Washington and Lee Journal of Civil Rights and Social Justice

Volume 2 | Issue 1 Article 14

Spring 4-1-1996

CHANDLER v. COMMONWEALTH 455 S.E.2d 219 (Va. 1995) Virginia Supreme Court

CHANDLER v. COMMONWEALTH
455 S.E.2d 219 (Va. 1995)
Virginia Supreme Court

FACTS

Lance Antonio Chandler was tried in the Circuit Court of Halifax County on charges of capital murder, use of a firearm in commission of a murder, robbery, conspiracy to commit robbery, and use of a firearm in the commission of a robbery. In selecting a jury, the state and the defendant were each given five peremptory strikes. From a venire of sixteen whites and eight blacks, the defendant struck five whites, and the state struck three blacks and two whites. At the close of this proceeding, the defendant made a motion under *Batson v. Kentucky*,[1] claiming the prosecution used its peremptory strikes disproportionately. The prosecution gave various race-neutral reasons for striking the blacks challenged. The trial judge overruled Chandler's motion.

After trial, the jury found the defendant guilty on all charges. Based on the "future dangerousness" predicate,[2] the jury at penalty stage of the bifurcated trial recommended death as punishment for the capital murder. The judge imposed the sentence recommended by the jury.

Chandler was entitled to automatic review of the capital murder conviction by the Virginia Supreme Court.[3] On appeal, Chandler claimed inter alia that the trial court had erred in denying Chandler's *Batson* motion to disallow the prosecution's striking of three black potential jurors. He claimed that the number of black venire persons struck had been disproportionate to the number of blacks represented on the venire. Chandler claimed that the reasons given by the prosecution for its use of the peremptory strikes were insufficient to meet the burden imposed by *Batson*.

HOLDING

The Virginia Supreme Court found no reversible error among the several issues raised by Chandler and refused to commute the sentence of death.[4] With regard to the *Batson* issue, the Virginia Supreme Court gave the trial court "substantial deference."[5] The trial court had determined that the Commonwealth's use of its peremptory strikes was not racially motivated and therefore not unconstitutional. This determination was not "clearly erroneous"[6] and therefore not reversible on appeal. Going a step beyond previous holdings, the Virginia Supreme Court's review included an examination of the record to determine the validity of the prosecution's race-neutral reasons.

ANALYSIS/APPLICATION

Batson established a three-prong test for courts to apply in evaluating claims of racial discrimination in the use of peremptory challenges. The first prong of the test places the initial burden on the defendant to establish a *prima facie* case by showing: (1) that the defendant is a member of a cognizable racial group; (2) that the prosecutor used preemptory challenges to remove venire persons of the defendant's race; and (3) that the relevant evidence raised an inference of racial discrimination by the prosecutor.[7] Once the *prima facie* case is shown, the burden shifts to the prosecutor to present race-neutral reasons related to the case being tried.[8] After the prosecution has provided race-neutral reasons for its use of the peremptory strikes, the defendant may challenge those reasons as pretextual.[9] Ultimately, the trial court must determine if the defendant has established purposeful discrimination.[10]

I. THE *PRIMA FACIE* CASE

It is not difficult for a defendant to establish a *prima facie* case of racial discrimination in the prosecution's use of its peremptory challenges. Courts require a defendant to make a relatively low showing of proof to establish the *prima facie* case. Chandler was able to meet this initial burden simply by pointing out that the prosecution used its peremptory strikes disproportionately to the number of blacks on the venire. Generally, the disproportionate use of peremptory strikes is enough to establish a *prima facie* case for *Batson* purposes.[11]

---

[1] 476 U.S. 79 (1986).

[2] Va. Code Ann. § 19-264.2 (Michie 1995).

[3] *Id.*, §§ 17-110.1(A), (F).

[4] *Chandler v. Commonwealth*, 455 S.E.2d 219, 228 (Va. 1995).

[5] *Id.* at 224.

[6] *Id.*

[7] *Batson v. Kentucky*, 476 U.S. 79, 96 (1986). *But see Powers v. Ohio*, 499 U.S. 400, 409-10 (1991) (holding that all criminal defendants, regardless of race, can object to racially-motivated use of peremptory strikes.).

[8] *Batson*, 476 U.S. at 97-98.

[9] *Buck v. Commonwealth*, 443 S.E.2d 414, 415 (Va. 1994).

[10] *Batson*, 476 U.S. at 98.

[11] *See Buck*, 443 S.E.2d at 415 (accepting use of three peremptory strikes to strike two African-Americans as prima fa-

The reviewing court will assume that the *prima facie* case has been established once the inquiry progresses beyond the defendant's initial showing.[12] If the prosecution addresses the challenge with explanations and the trial court makes a final determination on the issue, the reviewing court will consider the establishment of a *prima facie* case to be moot.[13]Thus Chandler could appeal the *Batson* issue without having to make a *prima facie* case anew to the Virginia Supreme Court, even though the trial court in Chandler never actually ruled on whether Chandler had made the required *prima facie* showing. Because the prosecution responded to Chandler's assertions with explanations of its peremptory strikes and the trial court held that there was no purposeful discrimination, Chandler could appeal the trial court's ruling as though the trial court had in fact ruled that a *prima facie* case had been established.

II. THE STATE'S BURDEN

Once the defendant establishes the *prima facie* case, the challenged party has the burden of providing race-neutral explanations for the questioned strikes.[14] A race-neutral explanation in the context of this analysis "means an explanation based on something other than the race of the juror."[16] The discriminatory purpose must be inherent on the face of the explanation in order for the court to find a constitutional violation.[16]

The state can meet its burden with relative ease.[17] Prosecutors can successfully assert irrelevant and inaccurate explanations for striking venire persons.[18] Prosecutors can strike potential jurors because of their appearance,[19] living address,[20] employment,[21] family,[22] age,[23] demeanor,[24] or merely the prosecution's intuitive assumptions.[25]

In *Chandler*, the prosecution's explanations for the striking of three black potential jurors fell within the usual realm of race-neutral reasoning. The prosecution struck two of the potential jurors because of their stance on the death penalty.[26] One struck black juror stated that she did not believe in the death penalty. The second struck black juror indicated that it might be difficult for him to impose the death penalty. The prosecution said it sought to remove a third black juror because he was, in the prosecution's opinion, "remarkably noncommunicative."[27]

III. THE COURT'S DETERMINATION

After the prosecution has offered its explanations, the trial court must determine whether the defendant has established purposeful discrimination.[28] Generally, this requires examining the explanations to determine whether they are facially discriminatory.[29] The defendant can challenge the prosecution's reasons as merely pretextual.[30] Intent or purposeful discrimination is required to show a violation of the Equal Protection Clause under *Batson*.[31]

In *Chandler*, the defendant failed to make any pretextual arguments to the trial court. Chandler only argued that the prosecution's use of the peremptory strikes was disproportionate.[32] The trial court therefore had no obligation to assess the genuineness of the prosecution's motives.[33] The trial court in *Chandler* sim-

---

cie evidence of racial discrimination); *Moore v. Keller Indus.*, 948 F.2d 199 (5th Cir. 1991) (accepting as prima facie evidence of racial discrimination use of three peremptory challenges to strike two African-Americans).

[12] *James v. Commonwealth*, 442 S.E.2d 396, 398 (Va. 1994).

[13] *Hernandez v. New York*, 111 S. Ct. 1859, 1866 (1991).

[14] *Batson*, 476 U.S. at 96-97.

[15] *Hernandez*, 111 S. Ct. at 1866.

[16] *Id.*

[17] *See* Jere W. Morehead, *When a Peremptory Challenge is No Longer Peremptory: Batson's Unfortunate Failure to Eradicate Invidious Discrimination form Jury Selection*, 43 DEPAUL L. REV. 625, 634 (1994) (suggesting that prosecutors may exclude potential jurors based on race so long as they can articulate race-neutral reason).

[18] *See* Ruth E. Friedman and Bryan A. Stevenson, *Deliberate Indifference: Judicial Tolerance of Racial Bias in Criminal Justice*, 51 WASH. & LEE L. REV. 509, 522-24 (1994) (illustrating that courts accept inaccurate and irrelevant race-neutral reasons).

[19] *See Buck v. Commonwealth*, 443 S.E.2d 414, 415 (Va. 1994) (concluding that striking potential juror because of "college athletic jacket" was race-neutral and "legitimate reason[ ] of trial tactics").

[20] *Id.*

[21] *See James v. Commonwealth*, 442 S.E.2d 396, 398 (Va. 1994) (upholding prosecution's use of peremptory strike to remove nursing assistant as race-neutral because such employment "reinforced the perception" of sympathy).

[22] *Chandler v. Commonwealth*, 455 S.E.2d 219, 224 (Va. 1995) (citing *James*, 442 S.E.2d at 398); *See Buck*, 443 S.E.2d at 415 (concluding that striking of potential juror because she "did not have children, while most of the other potential jurors did" was legitimate and race-neutral).

[23] *Moore v. Keller Indus.*, 948 F.2d 199, 202 (5th Cir. 1991); *Buck*, 443 S.E.2d at 415.

[24] *Moore*, 948 F.2d at 202; *Chandler*, 455 S.E.2d at 224.

[25] *See Moore*, 948 S.E.2d at 202 (allowing trial counsel "to rely upon initiative assumptions").

[26] *Chandler*, 455 S.E.2d at 223.

[27] *See id.* (noting that juror's responses included, "No," "Yes sir," "No, I don't," and "I'm comfortable with the prosecution.")

[28] *Batson v. Kentucky*, 476 U.S. 79, 98 (1986).

[29] *Hernandez v. New York*, 111 S. Ct. 1859, 1866 (1991).

[30] *Buck v. Commonwealth*, 443 S.E.2d 414, 415 (Va. 1994) (citing *United States v. Joe*, 928 F.2d 99, 103 (4th Cir. 1991).

[31] *Hernandez*, 111 S. Ct. at 1866.

[32] *Chandler v. Commonwealth*, 455 S.E.2d 219, 224 (Va. 1995).

[33] *See Broady v. Commonwealth*, 429 S.E.2d 468, 470-71 (Va. Ct. App. 1993) (holding that trial court must examine

ply found that the explanations were race-neutral and overruled the motion of the defendant.

IV. THE ISSUE ON APPEAL

The reviewing court will accord great deference to the trial court's finding of no purposeful discrimination.[34] In determining discriminatory intent the "best evidence will often be the demeanor of the attorney who exercises the challenge,"[35] and it is the trial judge who is in the best position to evaluate the state of mind of the prosecutor.[36] Therefore the reviewing court will reverse the trial court's findings only if they are clearly erroneous.[37]

In *Buck v. Commonwealth*,[38] the Supreme Court of Virginia considered whether the trial court's findings could be reversed based upon pretext arguments made by the defendant on appeal.[39] The defendant in that case had failed to explain to the trial court his reason for believing that the prosecutions asserted explanations were pretextual. [40] The *Buck* court held that when the defendant fails to raise pretextual arguments at trial, she is precluded from advancing them on appeal.[41] Because the defendant had conceded that the prosecution's explanations were race-neutral, the *Buck* court was left with nothing to consider on the *Batson* issue. Even if the defendant had not conceded that issue, the reviewing court's duty still would not have involved an examination of the prosecution's motives.

After the prosecution offered its race-neutral explanations for its use of the peremptory strikes, Chandler failed to make any assertions that the reasons were pretextual. Chandler also failed to raise a pretextual argument on appeal, arguing only that the prosecution should be required to give a more developed explanation.[42] Under these circumstances, *Buck* precludes the reviewing court from examining the prosecution's proffered reasons and limits the court's review to the race-neutrality of the explanations.[43]

In *Chandler*, however, the Supreme Court of Virginia did examine the prosecution's stated race-neutral explanations for evidence of pretext.[44] Considering Chandler's only contention, that the prosecution was required to offer more than a race-neutral reason, the court was not required to consider anything more than the facial validity of the prosecution's explanations. Instead, the court examined the explanations underlying bases. The court looked to see if the reasons given by the prosecution were supported by the record.[45] With regard to prospective juror Williams, the court examined all of his answers to the defenses attorney's questions and found them to support the state's contention that he was "remarkably noncommunicative."[46] The *Buck* court would not have gone that far.

CONCLUSION

In *Chandler* the Virginia Supreme Court examined the record of the *voir dire* in order to ascertain whether the defendant had proven purposeful discrimination. In doing so, the court may have opened a small opportunity through which attorneys who fail to maintain pretext arguments at trial may still have the arguments heard on appeal. It is still the duty of the party asserting purposeful discrimination to alert the court to reasons why the given explanations are pretextual. However, it is not clear that the pretext argument will be lost if it is not asserted at trial. Until it becomes clearer whether the strict procedural requirements of *Buck* are loosening, raising the pretextual issues at trial is the only way to ensure that they will be considered on appeal. The Virginia Supreme Court's willingness to examine the pretext issue is consistent with the constitutional requirement of heightened due process in capital cases.[47]

Summary and Analysis Prepared by:
Dennis Crovella

---

motives of prosecutor after defendant has pointed out unequal treatment of similarly situated blacks and whites).

[34] *Moore v. Keller Indus.*, 948 F.2d 199, 202 (5th Cir. 1991).

[35] *Hernandez v. New York*, 111 S. Ct. 1859, 1869 (1991).

[36] *Id.*

[37] *Chandler*, 455 S.E.2d at 223.

[38] 443 S.E.2d 414 (Va. 1994).

[39] *Buck v. Commonwealth*, 443 S.E.2d 414, 415 (Va. 1994).

[40] *Id.* at 416.

[41] *Id.*

[42] Appellant's Brief at p.21-22, *Chandler v. Commonwealth;* 455 S.E.2d. 219 (Va. 1995) (No. 940975).

[43] *Buck*, 443 S.E.2d at 416.

[44] *Chandler v. Commonwealth*, 455 S.E.2d 219, 223-24 (Va. 1995).

[45] *Id.* at 223.

[46] *Id.* at 224.

[47] *See generally Furman v. Georgia*, 408 U.S. 238 (1972) (discussing the constitutional requirement of heightened due process in capital cases).