

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-5124
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHERYL ANN PETRY,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1: 91-CR-93

March 18, 1993

Before KING, HIGGINBOTHAM, AND DAVIS, Circuit Judges.

PER CURIAM:*

A district court's denial of a Batson objection to the government's use of peremptory strikes against particular members of the venire will not be upheld on appeal where the defendant has carried his burden of proving purposeful discrimination. United States v. Clemons, 941 F.2d 321, 324 (5th Cir. 1991) (citation omitted).

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court's determination that the government had a race-neutral reason for excluding a juror is a credibility determination viewed with deference, United States v. De La Rosa, 911 F.2d 985, 991 (5th Cir. 1990), cert. denied 111 S.Ct. 2275 (1991), and reviewed under a clearly erroneous standard. Clemons, 941 F.2d at 325. In this case Petry made no showing that the government's purpose in striking the potential juror was improper or that the government described its actions in terms of age when in reality it was motivated by race. Age, in and of itself, is a valid basis for a peremptory challenge. United States v. Moreno, 878 F.2d 817, 821 (5th Cir.), cert. denied, 493 U.S. 979 (1989) (citation omitted).

Petry's argument that unadjudicated offenses were introduced to impeach her credibility and then improperly used as substantive evidence of guilt misses the mark, as the offenses were admitted under Fed. R. Evid. 404(b). The district court has the discretion to admit such evidence when the extrinsic offense is relevant to an issue other than the defendant's character and the evidence's probative value is not substantially outweighed by its undue prejudice. United States v. Moye, 951 F.2d 59, 61-62 (5th Cir. 1992) (citation omitted). The district court's decision to allow evidence of Petry's state drug offenses was appropriate in light of her argument at trial that she did not know the cocaine was in her car. Therefore, the judgment of the district court is AFFIRMED.