UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-7573
Summary Calendar

JAMES OLIVER SINGLETON,

Plaintiff-Appellant,

VERSUS

HARRY STILES, KENNETH RAMSEY and LARRY BULLARD,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-G-86-399)

April 19, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

DUHÉ, Circuit Judge:[1]

After a jury trial of this civil rights case, the court entered judgment for Defendants-Appellees in accordance with the verdict. Plaintiff James Oliver Singleton appeals on the grounds that a peremptory strike of a Hispanic venireman violated Batson[2] and that the court improperly denied leave to amend the complaint to add a defendant. We affirm.

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[1] 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

[2] Batson v. Kentucky, 476 U.S. 79 (1986).

I.

Plaintiff objected at trial to Defendants' peremptory challenge of the only Hispanic person on the jury venire. Batson and its progeny prohibit peremptory challenges of prospective jurors based solely on their race on equal protection grounds. Batson, 476 U.S. at 89; see also Edmonson v. Leesville Concrete Co., 111 S.Ct. 2077 (1991); Powers v. Ohio, 111 S.Ct. 1364 (1991). In the face of the Batson challenge, Defendants-Appellees' attorneys offered as race-neutral explanations for the peremptory strike the juror's demeanor, tentativeness, and employment as an engineer.[3]

"Unless a discriminatory intent is inherent in the counsel's explanation, the reason offered will be deemed race neutral." Hernandez v. New York, 111 S.Ct. 1859, 1866 (1991). Peremptory strikes based on demeanor are valid race-neutral explanations for a peremptory strike. E.g., Hernandez, 111 S.Ct. at 1867 (demeanor and responses). Plaintiff's objection relating to the venireman's forthright answer to the only question asked him does not recognize that observations of demeanor are beyond spoken words and therefore are not reflected in the written record.

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[3] Defense counsel responded that "it was kind of a mix of things: his demeanor and answer to certain -- to the mention of constitutional claims and police officers and that type of thing . . . ." (7 R.76). Upon request for more explanation on demeanor, counsel explained that the juror "was very tentative . . . when he was raising his hand. We weren't sure if he'd ever made his mind about anything." (7 R. 76-77). Additionally counsel asserted that in its "collective experience with engineers on the jury, they're kind of an unknown quantity." (7 R. 76).

Defendants articulated a second race-neutral explanation for striking the juror, namely, past experience of counsel with jurors of his employment background. Employment background is also an acceptable explanation for a peremptory strike. United States v. De La Rosa, 911 F.2d 985, 990-91 (5th Cir. 1990), cert. denied, 111 S.Ct. 2275 (1991); United States v. Moreno, 878 F.2d 817, 820-21 (5th Cir.), cert. denied, 493 U.S. 979 (1989). "'Valid reasons for exclusion may include "intuitive assumptions" upon confronting a venireman.'" Moreno, 878 F.2d at 821 (quoting United States v. Terrazas-Carrasco, 861 F.2d 93, 95 (5th Cir. 1988)). We afford great deference to the trial court's acceptance of these race-neutral explanations for the peremptory challenge. Hernandez, 111 S.Ct. at 1868-71, (reviewing for clear error); United States v. Lance, 853 F.2d 1177, 1181 (5th Cir. 1988) ("either a 'clearly erroneous' or 'great deference' standard"); Moreno, 878 F.2d at 821 (great deference).

Plaintiff argued that the fact that the juror was an engineer was a pretext because "other engineers on the panel . . . weren't struck for that reason." 7 R. 78. The record reflects that two other jurors who indicated engineering in their type of work were also peremptorily struck: Juror Dooley ("Design Eng. & Survey") by Plaintiff, and Juror Brunt ("Engineering Manager") by Defendants. Juror Crouch, a retired "Engr. Mgr.," was stricken for cause. See 1 R. 632-36. Plaintiff has not shown Defendants' reasons to be pretextual. We agree with the trial court that Plaintiff has not shown purposeful discrimination.

II.

Plaintiff also argues that we should abolish peremptory strikes on equal protection grounds. The Batson decision "enforces the mandate of equal protection" without abolishing peremptory strikes. Batson, 476 U.S. at 99; see also id. at 98 n.22. We will not deviate from Batson's established mechanism for analyzing a peremptory strike for equal protection violations.

III.

This case was originally filed pro se in 1981. Some ten years later, after counsel was appointed for Plaintiff, he moved to amend his pleading to add the City of Freeport, Texas, as a defendant under a theory of municipal liability. The court carefully considered the relation-back principles of Rule 15(c),[4] the applicable statute of limitations, Kirk v. Cronvich,[5] and the

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[4] The Rule provides in part,

> An amendment of a pleading relates back to the date of the original pleading when
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> . . .
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> (2) the claim . . . asserted in the amended pleading arose out of the conduct . . . or occurrence set forth or attempted to be set forth in the original pleading, or
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> (3) the amendment changes the party or the naming of the party against whom a claim is asserted if the foregoing provision (2) is satisfied and . . . the party to be brought in by amendment (A) has received such notice . . . that the party will not be prejudiced in maintaining a defense . . . and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Fed. R. Civ. P. 15(c).

[5] Kirk v. Cronvich, 629 F.2d 404 (5th Cir. 1980) (allowing amended complaint substituting sheriff individually and in official

allegations of the earlier pleadings. Giving due consideration to Plaintiff's pro se status and not holding Plaintiff to strict compliance with the rules of pleading, the court nevertheless concluded that the addition of a party "never intended" to be part of Plaintiff's complaint was beyond the requirements of Rule 15 and would disrespect the statute of limitations. 2 R. 447-444. No mistaken identity within the meaning of Rule 15(c)(3)(B) occurred. Plaintiff has shown no error in the court's conclusion.

IV.

Finding no Batson violation and no error in the denial of leave to amend, we affirm.

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capacity to relate back to date of original complaint which erroneously named parish and sheriff's office as defendants).