

Summary of SC93333, *State of Missouri v. Stanley Carter*

Appeal from the St. Louis circuit court, Judge Dennis Schaumann

Argued and submitted October 7, 2013; opinion issued December 10, 2013

Attorneys: Carter was represented by Jessica Hathaway of the public defender's office in St. Louis, (314) 340-7662; and the state was represented by Shaun Mackelprang and Mary H. Moore of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man appeals his convictions for assault and armed criminal action, arguing the state removed certain potential jurors for race-based reasons. In a decision written by Chief Justice Mary R. Russell and joined by three other judges, the Supreme Court of Missouri affirms the convictions. The man has not met his burden of showing the state's reasons for removing potential jurors who expressed familiarity with the area in which the crime was committed was pretextual or motivated by race. Further, comments the prosecutor made during closing rebuttal argument were not improper, and no manifest injustice or miscarriage of justice occurred.

Judge George W. Draper III concurs in a separate opinion joined by two other judges. He agrees the record was insufficient for the trial court to sustain the man's challenge to removing the jurors but writes separately to note that there would have been sufficient grounds had the man argued to the trial court that the area is known as an almost exclusively black neighborhood.

Facts: Stanley Carter was charged with first-degree assault and armed criminal action in connection with shooting the manager of a car wash. The jury pool included 15 individuals who were black. Because the car wash was in an area known for violence, Carter's counsel asked potential jurors whether they were familiar with the area and whether anything about it would cause them to be biased. Six potential jurors – all of whom were black – said they were familiar with the area. Of these, the state struck one for cause for sleeping during jury selection, used peremptory (discretionary) challenges to strike two potential jurors who said they would require the state to produce more than one witness and used additional peremptory strikes to remove the remaining three solely because they were familiar with the area. Carter challenged the peremptory strikes, arguing there was no race-neutral reason for them. The state then responded with race-neutral reasons. The trial court determined the state's reasons were not pretextual or racially motivated and allowed the strikes to stand. This left one juror who was black. Carter was convicted as charged. He appeals.

AFFIRMED.

Court en banc holds: (1) Carter failed to meet his burden in demonstrating that the state's strikes violated his rights to equal protection and a fair trial. The United States Supreme Court held in *Batson v. Kentucky* that the equal protection clause of the federal constitution prohibits parties from using peremptory challenges to strike potential jurors on the basis of race. Because a trial court's ruling concerning a *Batson* challenge is based largely on an analysis of the

prosecutor's credibility and demeanor, a reviewing court will overturn such a decision only if the trial court's decision is clearly erroneous and the reviewing court is left with a definite and firm conviction that the trial court made a mistake. This Court has no such conviction in this case. Carter acknowledges that familiarity with the area near the crime is a race-neutral explanation but argues for the first time on appeal that every potential juror who expressed familiarity with the area was black. Anyone, however – regardless of race – can be familiar with a particular area of the city. Such familiarity, therefore, does not convert a racially neutral explanation into a per se violation of equal protection.

(2) It was not plain error for the trial court not to interfere in the prosecutor's closing rebuttal argument, which was not improper. At trial, Carter did not object to the comments he now argues should have caused the trial court, on its own motion, to admonish the prosecutor or declare a mistrial. Prosecutors have considerable leeway to make retaliatory arguments at closing and may rebut any issue raised by the defense. Here, the rebuttal was not improper because it responded to arguments made by Carter's counsel. No manifest injustice or miscarriage of justice occurred.

Concurring opinion by Judge Draper: The author agrees there was an insufficient record from which the trial court here could have sustained Carter's *Batson* challenge for pretext. Once the state offered race-neutral reasons for striking the potential jurors based on their familiarity with the area where the crime occurred, it was incumbent on Carter to demonstrate the reasons were pretext for discrimination. He failed to do so, stating merely that "the record speaks." Although the area in question is known as an almost exclusively black neighborhood, Carter did not articulate that argument to the trial court and may not challenge the state's explanation on appeal.