Affirmed and Opinion filed October 11, 2001.

In The

Fourteenth Court of Appeals

NO. 14-00-00963-CR
NO. 14-00-00964-CR
NO. 14-00-00965-CR
NO. 14-00-00966-CR

HAROLD LEE BYARS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 9th District Court
Waller County, Texas
Trial Court Cause Nos. 00-02-10,155; 00-02-10,162; 00-02-10,161; & 00-02-10,163

O P I N I O N

Appellant, Harold Lee Byars, was convicted of two counts of sexual assault and two counts of indecency with a child and sentenced to thirty years' confinement in the Texas Department of Criminal Justice for each offense, to be served consecutively. In two points of error, appellant argues (1) the trial court erred in overruling his objection to the State's use of peremptory challenges, and (2) the evidence is factually insufficient to support the jury's verdict. We affirm.

In his first point of error, appellant claims the trial court erred in overruling his *Batson* challenge to the State's use of its peremptory challenges. *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 (1986). Appellant, who is African-American, alleges that the prosecution struck five prospective African-American jurors in violation of the Equal Protection Clause. *Id.*, 476 U.S. at 89, 106 S. Ct. at 1719. In reviewing a *Batson* claim, we determine whether the trial court's findings were clearly erroneous by examining the evidence in the light most favorable to the trial court's ruling. *Pondexter v. State*, 942 S.W.2d 577, 581 (Tex. Crim. App. 1996). In so doing, we accord great deference to the trial judge who was present to assess the credibility of the prosecutor and his explanations. *Cantu v. State*, 842 S.W.2d 667, 689 (Tex. Crim. App. 1992).

During the *Batson* hearing, the State proffered facially race-neutral reasons for each of the five challenged strikes. So long as no discriminatory intent is inherent in the explanation given, a reason is deemed race-neutral even if the explanation is fantastic or implausible. *Williams v. State*, 937 S.W.2d 479, 485 (Tex. Crim. App. 1996). In response, appellant attacked only one of those reasons – knowledge of appellant's attorney – by arguing that several non-African-Americans who also indicated they knew appellant's attorney were not struck. First, appellant failed to meet his burden of demonstrating the other race-neutral reasons articulated by the State were merely a pretext for discrimination. Furthermore, the State demonstrated that of the prospective jurors on the reachable panel who indicated they knew appellant's attorney, all but one were struck by the prosecution, including three who were not African-American. The State explained it did not strike the one remaining venire member who knew appellant's attorney because her position on the panel made it unlikely she would be reached, so the State used its last peremptory challenge on another panel member.

Appellant failed to carry his burden of showing intentional discrimination by the State's use of peremptory challenges. Point of error one is overruled.

In his second point of error, appellant contends the evidence is factually insufficient to support the jury's verdict. The standard by which we conduct a factual sufficiency review is to review all the evidence in a neutral light to determine whether the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000). We may set aside the jury's verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* at 7. Although we review the fact finder's weighing of the evidence, and we are authorized to disagree with the fact finder's determination, our evaluation should not substantially intrude upon the fact finder's role as the sole judge of the weight and credibility given to witness testimony. *Id.* In particular, we must defer to the jury's determination concerning what weight to give contradictory testimonial evidence, because resolution often turns on an evaluation of credibility and demeanor, an evaluation better suited for jurors who were in attendance when the testimony was delivered. *Id.* at 8.

Appellant argues that certain inconsistencies between the complainants' testimony, along with the absence of medical evidence linking appellant to the crimes, constitute "unimpeached evidence" of an alternative hypothesis that someone other than appellant was the assailant. We disagree. Both complainants positively identified appellant and testified that he had sexual intercourse with each of them numerous times, while both were younger than seventeen years of age. One of the complainants also testified that appellant touched her "on the inside part," while the other testified that appellant touched her breasts with his mouth. The record contains no evidence even remotely suggesting that someone other than appellant committed the offenses. We cannot say the jury's verdict is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appellant's second point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed October 11, 2001.

Panel consists of Justices Yates, Edelman, and Wittig.[1]

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[1] Senior Justice Don Wittig sitting by assignment.