STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 15, 2007
v	No. 266651 Kent Circuit Court
ANTOINE MAURICE LLOYD, Defendant-Appellant.	LC No. 05-001955-FH

Before: Hoekstra, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

After a jury trial, defendant was convicted on two counts of resisting and obstructing a police officer, MCL 750.81(d)(1), and was given concurrent sentences of 30 months' probation. We affirm.

On February 9, 2005, two officers with the Grand Rapids Police Department arrested defendant, an African-American, for two outstanding warrants. During the arrest, defendant struggled and attempted to evade handcuffing, leading to the charges in this case. During jury selection, the prosecutor used a peremptory challenge to dismiss an African-American veniremember who had admitted to a recent conviction for possession of marijuana.[1] Defense counsel contested this use of a peremptory challenge, arguing that the prosecutor committed a *Batson*[2] violation because the veniremember was African-American. The prosecutor provided a race-neutral basis for using the peremptory challenge, namely, that this veniremember had not been forthcoming regarding his prior conviction. Specifically, when the prospective jurors were asked if they, or someone close to them, had been accused or charged with a crime, the dismissed veniremember did not volunteer that he had been charged with a crime, although he mentioned his conviction on his juror questionnaire. The trial court noted that both the veniremember in question and a Caucasian veniremember neglected to disclose their convictions at the first

[1] The prosecutor had earlier moved to dismiss the veniremember for cause under MCR 2.511, but the trial court denied this challenge because it was unclear whether the Kent County Prosecutor's Office prosecuted him.

[2] *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d 69 (1986).

opportunity, and the prosecutor employed peremptory challenges to dismiss both individuals. The trial court held that the prosecutor's basis for exercising a peremptory challenge to dismiss the African-American veniremember was nondiscriminatory and nonpretextual.

Defendant argues that the prosecutor violated his constitutional right to be tried by an impartial jury when she exercised a peremptory challenge to dismiss this African-American member of the jury venire. We do not agree. We review "a trial court's determination concerning whether the opponent of the peremptory challenge has satisfied the ultimate burden of purposeful discrimination" in the exercise of a peremptory challenge for clear error. *People v Knight*, 473 Mich 324, 344; 701 NW2d 715 (2005). Because the trial court's ultimate factual finding turns on an evaluation of credibility, we accord it great deference. *Id.*

In *Batson v Kentucky*, 476 US 79, 84; 106 S Ct 1712; 90 L Ed 2d 69 (1986), the United States Supreme Court determined that the use of a peremptory challenge to strike a veniremember solely on the basis of race violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The *Batson* Court developed a three-step test to determine if a peremptory challenge has been used improperly to disqualify a veniremember on the basis of race.

First, the party contesting the peremptory challenge must make a prima facie showing of discrimination on the basis of race. *People v Bell*, 473 Mich 275, 282; 702 NW2d 128 (2005), amended 474 Mich 1201 (2005).

> To establish a prima facie case of discrimination based on race, the opponent of the challenge must show that: (1) the defendant is a member of a cognizable racial group; (2) peremptory challenges are being exercised to exclude members of a certain racial group from the jury pool; and (3) the circumstances raise an inference that the exclusion was based on race. [*Batson*, *supra*] at 96. The *Batson* Court directed trial courts to consider all relevant circumstances in deciding whether a prima facie showing has been made. *Id.* [*Id.* at 282-283.]

After the contesting party makes a prima facie showing of discrimination, the burden shifts to the party exercising its peremptory challenge to present a race-neutral explanation for using the challenge. *Id.* at 283. "The neutral explanation must be related to the particular case being tried and must provide more than a general assertion in order to rebut the prima facie showing. If the challenging party fails to come forward with a neutral explanation, the challenge will be denied." *Id.* (citations omitted).

If this party presents a race-neutral explanation for using a peremptory challenge, the trial court must then determine if the party contesting the peremptory challenge has established "purposeful discrimination." *Id.* Purposeful discrimination is established if the trial court concludes that the race-neutral explanation for using a peremptory challenge is not credible. *Id.*

> "Credibility can be measured by, among other factors, the . . . [] demeanor [of the party exercising the peremptory challenge]; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." [*Miller-El v Cockrell*, 537 US 322, 339; 123 S Ct 1029; 154 L Ed 2d 931 (2003).] If the trial court finds that the reasons proffered

were a pretext, the peremptory challenge will be denied. *Batson*, *supra* at 100. [*Bell*, *supra* at 283.]

When defendant challenged the prosecutor's use of a peremptory challenge to dismiss the African-American veniremember during jury selection, the prosecutor provided a "race-neutral" explanation for her use of the challenge. The trial court, accepting the prosecutor's explanation, permitted the dismissal of this veniremember. Defendant argues on appeal that the trial court's decision to permit the use of this peremptory challenge was erroneous because the prosecutor's "race-neutral" reason was not credible, but merely a pretext for purposeful discrimination. We disagree. Instead, we hold that the trial court properly determined that the prosecutor's basis for raising the peremptory challenge was reasonable and nondiscriminatory.

The African-American veniremember admitted that he had recently been convicted of possession of marijuana. Some indication existed that the Kent County Prosecutor's Office prosecuted this veniremember regarding this charge. This Court has recognized that a veniremember previously tried by the entity that was also prosecuting the criminal case for which he was a potential juror could be dismissed for cause, despite his promise to remain impartial, because the bias inherent in being on opposing sides with the prosecutor in another criminal proceeding would likely impair a juror's ability to be impartial. *People v Eccles*, 260 Mich App 379, 383-384; 677 NW2d 76 (2004). Further, this Court upheld the exercise of a peremptory challenge against a potential juror whose uncle had been tried for murder, *People v Howard*, 226 Mich App 528, 535; 575 NW2d 16 (1997), and the potential for a juror to be biased against the prosecution if that juror had a criminal conviction would reasonably be greater.

Moreover, the United States Supreme Court held, "If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination . . . ." *Miller-el v Dretke*, 545 US 231, 241; 125 S Ct 2317; 162 L Ed 2d 196 (2005). Conversely, dismissing both an African-American and a nonblack veniremember for the same race-neutral reason tends to prove that the dismissal of the African-American veniremember was nondiscriminatory. In this case, the African-American veniremember was not forthcoming regarding his conviction, not volunteering this information when the prosecutor made a general inquiry regarding the criminal histories of the potential jurors. However, the prosecutor also excused a Caucasian veniremember for not being forthcoming regarding his criminal history. This even-handed exercise of peremptory challenges lends support to the trial court's conclusion that the prosecutor did not purposefully discriminate on the basis of race. *Id.*

Finally, the prosecutor's reason for using a peremptory challenge to dismiss this veniremember had a basis in trial strategy. See *Bell*, *supra* at 283. Not only did the prior conviction provide a basis for bias against the prosecution, but the veniremember also expressed bias against police officers during voir dire. When the prosecutor asked the veniremember for his general opinion of police, he replied, "I think you got good cops and there's bad cops, like a lot of them abuse their authority" and "Like as far as it never happened to me, but like I've seen it, they just go way too overboard." Despite his claim that he could be fair and impartial, the veniremember expressed a bias against police officers. This expressed bias constituted a legitimate reason to excuse the veniremember, because the credibility of the officers' claims of resistance was a key issue in this case. See, e.g., *United States v Moreno*, 878 F2d 817, 820-821

(CA 5, 1989) (upholding a peremptory challenge based on the juror's hostile attitude toward police).

Accordingly, the trial court did not clearly err when it held that the prosecutor's reason for exercising the peremptory challenge was not a pretext for discrimination. The prosecutor provided a proper, race-neutral explanation for the exercise of this peremptory challenge that had a reasonable basis in trial strategy. Reversal of defendant's conviction is unwarranted.[3]

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens

[3] Defendant also includes in his statement of issues presented on appeal a contention that the trial court erred when it allowed the prosecution to add an expert witness on the first day of the trial. Defendant, however, failed to present any argument in support of this issue in his brief on appeal. The failure to argue the merits of the assertion of error in the body of the brief constitutes abandonment of the issue, and we decline to address it further. See *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).