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ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR09-1050

JERMIKO VONJAY JOHNSON
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 20, 2010

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CR-08-86]

HONORABLE JAMES O. COX,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

A Sebastian County jury found appellant, Jermiko Johnson, guilty of second-degree sexual assault. Johnson was sentenced to twenty-four years in the Arkansas Department of Correction and fined \$15,000. He argues on appeal that the trial court erred in denying his *Batson* challenge to the State's use of a peremptory strike to exclude potential juror Gatling, an African-American woman. We affirm.

Johnson contends that the State's race-neutral explanation and the trial court's factual determination were not consistent and urges this court to reverse and remand the matter back to the trial court. However, this argument is not convincing.

In *Batson v. Kentucky*,¹ the Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibits the State from striking a juror solely on the basis of race. Striking even one juror for a racially motivated reason violates the Equal Protection Clause.² Our supreme court has delineated a three-step process to be used in the case of *Batson* challenges.³ First, the strike's opponent must present facts to raise an inference of purposeful discrimination; that is, the opponent must demonstrate a prima facie case of racial discrimination.⁴ Second, once the strike's opponent has made a prima facie case, the burden shifts to the proponent of the strike to present a race-neutral explanation for the strike.⁵ If a race-neutral explanation is given, the inquiry proceeds to the third step, wherein the trial court must decide whether the strike's proponent has proven purposeful discrimination.⁶ At this stage, the strike's opponent must persuade the trial court that the expressed motive of the striking party is not genuine but is rather the product of discriminatory intent.⁷ The ultimate

¹476 U.S. 79 (1986).

²*Holder v. State*, 354 Ark. 364, 124 S.W.3d 439 (2003).

³*MacKintrush v. State*, 334 Ark. 390, 978 S.W.2d 293 (1998).

⁴*Hinkston v. State*, 340 Ark. 530, 10 S.W.3d 906 (2000).

⁵*Id.*

⁶*Id.*

⁷*Id.*

burden of persuasion that there is purposeful discriminatory intent rests with and never shifts from the party opposing the strikes.⁸

We will reverse a trial court's ruling on a *Batson* challenge only when its findings are clearly against the preponderance of the evidence.⁹ In deciding *Batson* claims, the trial court is accorded some deference in making *Batson* rulings because it is in a superior position to observe the parties and to determine their credibility.¹⁰

Here, we do not consider whether Johnson made a prima facie case of racial discrimination at the time of his objection because when he objected, the State explained its grounds for the strike. The trial court then made its ruling on the issue of discriminatory intent. Once the party striking a juror offers a race-neutral explanation, and the court rules on the ultimate issue of intentional discrimination, the preliminary issue of whether a prima facie case was shown becomes moot.¹¹ We thus proceed with an analysis of the State's reason for exercising the peremptory challenge.¹²

After Johnson objected to the State's strike of Gatling, the State responded that Gatling was struck because (1) she would never look the prosecutor in the eyes during voir dire and

⁸*Armstrong v. State*, 366 Ark. 105, 233 S.W.3d 627 (2006).

⁹*Id.*

¹⁰*Ashley v. State*, 358 Ark. 414, 191 S.W.3d 520 (2004).

¹¹*Riley v. State*, 2009 Ark. App. 613 (citing *Flowers v. State*, 362 Ark. 193, 208 S.W.3d 113 (2005)).

¹²*Id.*

(2) the prosecutor noticed that Gatling had some tattoos on her hands. The trial court found that the State had provided a race-neutral explanation and denied Johnson's objection. Our supreme court has held that the State's race-neutral explanation must be more than a mere denial of racial discrimination, but need not be persuasive or even plausible.¹³ Following the State's explanation, Johnson argued that the State's strike was based on race and that the State failed to provide a race-neutral explanation. The trial court denied the motion, and we cannot say that it erred in upholding the State's strike. Accordingly, we affirm.

Affirmed.

ABRAMSON and HENRY, JJ., agree.

¹³*Armstrong, supra.*