IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

RONNIE BURNETT JONES,	)	
	)	**NOT FOR PUBLICATION**
Appellant,	)	
vs.	)	**No. F-2015-16**
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

OPINION

SMITH, PRESIDING JUDGE:

Appellant, Ronnie Burnett Jones, was convicted by a jury in Tulsa County District Court, Case No. CF-2012-4245, of one count of First Degree Murder (21 O.S.2011, § 701.7), and two counts of Shooting with Intent to Kill, After Conviction of Two or More Felonies (21 O.S.2011, § 652(A)). On December 1, 2014, the Honorable William C. Kellough, District Judge, sentenced him in accordance with the jury's recommendation to life imprisonment without parole on the murder count, and to life imprisonment on the remaining counts. The sentences were ordered to be served consecutively.[1] This appeal followed.

In the early morning hours of September 10, 2012, Appellant, with the help of co-defendant Everett Wilson, went on a shooting spree at an apartment complex in south Tulsa, killing Shametra Fields and wounding Everett Adkins and Makala White. Using a .45 caliber handgun, Appellant shot Adkins at close range in the chest inside Adkins's apartment. Outside Adkins's apartment, Appellant shot White twice – once in the head, and also at close range in the chest. Fields, who

[1] Besides his ineligibility for parole on the murder sentence, Appellant is also required to serve at least 85% of his other two sentences before being eligible for parole. 21 O.S. § 13.1(5).

lived nearby, just happened to be walking by the scene; Appellant shot her at close range three times, once in the back of the head.

At trial, Appellant was identified as the gunman by the surviving victims, Adkins and White; by another witness at the scene who was not injured, David Wilson; and by co-defendant Everett Wilson (David Wilson's brother).[2] Yet another witness, who lived in the neighborhood, testified that he saw a car matching the general description of Appellant's vehicle speed away from the scene after the shootings. Appellant testified on his own behalf. He denied any involvement in the shooting, and denied even being at Adkins's apartment on the day in question. He could not explain why four eyewitnesses who were personally acquainted with him would falsely implicate him in such a serious crime. On appeal, however, Appellant does not challenge the sufficiency of the evidence to support his convictions.

In Proposition 1, Appellant claims that the trial court erred in allowing the prosecutor, during *voir dire*, to use a peremptory strike to remove an African-American panelist without a convincing race-neutral reason, in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). In *Batson*, the United States Supreme Court held that the use of peremptory challenges to exclude panelists from the jury based solely on their race violates the Equal Protection Clause of the United States Constitution. *Batson* establishes a three-part inquiry. First, the defendant must make a *prima facie* showing that the prosecutor has

[2] Everett Wilson testified for the State at Appellant's trial, in hopes of obtaining leniency in his own outcome. The motive for the assault was not entirely clear, but from the testimony at trial it appears that Appellant was angry over disparaging comments that Adkins had made about him. Makala White was related to Adkins. By all accounts, Shametra Fields just happened to be walking in the vicinity when Appellant began shooting.

exercised a peremptory challenge based on race. Once he does so, the burden shifts to the prosecutor to articulate a reasonably specific, race-neutral explanation for striking the panelist that is related to the case at hand. That explanation will be deemed racially neutral unless discriminatory intent is inherent in the answer. Once a facially race-neutral explanation is given, the burden shifts back to the opponent of the strike to prove discriminatory intent. *Batson*, 476 U.S. at 96–98, 106 S.Ct. at 1723–24; *Purkett v. Elem*, 514 U.S. 765, 767–69, 115 S.Ct. 1769, 1771, 131 L.Ed.2d 834 (1995); *Grant v. State*, 2009 OK CR 11, ¶ 26, 205 P.3d 1, 14. We review a trial court's *Batson* rulings for an abuse of discretion, since the trial court has the unique benefit of being able to personally assess the demeanor of the prosecutor making the challenge. *Grant, id.* The trial court is also in the best position to consider the demeanor of the panelist in question and the tenor of her responses, insofar as those factors may bear on the prosecutor's explanation for the strike. *Snyder v. Louisiana*, 552 U.S. 472, 477, 128 S.Ct. 1203, 1207–08, 170 L.Ed.2d 175 (2008).

The record shows there were three African-Americans on the jury panel, whom we will refer to as Panelists 1, 2, and 3. Panelist 1 was excused for cause. Neither party objected, although the prosecutor commented at the time that he had no intention of using a peremptory strike against Panelist 1, saying, "[H]e was a good juror for me." The defense used its first of nine peremptory strikes to remove Panelist 2. The prosecutor used his eighth of nine peremptory challenges to remove Panelist 3.

We now consider the information Panelist 3 offered before she was removed. When asked if she had any friends or family who had been convicted of crimes, Panelist 3 said that (1) her brother was in federal prison for firearms charges, (2) her son's father was in federal prison for firearms charges, and (3) her father had been in prison throughout her childhood years. Defense counsel later asked panelists, "When you walked in that door, how many looked over here and said, 'Oh, I wonder what he did?'" Panelist 3 replied, "I just seen a young black man and said, 'Hey, I hope this isn't too bad.'" Later, when defense counsel asked her if she could convict someone based only on eyewitness testimony, particularly a single eyewitness, she replied, "Oh, no."

The trial court asked the prosecutor to provide a race-neutral explanation for the strike. The prosecutor replied:

> [Panelist 3] stated quite emphatically, she didn't know if she could convict based on eyewitness testimony. That was elicited from defense counsel. Another thing that was elicited from defense counsel that I'm not sure how to take, but it gave me pause, was "When you saw the defendant, what did you think?" She said, quote, "I saw a young black man. I hope this isn't too bad." I don't know what that means, but it gives me cause for concern, potentially. I suppose you could take that either way, but she's immediately thinking of race and the trial. This isn't about race. I don't want her to be thinking that way. Lastly, in terms of the Court's questioning, ... her son's father is currently in prison on a gun charge. [H]er natural father is currently in prison, she didn't even know why, which I thought was real strange... .

The trial court accepted the prosecutor's explanation. The prosecutor then told the court he was amenable to having Panelist 1 (who had been removed for cause) recalled. Defense counsel accepted the offer, and Panelist 1 was reinstated to panel and ultimately served on Appellant's jury.

Appellant cites *United States v. Brown*, 817 F.2d 674 (10th Cir. 1987) to support his argument. In *Brown*, the defendant and his counsel were both African-American. In explaining the peremptory strike of an African-American panelist, the prosecutor said that because defense counsel was well-known in the African-American community, he feared African-American jurors would be inclined to acquit the defendant based only on defense counsel's involvement. The trial court accepted this reason, but the appellate court did not. The Tenth Circuit observed that even after *Batson*, the prosecutor's concern would have been a "justifiable reason" for a peremptory strike, *if* it had been "supported by fact and not surmise. ... [S]uch a linkage cannot be assumed just because of racial identity." *Brown*, 817 F.2d at 676.

Appellant claims the prosecutor's explanation for striking Panelist 3 was "explicitly based on race," and that like the prosecutor in *Brown*, he merely *presumed* an affinity between Appellant and Panelist 3 based solely on their common race. We do not agree. The prosecutor gave several reasons for striking Panelist 3, and all but one had no racial component whatsoever. The remaining reason was not "race-based" in the *Batson* sense.

The prosecutor did not strike Panelist 3 because of her own race *per se*, but because of her own comments touching upon race and how they might affect her consideration of Appellant's guilt. Panelist 3 told defense counsel that when she saw that Appellant was "a young black man," she thought to herself, "I hope this isn't too bad." As the prosecutor observed, the meaning of this statement is not clear. Was Panelist 3 suggesting that she was more inclined to assume Appellant

was guilty, because of his race? Or was she assuming that Appellant's race increased the chance that he was falsely accused? In the final analysis, it does not matter whether Panelist 3 was biased in either direction. What matters is that Panelist 3's comment indicated that race might play a role in her evaluation of *this particular case*. *Batson*'s purpose is to stop the systematic exclusion of potential jurors based solely on their race. *Batson* does not condone the empanelment of any juror, regardless of race, who has her own race-based concerns that may interfere with the trial. *See Georgia v. McCollum*, 505 U.S. 42, 59, 112 S.Ct. 2348, 2359, 120 L.Ed.2d 33 (1992) ("[T]here is a distinction between exercising a peremptory challenge to discriminate invidiously against jurors on account of race[,] and exercising a peremptory challenge to remove an individual juror who harbors racial prejudice").

"[T]he Equal Protection Clause forbids the prosecutor to challenge potential jurors *solely on account of their race* or on the *assumption* that black jurors *as a group* will be unable impartially to consider the [prosecution's] case against a black defendant." *Batson*, 476 U.S. at 89, 106 S.Ct. at 1719 (emphasis added). *Batson* does not forbid challenges of potential jurors for legitimate reasons that are only "tangentially connected" with their race. *Brown*, 817 F.2d at 676. The prosecutor's assumption in *Brown* – about black jurors in general – was not supported by anything the panelists themselves said or did. The appellate court could only presume that the prosecutor struck those panelists because he "simply presumed from his previous experience *all* black people would be influenced to acquit the defendant because of the mere presence of [defense counsel]." 817 F.2d at 676

(emphasis added). Here, however, the only "race-based" component of the strike against Panelist 3 comes not from any general assumption by the prosecutor, but from the panelist's own comment, and nothing more. The trial court did not abuse its discretion in finding no discriminatory intent under these circumstances.[3] *Grant*, 2009 OK CR 11, ¶ 26, 205 P.3d at 14. Proposition 1 is denied.

The next four propositions of error relate to evidence that Everett Adkins was encouraged to change his testimony. Adkins testified that during the pendency of this prosecution, he received a letter from an unknown source asking him to claim that he had been mistaken, and that in fact, Appellant was not the shooter.[4] Adkins also testified that he had received phone calls from Appellant, apologizing for what happened and asking if Adkins planned to testify. (Adkins also received calls from someone calling himself "Dominque," at first threatening Adkins if he cooperated with the authorities, and later offering him money not to testify.) On cross-examination, defense counsel attempted to impeach Adkins's credibility in several ways, including a general suggestion that his claims of intimidation were fabricated. Later in the trial, the prosecutor had a police detective identify the letter that Adkins had given him, and offered it into evidence. At first, defense counsel had no objection. The prosecutor made it clear he was not offering the letter necessarily to suggest that Appellant himself wrote or dictated it, but only to

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[3] The prosecutor's lack of discriminatory intent is also supported by the fact that he had no objection to recalling Panelist 1 to serve on this jury. *Miller-El v. Dretke*, 545 U.S. 231, 240, 125 S.Ct. 2317, 2325, 162 L.Ed.2d 196 (2005) (all attendant circumstances are relevant to whether a peremptory strike was racially motivated).

[4] The "letter" actually consists of two documents received together: (1) a handwritten letter, worded as if it was written by Appellant, and (2) a typewritten statement of what the letter's author suggests that Adkins tell Appellant's attorney.

rehabilitate Adkins's credibility and show that he had, in fact, been intimidated. Defense counsel changed his mind and did lodge an objection to the letter, but only on the grounds that it was not properly authenticated. The trial court admitted the letter, but instructed the jury on its limited relevance at that time.[5]

As the trial continued, however, the State received information that a woman in the gallery had told another spectator that she had written the letter. The woman, Britnae Ragsdale, was served with a subpoena in open court and summoned to the witness stand to testify about any knowledge she had concerning the letter. Ragsdale testified that she was friends with Appellant and had been visiting him in jail pending his trial. Although her testimony was rather evasive, Ragsdale denied writing the letter and denied telling anyone otherwise. She did, however, indicate that Appellant was aware of the letter and that they had spoken about it before trial.[6]

In Proposition 2, Appellant claims the letter was irrelevant (and therefore improperly admitted) because defense counsel never insinuated that Adkins was lying about receiving it; he claims counsel only attacked Adkins's veracity concerning the telephonic threats. In Proposition 3, Appellant claims that even if the letter was relevant, it was not properly authenticated. We review a trial court's decision to admit evidence for an abuse of discretion. *Pavatt v. State*, 2007 OK CR 19, ¶ 42, 159 P.3d 272, 286. The only objection defense counsel made to the letter

[5] "As you read [these documents], though, I'm going to instruct you to understand that there is no evidence that the defendant or anybody he instructed to perform any act is the author of either of those letters. You're receiving them solely on the basis of the question of the credibility of Mr. Adkins."

[6] The prosecutor was prepared to call the spectator who heard Ragsdale admit to writing the letter. Defense counsel objected, and the trial court disallowed that testimony.

was for lack of authentication. Therefore, we review the relevance challenge only for plain error. To obtain relief under this standard, Appellant must show an actual deviation from a legal rule which is plain and obvious, and which affected his substantial rights, *i.e.*, the outcome of the proceeding. *Hogan v. State*, 2006 OK CR 19, ¶ 38, 139 P.3d 907, 923.

Authentication of physical evidence is a preliminary question for the trial court to consider. *See* 12 O.S.2011, §§ 2105(B), 2901(A). Authentication is related to relevance; the need for, and degree of, authentication depends on what the evidence is being offered to prove, as this case well illustrates. A piece of evidence may be authenticated by testimony that it is "what it is claimed to be." 12 O.S.2011, § 2901(B)(1). When it comes to writings, proof of authorship is not always a prerequisite to admissibility, for the simple reason that a written document may be relevant regardless of who wrote it. Whether Appellant actually wrote or dictated the letter sent to Adkins was a collateral matter; Appellant was not on trial for intimidating a witness or subornation of perjury. The point was merely that Adkins reasonably took the letter as an act of intimidation by *someone* sympathetic to Appellant. *See* 7 Wigmore on Evidence § 2132, p. 714 (Chadbourn Rev. 1978) ("When the execution of a document is *not in issue*, but *only the contents* or the fact of the existence of a document of such a tenor, no authentication is necessary") (emphasis in original).[7]

[7] *See also People v. Adamson*, 258 P.2d 1020, 1024 (Cal.App. 1953) ("The authenticity of the letter would seem to have no bearing on its intended use. Whether it be genuine or a forgery, it was merely offered to show that Mr. Pugh was motivated by it in his actions").

Defense counsel tried to impeach Adkins's credibility in several ways. Counsel discussed Adkins's membership in the Hoover Crips street gang, and his activities as a drug dealer. Counsel implied that Adkins had made up his claim about Appellant calling him from jail. While we find no specific challenge by defense counsel to Adkins's claim concerning the letter, we again note that counsel had no objection to the letter's relevance. Given the strength of the evidence in this case, and the collateral nature of the letter, we cannot say its admission amounted to plain error. *Douglas v. State*, 1997 OK CR 79, ¶ 38, 951 P.2d 651, 666. Propositions 2 and 3 are denied.

In Proposition 5, Appellant claims the prosecutor committed misconduct in closing argument by suggesting that Appellant and his friend, Britnae Ragsdale, were responsible for the letter asking Adkins to change his testimony. Defense counsel did not object to these closing comments, so our review is only for plain error. *Bosse v. State*, 2015 OK CR 14, ¶ 26, 360 P.3d 1203, 1218. As discussed above, the letter was originally admitted without regard to authorship, and the jury was so instructed. Appellant claims the prosecutor went beyond this limited relevance by suggesting Appellant dictated the letter. The prosecutor did make such comments, but we believe they were fair, based on developments *after* the letter was admitted.

Britnae Ragsdale was subpoenaed in open court based on incriminating statements she had apparently made during a lunch break. Her answers on the witness stand suggest she was being evasive. The prosecutor's description, in closing argument, of Ragsdale's demeanor as a witness casts further doubt on her

credibility concerning the letter. Furthermore, the last witness to testify at this trial was Appellant himself. But in the middle of the prosecutor's questioning, Appellant refused to continue, even after the trial court warned him about a possible citation for contempt of court. Thus, Appellant told the jurors what he wanted them to hear, but refused to subject himself to full cross-examination.

The prosecutor suggested that Appellant and Ragsdale were untruthful in their testimony, and posited that they were responsible for the letter sent to Adkins. But again, given the circumstances which developed *after* the letter was admitted for a more limited purpose, we believe these inferences were reasonable and not unfairly prejudicial. *Dodd v. State*, 2004 OK CR 31, ¶ 78, 100 P.3d 1017, 1041 (when the defendant offers himself as a witness, prosecutor may make reasonable inferences from his demeanor); *Smallwood v. State*, 1995 OK CR 60, ¶ 37, 907 P.2d 217, 229 (it is permissible to comment on the veracity of a witness when such is supported by the evidence).[8] We also note that while the letter in question did ask Adkins to change his story, it was not threatening in any way, which diminishes its prejudicial effect. The letter stated:

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[8] Evidence tending to show the accused intimidated, threatened, or attempted to bribe witnesses is generally admissible to show consciousness of guilt. *Dodd*, 2004 OK CR 31, ¶ 34, 100 P.3d at 1031. To be clear, however, when the prosecutor accused Appellant of being untruthful, he was not referring to any involvement with the letter, because the prosecutor was never able to question Appellant about the letter. As noted, Appellant stopped answering the prosecutor's questions in the middle of cross-examination. Rather, the prosecutor was referring to Appellant's general denial of any involvement in the shooting, and to the weakness of his alibi. ("The defendant is lying. He's lying because he wants to evade. He wants to keep himself out of prison. And he does not want you to hold him accountable.") Appellant had told police that he was with his girlfriend at the time of the shooting. The girlfriend, however, did not support this alibi, and testified that Appellant left her home earlier in the evening. In his testimony, Appellant conceded that he left his girlfriend's company, but claimed he actually stayed outside her apartment complex, talking with a neighbor. Appellant could not identify that mysterious neighbor, and admitted he had never told his counsel about the person. Appellant also admitted that he had asked his girlfriend just before the shooting about obtaining firearm, but claimed he was only concerned about safety in their neighborhood.

> Don't feel bad bro I know you was doing what was right [at] the time [that] all the shit happened. ... By you coming back to make that night mean a lot to [me]... . I appreciate you! Just let me come home I want to be free and raise my kids too!!! ... I would rather you not run and just get bac[k] on the stand for me March 13, 2013. ...

Given the strength and nature of the evidence against Appellant, there was no plain error in the prosecutor's closing comments. *Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923. Proposition 5 is denied.

In Proposition 4, Appellant accuses his trial counsel of deficient performance. The right to counsel, found in the Sixth Amendment to the United States Constitution, contemplates counsel who provides reasonably effective assistance to the client. When a defendant claims he was denied this right, we begin with the presumption that counsel performed competently. It is the defendant's burden to show that counsel's acts or omissions (1) were unreasonable under prevailing professional norms, and (2) caused prejudice, *i.e.*, that they undermine confidence in the outcome of the trial. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Underwood v. State*, 2011 OK CR 12, ¶ 77, 252 P.3d 221, 250.

Appellant faults his trial counsel for not objecting to the letter sent to Adkins asking him to change his testimony (*see* Proposition 2), to Britnae Ragsdale's testimony on the subject, and to the prosecutor's closing comments accusing both Appellant and Ragsdale of being untruthful in their testimony (*see* Proposition 5). We have already reviewed these claims for plain error, and found none. Just as *Hogan*'s plain-error test does not allow relief absent a reasonable probability that the error affected the outcome, *see Hogan*, 2006 OK CR 19, ¶ 38, 139 P.3d at 923,

so too, *Strickland*'s test for counsel's performance does not allow relief unless counsel's errors undermine confidence in the verdict. *Cf. Jones v. State*, 2006 OK CR 5, ¶ 98, 128 P.3d 521, 550 (counsel will not be deemed ineffective for errors which were harmless beyond a reasonable doubt).

Appellant claims that the evidence and commentary surrounding the letter asking Adkins to change his story were particularly prejudicial, because "Appellant's defense was one of innocence." First, we note that neither the letter, nor Ragsdale's testimony, directly implicate Appellant in the crimes. But more importantly, Appellant's claim of innocence was heavily outweighed by the testimony of four witnesses (one accomplice, one bystander, and the two surviving victims), who were personally acquainted with Appellant and who shed light on the apparent motive for the shootings. Indeed, Appellant does not challenge the sufficiency of the evidence to support his convictions. He used a large-caliber handgun against three people. His original target, Everett Adkins, survived a gunshot wound to the chest. Makala White, who had no clear connection with Appellant's animosity other than being related to Adkins, miraculously survived shots to the chest and head. Shametra Fields, who had no known connection to the events surrounding this case at all, was fatally shot at close range in the back of the head. Given the outrageous nature of the crimes and the strong evidence against Appellant, we find no reasonable probability that trial counsel's failure to object to the evidence and commentary discussed above had any effect on the jury's verdict of guilt, or its punishment recommendation. *Short v. State*, 1999 OK CR 15, ¶ 83 980 P.2d 1081, 1106. Proposition 4 is denied.

In Proposition 6, Appellant claims that all errors identified above, considered in a cumulative fashion, denied him due process of law. Having already found neither plain error nor *Strickland* error, we reiterate that we find nothing in the record to undermine our confidence in the jury's verdict. *See generally Logsdon v. State*, 2010 OK CR 7, ¶ 42, 231 P.3d 1156, 1170. Proposition 6 is denied.

DECISION

The Judgment and Sentence of the District Court of Tulsa County is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2016), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY
THE HONORABLE WILLIAM C. KELLOUGH, DISTRICT JUDGE

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