

IN THE COURT OF APPEALS OF IOWA

No. 7-324 / 06-1126
Filed June 27, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LUNDELL EARLEST BUCHANAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs,
Judge.

The defendant appeals following his conviction and sentence by the
district court. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert Ewald, Assistant Attorney
General, Harold Denton, County Attorney, and Jerry Vander Sanden, Assistant
County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

VOGEL, J.

Lundell Buchanan appeals from his conviction and sentence by the district court following a jury verdict, finding him guilty of assault with intent to commit sexual abuse, in violation of Iowa Code section 709.11 (2005). Buchanan claims the State violated his rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution during jury selection. See *State v. Griffin*, 564 N.W.2d 370, 375 (Iowa 1997). Therefore, our review is de novo. *State v. Keys*, 535 N.W.2d 783, 785 (Iowa Ct. App. 1995).

Buchanan, who is African-American, argues that the State violated *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), when the prosecutor struck two African-American prospective jurors following voir dire of the panel. Under *Batson*, the defendant must first establish a prima facie case of purposeful discrimination by showing that he is a member of a cognizable racial group and that the prosecutor has used strikes to remove prospective jurors of the defendant's race, raising an inference that such exclusion is discriminatory. *Batson*, 476 U.S. at 96, 106 S. Ct. at 1723, 90 L. Ed. 2d at 87-88. The burden then shifts to the State to articulate a race-neutral reason for the strikes. *Id.* at 97, 106 S. Ct. at 1723, 90 L. Ed. 2d at 88. The State's explanation must be deemed neutral unless a discriminatory intent is inherent. *Kiray v. Hy-Vee, Inc.*, 716 N.W.2d 193, 207 (Iowa Ct. App. 2006) (citing *Purkett v. Elem*, 514 U.S. 765, 768, 115 S. Ct. 1769, 1771, 131 L. Ed. 2d 834, 839 (1995)). Finally, the trial court must determine whether the defendant has established purposeful discrimination. *Id.* at 98, 106 S. Ct. at 1724, 90 L. Ed. 2d at 88-89. In other words, the court must decide whether to believe the prosecutor's explanation for

the strikes.¹ *State v. Veal*, 564 N.W.2d 797, 807 (Iowa 1997), *overruled on other grounds by State v. Hallum*, 585 N.W.2d 249 (Iowa Oct 21, 1998). The trial court's decision in this regard is accorded great deference on appeal. *Id.* at 807.

The voir dire itself was not reported, thus making our review of the prosecutor's questions and statements limited to the subsequent record created in chambers. Buchanan's counsel objected because the two prospective jurors were the only African-Americans on the panel. The prosecutor stated the reason for striking Conswella Fields was because she knew Buchanan, had a prior business relationship with him, and that relationship may also inject issues of Buchanan's prior criminal record into the trial.² The court noted that Fields also stated during voir dire that she would "hate to stand in judgment for someone who comes to me for help." Both Buchanan and his counsel conceded that Fields answered in that fashion. The prosecutor struck the other prospective juror, Glynn Jones, for his indication on a juror questionnaire that he had been convicted of a crime more serious than a traffic offense, but failing to provide further explanation as requested. The prosecutor was concerned that criminal offense may have been initiated by the Linn County Attorney's office, thereby making Jones biased against the prosecution. Jones was not questioned further by the prosecutor or the court as to his conviction. The court accepted the explanation for the strikes and found the State had struck the two prospective

¹ Once a prosecutor has offered a race-neutral explanation for the strikes and the trial court has ruled on the ultimate question of intentional discrimination (whether the nondiscriminatory explanation is pretextual or not), the preliminary issue of whether the defendant had made a prima facie showing becomes moot. *Hernandez v. New York*, 500 U.S. 352, 359, 111 S. Ct. 1859, 1866, 114 L. Ed. 2d 395, 405 (1991).

² Fields is involved in a bail bonds business that Buchanan has used in the past.

jurors for race-neutral reasons. Buchanan made no claim that the reasons given by the State were pretextual, nor does he make one on appeal. We conclude the district court properly overruled his *Batson* challenge and affirm on this issue.

Buchanan also asserts that his trial counsel was ineffective for failing to move for new trial based upon the weight of the evidence standard as set forth in *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998). He asserts the district court, in light of the testimony of several defense witnesses, should have been given the opportunity to weigh the evidence and consider the appropriateness of a new trial. We generally preserve claims for postconviction relief proceedings where an adequate record of the claim can be developed and the attorney charged with providing ineffective assistance may have an opportunity to respond to defendant's claims. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002). No record has yet been made before the district court, and we therefore preserve Buchanan's claim for a possible postconviction proceeding. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986).

AFFIRMED.