

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21392
O/kmg

_____AD3d_____

Submitted - November 10, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
FRED T. SANTUCCI
RUTH C. BALKIN, JJ.

2007-01525

DECISION & ORDER

The People, etc., respondent,
v Carlos Reid, appellant.

(Ind. No. 864-06)

John F. McGlynn, Rockville Centre, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Peter A. Weinstein and Jason R. Richards of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Ayres, J.), rendered January 22, 2007, convicting him of criminal possession of marijuana in the second degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

During jury selection, the defendant raised *Batson* challenges with respect to the prosecutor's use of peremptory challenges to strike three black prospective jurors (*see Batson v Kentucky*, 476 US 79). A *Batson* challenge involves a three-step analysis. First, the defendant is required to establish a prima facie case of discrimination (*see Hernandez v New York*, 500 US 352, 358-359; *People v Luciano*, 10 NY3d 499; *People v Allen*, 86 NY2d 101, 109). If that burden is met, the prosecutor must set forth a neutral reason for the challenged strike (*see People v Allen*, 86 NY2d at 109). "When defendant challenges as pretextual the People's explanation as to a particular juror, the inquiry has become factual in nature and moves to step three" (*People v Allen*, 86 NY2d at 110; *see People v James*, 99 NY2d 264, 271). In step three, the trial court resolves the factual dispute of whether the prosecutor intended to discriminate (*see People v James*, 99 NY2d 264, 271; *People v Allen*, 86 NY2d at 110). If the court concludes that a proffered reason is pretextual, a

December 9, 2008

PEOPLE v REID, CARLOS

Page 1.

defendant has met his or her burden of proving intentional discrimination (*see People v Allen*, 86 NY2d at 110).

The court properly denied the defendant's first *Batson* challenge because the defendant failed to meet his burden of demonstrating a prima facie case of discrimination (*see People v Booker*, 49 AD3d 658, 659; *People v Severino*, 44 AD3d 1077, 1078; *People v Lassiter*, 44 AD3d 877, 877-878; *People v London*, 38 AD3d 570, 571). The defendant's claim that the court should have revisited that first *Batson* challenge when confronted with the subsequent *Batson* challenges is unpreserved for appellate review (*see People v Booker*, 49 AD3d at 659; *People v Thompson*, 34 AD3d 852, 853) and, in any event, without merit.

The court properly denied the defendant's second *Batson* challenge because, after the prosecutor provided a neutral reason for the strike, the defendant failed to meet his burden of establishing, under the third prong of *Batson*, that the reason was pretextual (*see People v Booker*, 49 AD3d at 659; *People v Thompson*, 45 AD3d 876, 877; *People v Thompson*, 34 AD3d at 853). The defendant's contention that the court deprived him of an opportunity to respond to the prosecutor's explanation is without merit.

The court properly denied the defendant's third *Batson* challenge. When the prosecutor proffered a neutral reason for the strike, the defendant failed to show that the reason was pretextual (*see People v Booker*, 49 AD3d at 696; *People v Thompson*, 45 AD3d at 877; *People v Thompson*, 34 AD3d at 853). Contrary to the defendant's contention, the court did not meld steps two and three of the *Batson* inquiry.

SKELOS, J.P., LIFSON, SANTUCCI and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court