Panel consists of Justices Cannon, Draughn and Hutson-Dunn.*
Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Bill Cannon, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.