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**IN THE
COURT OF APPEALS OF INDIANA**

ERICK A. WHITE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0611-CR-635

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Fossum, Judge Pro Tempore
Cause No. 49G03-0602-FB-20477

July 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Erick A. White appeals his two convictions for robbery,¹ each as a Class B felony, two convictions for confinement,² each as a Class B felony, and one conviction for carrying a handgun without a license³ as a Class A misdemeanor. White raises two issues on appeal, which we restate as:

- I. Whether the trial court erred in finding a race-neutral reason to White's *Batson* challenge.
- II. Whether evidence was sufficient to establish White was the perpetrator.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 28, 2006, just before 11:00 a.m., a man entered the Rent-a-Center store located at 43 South Ridgeview Drive, in the Irvington Plaza, in Marion County. The man spoke with store manager Mitchell and assistant manager Lawson and inquired about their televisions. While, Mitchell explained the terms of the rental policy, the man looked around the store and turned around with a handgun. The man demanded the store's money and money from Mitchell and Lawson.

The robber took cash from the store, cash from the assistant manager, and two camcorders. During that time Lawson was able to set off the store's silent alarm. The robber ordered both Mitchell and Lawson to sit in a sectional sofa near the front of the store and not to move until he had left. Immediately thereafter, at 11:01 a.m., Mitchell and Lawson contacted the police. The security company who monitored the silent alarm

¹ See IC 35-42-5-1.

² See IC 35-42-3-3.

³ See IC 35-47-2-1

contacted the police at 10:56 a.m. The police quickly reported to the store, and Lawson gave them a description of the robber. During the police investigation, they recovered a palm print from inside the door that was later identified as belonging to White. Indianapolis Police Detective Derrick Harris used this information to create a photo array that he displayed to Mitchell and Lawson separately. Lawson immediately identified White as the robber, while Mitchell identified another individual. Mitchell testified that he was not completely sure of his selection and that he was more focused on the gun than the robber.

At the time of the robbery, White was an assistant manager at a Rent-a-Center store on West 38th Street near Georgetown Road. On the morning of January 28, White left the 38th Street store to pick up an item from the Lebanon store. The 38th Street store manager, Eric Page, told the investigating officer that he witnessed White leave at approximately 11:00 a.m., but during the trial, Page testified that he left somewhere between 10:00 a.m. and 11:00 a.m. According to the Lebanon store manager, Amber Hood, White arrived at her store between 12:00 p.m. and 12:15 p.m. Hood had learned of the robbery and told White to inform Page of what had occurred. White returned to the 38th Street store sometime between 1:00 p.m. and 2:00 p.m. but did not inform Page of the robbery.

The State charged White with two counts of robbery, two counts of confinement, and one count of carrying a handgun without a license. During *voir dire*, White objected to two of the State's preemptory strikes of African-American jurors claiming they were racially motivated and in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). The trial

court found that White had made a *prima facie* showing of racial discrimination, but also found that the State thereafter provided race-neutral reasons for the strikes. The matter went before the jury, and White was found guilty as charged. White now appeals.

DISCUSSION AND DECISION

I. *Batson* Challenge

Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, a party cannot use a peremptory challenge to strike a prospective juror solely because of the juror's race. *Patterson v. State*, 729 N.E.2d 1035, 1038-39 (Ind. Ct. App. 2000) (citing *Batson*, 476 U.S. at 89). When a party raises a *Batson* challenge, the trial court must undertake a three-step test. *Schumm v. State*, 866 N.E.2d 781, 789 (Ind. Ct. App. 2007), *reh'g granted on other grounds* (citing *Highler v. State*, 854 N.E.2d 823, 826 (Ind. 2006)). “First, the trial court must determine whether the defendant has made a *prima facie* showing that the prosecutor exercised a peremptory challenge on the basis of race.” *Id.* (quoting *Highler*, 854 N.E.2d at 826-27). “Second, ‘the burden shifts to the State to present a race-neutral explanation for striking the juror.’” *Id.* (quoting *Highler*, 854 N.E.2d at 827). “Third, the trial court must evaluate ‘the persuasiveness of the justification’ proffered by the prosecutor, but ‘the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike.’” *Id.* (quoting *Highler*, 854 N.E.2d at 828). “We afford great deference to a trial court’s determination that a prosecutor’s motivation for striking a juror was not improper, and will reverse only if we conclude the trial court’s decision was clearly erroneous.” *Id.*

White contends that the trial court was correct in finding that he made a prima facie showing that the two preemptory strikes were racially motivated, but that it erred in finding race-neutral explanations for the strikes. The State counters that White waived his argument by not challenging the final jury pool, and also claims in the alternative that the challenges were race-neutral because its proffered reasons for the strikes were race-neutral and two African-Americans remained on the final pool.

White did not waive his *Batson* challenge because he raised it during *voir dire* and was not required to raise the challenge again later. However, it was within the trial court's discretion to determine that the State's preemptory strikes were race-neutral. As to the first venire woman, the State explained that she indicated her work obligations would distract her from listening to the evidence and reaching a fair decision.⁴ As to the second venire woman, the State explained that she listed nothing about her family or employment in the juror questionnaire; she gave an equivocal response when asked whether she lived with anyone; she was unable to state she would be fair in her determination of the proceedings; and she stated she was a follower. White has failed to show that the trial court's race-neutral findings were clearly erroneous.

II. Sufficiency of the Evidence

White also challenges the sufficiency of evidence to support his convictions. Specifically, he claims that one eyewitness's misidentification and his alibi defense clearly establish reasonable doubt. In reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor assess the credibility of the witnesses. *Love v. State*,

⁴ The venire woman admitted on the record that she incorrectly filled out the juror questionnaire portion asking whether she believed she could be fair. *Tr.* at 61. She corrected herself and indicated that she could. *Id.*

761 N.E.2d 806, 810 (Ind. 2002). We look to the evidence most favorable to the verdict and reasonable inferences drawn therefrom. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id.*

Our standard of review dictates that the evidence was sufficient. One of the victims of the robbery identified White as the perpetrator. White's palm print was found on the inside door of the location of the robbery. And, White's alibi defense was not concrete. While White presented evidence about his claimed alibi, which was inconsistent, it was for the trier of fact to resolve such inconsistencies. The evidence was sufficient to convict White of two counts of robbery, two counts of confinement, and one count of possession of a handgun without a license.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.