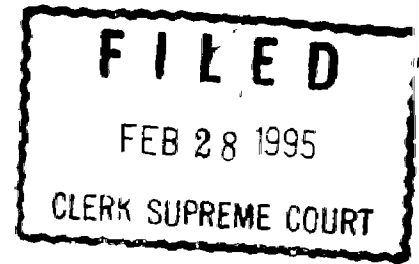


IN THE COURT OF APPEALS OF IOWA

No. 5-020 / 94-65



STATE OF IOWA,

Appellee,

vs.

LILLIE B. HENDERSON,

Appellant.

Appeal from the Iowa District Court for Black Hawk County, Lawrence Fautsch and William G. Klotzbach, Judges.

Lillie Henderson appeals her convictions, following a jury trial, of possession of cocaine with intent to deliver, failure to affix a drug tax stamp, and possession of marijuana. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Shari Barron, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Susan Crawford and Ann E. Brenden, Assistant Attorneys General, Thomas J. Ferguson, County Attorney, and Kim Griffith, Assistant County Attorney, for appellee.

Heard by Hayden, P.J., and Cady and Huitink, JJ.

HUITINK, J.

Lillie Henderson appeals her convictions of possession of cocaine with intent to deliver, failure to affix a drug tax stamp, and possession of marijuana. We affirm.

Henderson, an elderly African-American woman, was charged with these offenses after police found twenty-five rocks of cocaine on her person while executing a search warrant at her residence. During jury selection at Henderson's trial, the State used two of its peremptory challenges to remove two African-Americans from the jury panel. Henderson objected to the State's racially discriminatory use of its peremptory challenges to remove African-Americans from the panel. The State denied any racially-discriminatory motivation for striking the jurors, citing each stricken juror's familiarity with a defense witness. The State also cited one stricken juror's statement that he would have trouble sitting in judgment of another person. The district court overruled Henderson's objections.

A jury found Henderson guilty as charged. The district court entered judgment and sentenced her to concurrent prison terms of up to twenty-five years, five years, and six months on the three counts.

On appeal Henderson contends the State's use of peremptory challenges to remove African-American jurors violated the constitutional prohibition against the racially-discriminatory use of peremptory challenges in

jury selection. See Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). Because her claims raise constitutional implications, our review is de novo. State v. Taft, 506 N.W.2d 757, 762 (Iowa 1993). Since the trial court's findings of purposeful discrimination turn largely on an evaluation of credibility, we give those findings great deference. Batson, 476 U.S. at 98, n.21, 106 S. Ct. at 1724, n.21, 90 L. Ed. at 88-89, n.21.

In order to establish a prima facie case of discrimination in jury selection under Batson a defendant must first show that she is a member of a recognizable minority and that the prosecutor used peremptory challenges to remove members of her race from the jury. Batson, 479 U.S. at 96, 106 S. Ct. at 1723, 90 L. Ed. at 87. Next, a defendant is entitled to rely on the fact peremptory challenges "permit those to discriminate who are of a mind to discriminate." Id. Finally, a defendant must show "that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race." Id., 476 U.S. at 96, 106 S. Ct. at 1723, 90 L. Ed. at 87-88. The relevant circumstances include, but are not limited to, a pattern of strikes against African-American jurors as well as the prosecutor's questions and statements during voir dire. Id. Once the defendant makes the required prima facie showing, the State has the burden of articulating a clear, reasonably specific

and race-neutral explanation for the peremptory challenge. Id., 476 U.S. at 97, 106 S. Ct. at 1723, 90 L. Ed. at 88.

In the present case, Henderson argues that the necessary inference was raised by the State's exclusion of two of the three African-American jurors. The State, on the contrary, contends Henderson has not met her burden and a prima facie case has not established.

In State v. Knox, 464 N.W.2d 445 (Iowa 1990), our supreme court held merely showing that the State used a peremptory challenge to exclude an African-American juror falls short of raising an inference of purposeful discrimination. Knox, 464 N.W.2d at 448 (citations omitted). However, Knox involved a Sixth Amendment challenge to the use of the peremptory challenges. The prima facie case for a Sixth Amendment claim is different than that of an equal protection claim. State v. Watkins, 463 N.W.2d 411, 414 (Iowa 1990) (citing Duren v. Missouri, 439 U.S. 357, 364, 99 S. Ct. 664, 668, 58 L. Ed. 579, 586-87 (1979)); see also State v. Moore, 469 N.W.2d 269, 272 (Iowa App. 1991).

In this case Henderson's claim is framed in an equal protection context. The elements of a prima facie case are those set forth in Batson and stated above. Therefore all that Henderson needs to establish is that she is African-American and African-American jurors were stricken from the panel. We find Henderson has established a prima facie case of purposeful discrimination in an equal

protection context as provided for in Batson. The burden then shifts to the State to rebut the prima facie case.

In order to rebut Henderson's prima facie case the State was required to provide a race-neutral explanation for challenging the African-American jurors which was clear, reasonably specific and legitimate. Batson, 476 U.S. at 98, n.20, 106 S. Ct. at 1724, n.20, 90 L. Ed. at 88, n.20. The State explained both African-American jurors were struck primarily because of their acquaintance with one or more defense witnesses. Henderson contends the reasons provided were not legitimate and were pretextual, permitting the State to "tap the jury panel of minority members."

The record reveals that stricken juror Sheila Bullock indicated witness Roosevelt Taylor was a family friend and that she also knew witness Diane Mihms. The other stricken juror, Mr. Sanders, indicated he knew Roosevelt Taylor and that it was more than a casual relationship. Additionally, both African-American jurors hesitated when asked if they could be fair and impartial. Ms. Bullock nodded her head in agreement when another potential juror stated he knew Roosevelt Taylor well and that he would believe anything he said to be true. Mr. Sanders indicated he would have a difficult time sitting in judgment of another person. The record also reveals the State struck two white jurors, Elmer Kline and Glen Rasmussen, because of their casual relationships with witness Roosevelt Taylor.

We, like the trial court, find the State's reasons for striking the two African-American jurors were clear, specific, race-neutral, and legitimate. We find Henderson's claims to the contrary to be without merit. Henderson's conviction is accordingly affirmed.

AFFIRMED.