NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 1385

STATE OF LOUISIANA

VERSUS

TYRONE WILLIAMS

Judgment Rendered: December 21, 2007

* * * * * * *

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Trial Court Number 500745

Honorable Ernest G. Drake, Jr., Judge

* * * * * * *

Scott M. Perrilloux, District Attorney
Patrick Walsh Dunn, Asst. District Attorney
Amite, LA

Attorneys for
State – Appellee

Bertha M. Hillman
Thibodaux, LA

Attorney for
Defendant – Appellant
Tyrone Williams

* * * * * *

BEFORE: CARTER, C.J., PETTIGREW, AND WELCH, JJ.

WELCH, J.

The defendant, Tyrone Williams, was charged by grand jury indictment with three counts of aggravated rape, violations of La. R.S. 14:42, and pled not guilty on all counts. Following a jury trial, by unanimous verdict, he was found guilty as charged on count I, and guilty of the responsive offense of attempted aggravated rape, a violation of La. R.S. 14:27 and La. R.S. 14:42, on count II.[1] He moved for a post-verdict judgment of acquittal, in arrest of judgment, and for a new trial, but the motions were denied. On count I, he was sentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. On count II, he was sentenced to fifty years at hard labor without benefit of parole, probation, or suspension of sentence to run consecutively to the sentence imposed on count I. He moved for reconsideration of sentence, but the motion was denied. He now appeals, designating one assignment of error. We affirm the convictions and sentences on counts I and II.

ASSIGNMENT OF ERROR

The trial court erred in denying the defendant's **Batson** challenge.

FACTS

The victim, J.W.,[2] testified at trial concerning two incidents involving the defendant. The first incident related by the victim occurred during the summer of 2004, when the victim was eleven or twelve years old. The victim claimed the defendant, a preacher, raped him at the church after asking the victim to go to the church to look for some garbage bags. The second incident occurred when the defendant raped the victim on a night when the victim spent the night at the defendant's trailer.

In a January 21, 2005 videotaped statement, the defendant claimed between

---

1 The State severed count III prior to the presentation of evidence at trial.

2 The victim is referenced herein only by his initials. See La. R.S. 46:1844(W).

the spring and summer of 2004, he "made affair" at the victim in the church. He claimed he got on the victim, but denied "go[ing] into him." The defendant also discussed an incident that occurred in his trailer with the victim during the summer of 2004. The defendant claimed he rubbed his penis on the victim's buttocks, but did not put his penis in the victim's mouth or rectum. The defendant stated, at the time of the incidents, he was vice-president and second minister of New Beginning Church.

The defendant testified at trial that he was blackmailed into making the videotaped statement. He denied going to the church with the victim, as alleged by the victim for the first incident, and he denied that the victim ever spent the night at his trailer.

BATSON

In his sole assignment of error, the defendant argues the trial court erred in denying the **Batson** challenges to the State's use of peremptory challenges to strike prospective jurors Alon Frazier, Charley Tucker, Conney Lee Pugh, and Lionel Harris.

In **Batson v. Kentucky**, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), the supreme court adopted the following three-step analysis to determine whether the constitutional rights of a defendant or prospective jurors had been infringed by impermissible discriminatory practices. First, the defendant must make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race. Second, if the requisite showing has been made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination. **State v. Handon**, 2006-0131, pp. 3-4 (La. App. 1st Cir. 12/28/06), 952 So.2d 53, 56.

Louisiana Code of Criminal Procedure article 795 provides, in pertinent part:

> C. No peremptory challenge made by the state or the defendant shall be based solely upon the race of the juror. If an objection is made that the state or defense has excluded a juror solely on the basis of race, and a prima facie case supporting that objection is made by the objecting party, the court may demand a satisfactory racially neutral reason for the exercise of the challenge, unless the court is satisfied that such reason is apparent from the voir dire examination of the juror.[3] Such demand and disclosure, if required by the court, shall be made outside of the hearing of any juror or prospective juror. [Footnote added.]
>
> D. The court shall allow to stand each peremptory challenge exercised for a racially neutral reason either apparent from the examination or disclosed by counsel when required by the court. The provisions of Paragraph C and this Paragraph shall not apply when both the state and the defense have exercised a challenge against the same juror.
>
> E. The court shall allow to stand each peremptory challenge for which a satisfactory racially neutral reason is given. Those jurors who have been peremptorily challenged and for whom no satisfactory racially neutral reason is apparent or given may be ordered returned to the panel, or the court may take such other corrective action as it deems appropriate under the circumstances. The court shall make specific findings regarding each such challenge.

The ultimate burden of persuasion remains on the party raising the challenge to prove purposeful discrimination. A defendant satisfies the requirements of **Batson's** first step by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred. **Handon**, 2006-0131 at p. 4, 952 So.2d at 57.

In order to make a prima facie showing the prosecutor has exercised peremptory challenges on an impermissible basis, the defendant may offer any facts relevant to the question of the prosecutor's discriminatory intent. Such facts include, but are not limited to, a pattern of strikes by a prosecutor against members of a suspect class, statements or actions of the prosecutor during voir dire that support an

---

[3] The discretion afforded to a trial court by La. C.Cr.P. art. 795(C) to overrule a **Batson** objection following a prima facie case supporting the objection, without requiring the State to set forth its reasons for a challenged peremptory strike, may be at odds with **Miller-El v. Dretke**, 545 U.S. 231, 252, 125 S.Ct. 2317, 2332, 162 L.Ed.2d 196 (2005). **Handon**, 2006-0131 at p. 4 n.1, 952 So.2d at 57 n.1.

inference that the exercise of peremptory strikes was motivated by impermissible considerations, the composition of the venire and of the jury finally empanelled, and any other disparate impact upon the suspect class that is alleged to be the victim of purposeful discrimination. **Handon**, 2006-0131 at pp. 4-5, 952 So.2d at 57.

No formula exists for determining whether the defense has established a prima facie case of purposeful racial discrimination. A trial judge may take into account not only whether a pattern of strikes against African-American venire-persons has emerged during voir dire but also whether the prosecutor's questions and statements during voir dire examination and in exercising his challenges may support or refute an inference of discriminatory purpose. **Handon**, 2006-0131 at p. 5, 952 So.2d at 57.

For a **Batson** challenge to succeed, it is not enough that a racially discriminatory result be evidenced; rather, that result must ultimately be traced to a racially discriminatory purpose. Thus, the sole focus of the **Batson** inquiry is upon the intent of the prosecutor at the time he exercised his peremptory strikes. **Handon**, 2006-0131 at p. 5, 952 So.2d at 57-58.

If the defendant is unable to make out a prima facie case of racial discrimination, then the **Batson** challenge fails and it is not necessary for the prosecutor to articulate "race-neutral" reasons for his strikes. **Handon**, 2006-0131 at p. 5, 952 So.2d at 58.

The State, in presenting race-neutral reasons for its excusal of prospective jurors, need not present an explanation that is persuasive, or even plausible; unless a discriminatory intent is inherent in the State's explanation after review of the entire record, the reason offered will be deemed race neutral. A reviewing court owes the trial court's evaluations of discriminatory intent great deference and should not reverse them unless they are clearly erroneous. **Handon**, 2006-0131 at p. 5, 952 So.2d at 58.

In connection with voir dire of panel #1, the State attempted to exercise a cause challenge against prospective juror Alon Frazier because he was a pastor and the defendant was a pastor, and also because Frazier had commented that he could determine whether the child was telling the truth based on whether the child made eye contact with him. The court denied the cause challenge, and the State exercised a peremptory challenge against Frazier.

The State also attempted to exercise a cause challenge against prospective juror Conney Lee Pugh because he indicated he knew the defendant and stated that in order for him to know whether a child was telling him the truth, the child needed to have certain training, and also, if a child had a bad upbringing, he would spank the child. The court denied the cause challenge, and the State exercised a peremptory challenge against Pugh.

The State also attempted to exercise a cause challenge against prospective juror Lionel D. Harris because he believed that society viewed men and women sex offenders differently and expressed that this bothered him. The State indicated it had reason to believe that Harris would use the instant trial and the defendant as tools to send society a message. The court denied the cause challenge, and the State exercised a peremptory challenge against Harris.

The State also attempted to exercise a cause challenge against prospective juror Charley R. Tucker because he indicated he would have to have physical evidence to believe a rape had occurred. The court denied the cause challenge, and the State exercised a peremptory challenge against Tucker.

The defense objected under **Batson** to the State's use of peremptory challenges against Frazier, Pugh, Harris, and Tucker. The court asked the State for a race-neutral reason for exercising a peremptory challenge against Frazier.

The State indicated it had peremptorily challenged all of the jurors in question

for the same reasons it had challenged the jurors for cause. The court asked the State to restate its reasons.

The State indicated it had challenged Frazier because he was a pastor and he had indicated he would require the victim to look him in the eyes to determine whether he was telling the truth. The court found the fact that Frazier was a pastor to be unsatisfactory, and asked the State to set forth its next reason. The State advised the court that before it was required to set forth racially-neutral reasons, the court had to find that the defense had made a prima facie case that the State had exercised its challenges in a racially discriminatory manner. The court indicated the second, third, fourth, and fifth peremptory challenges by the State were exercised against minority prospective jurors, and the court found that fact "sufficiently interesting" to ask the State for race-neutral reasons.[4]

The State set forth that Frazier had stated he was trained in knowing how and when children tell the truth and, if a child did not make eye contact with him, he would have reason to disbelieve the child. The State indicated that in a case like the instant case, where the child is probably not comfortable with discussing the offense, the only person the child would probably be making eye contact with would be the State. The court felt that the reason was "somewhat close," but accepted the reason.

The State set forth it had challenged Pugh because he indicated he knew the defendant but had not gone into the extent of his relationship with the defendant. The State expressed that it was also bothered by the fact that Pugh had stated the child needed certain training to tell the truth before he could take the stand. The State indicated, upon further inquiry about what kind of training he was referencing, Pugh had stated if the child had a bad upbringing, he needed to be trained or spanked. The State indicated the victim came from a foster home. The court accepted the reason.

---

[4] At the hearing on the post-trial defense motions, the trial court noted two African-Americans were seated on the jury, and, at least at the seating of the first of those jurors, the State had not exhausted its peremptory challenges.

The State set forth it had challenged Harris because he had indicated that men and women were not treated the same in society, and the State was fearful that he may have some animosity towards male victims. The court noted that "it's not our situation," but acknowledged the State's concern that Harris might want a level playing field for a male convicted or charged with such a crime, and accepted the reason.

The State set forth it had challenged Tucker because he had repeatedly indicated that he needed physical evidence to believe that a rape had occurred. The State indicated, in the instant case, five months elapsed between the incident and the physical examination, so there was not much medical evidence. The State also expressed that it was concerned about the fact that Tucker had indicated he had read about the case in the newspaper. The court ruled it was not concerned about Tucker reading about the case in the newspaper because the court did not think he remembered enough about the case, but indicated it shared the State's concern about Tucker needing physical evidence, and thus would also deny the **Batson** challenge in regard to Tucker. The defense objected to the court's ruling and assigned error.

There was no abuse of discretion in the denial of the **Batson** challenges against prospective jurors Frazier, Pugh, Harris, and Tucker. A review of the State's explanations for the peremptory challenges against the jurors in question reveals no discriminatory intent. See **Handon**, 2006-0131 at p. 7, 952 So.2d at 59. Further, the prosecutor's demeanor was evaluated by the trial court, which found no discriminatory intent. The explanations were reasonable and the proffered rationale had some basis in accepted trial strategy. See **Handon**, 2006-0131 at p. 7, 952 So.2d at 59.

Moreover, a review of the entire voir dire transcript fails to reveal any evidence that the use of peremptory strikes by the State in this matter was motivated

by impermissible considerations.

This assignment of error is without merit.

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTIONS AND SENTENCES ON COUNTS I AND II AFFIRMED.