

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-458-2015
 :
 JAMILL HINES, :
 Defendant :

OPINION AND ORDER

The court selected a jury in the above-captioned matter on January 26, 2017. During the selection, the Commonwealth made a *Batson* challenge based on gender discrimination.

It is clear under *Batson* and its progeny that a defendant has a right to a jury selected without discrimination. While *Batson* involved a claim of racial discrimination, both the United States Supreme Court and the Pennsylvania Supreme Court have recognized *Batson* claims based on gender discrimination. *J.E.B. v. Alabama*, 511 U.S. 127 (1994); *Commonwealth v. Towles*, 106 A.3d 591, 602 (Pa. 2014). Furthermore, Article 1 Section 28 of the Pennsylvania Constitution states: “Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual.”

The Commonwealth has the same right to trial by jury as does the accused. Pa. Const. Art. 1, §6.

There were 9 men and 17 women in the main jury panel. Defense counsel used all seven of his peremptory challenges to strike males from that panel. The Commonwealth made a *Batson* challenge. When the court asked about the reasons, defense counsel candidly stated that he felt women are more attentive in sex cases and analyze the

facts better and come to a decision based on the facts and not the emotions of the situation. He then countered that the Commonwealth utilized six of its seven peremptory challenges to strike women from the jury panel. The prosecutor then responded that she was trying to get at least one man left on the jury panel.

After the jury was seated and excused, defense counsel put additional reasons on the record. Again, he admitted that his general reason for striking the men was that he found women to be more attentive and more “tuned in” to the facts of sex cases. He then gave the following additional reasons for his seven strikes: the first man was not paying attention; the second and third men had connections with law enforcement; the fourth man worked as a security guard; the fifth and sixth men were staring at Defendant and had an expression on their face that concerned Defendant; and the seventh man stated on his jury questionnaire that he resided in Hughesville/Montgomery but did not raise his hand when defense counsel asked if any of the jurors lived in Montgomery so defense counsel did not feel he was being honest.

The prosecutor argued that these additional reasons were weak because she believed that several of the women had law enforcement connections and she also had to imagine that there were women who were not paying attention. She also noted that even the jurors gasped and noted that the men were stricken.

The defense then asked for the prosecutor’s reasons for striking women. The prosecutor indicated that the first woman she struck had a family member who had been convicted of a crime. With respect to the second woman she struck, the prosecutor said she

did not like the way the woman looked at her or the way she answered defense counsel's question that inquired whether anyone had ever heard of a woman lying about being the victim of a sexual assault case. The prosecutor used one of her peremptory challenges on a man, because he indicated that his child had been falsely accused. The prosecutor indicated that she used her next strike on a female juror because she was a school counselor. The prosecutor said she used her fifth and sixth peremptory challenges to strike women who also had a reaction to defense counsel's question about women who may have lied about being victims of sexual assaults. The prosecutor then stated that she used her final peremptory challenge to strike a woman who she had observed "smiling at the Defendant several times as if she had already made up her mind."

The court appreciates defense counsel's candor that he feels women are better jurors for the defense in cases involving sexual offenses. Nevertheless, such a reason is clearly not gender neutral. Furthermore, it appears that the specific reasons added by both parties after the jury was excused were secondary to the gender-based reasons. For these reasons, the court was compelled to grant the Commonwealth's *Batson* challenge.

ORDER

AND NOW, this 27th day of January 2017, the court grants the Commonwealth's *Batson* challenge and strikes the jury that was selected in this case on January 26, 2017. This case is scheduled for call of the list on April 18, 2017 at 8:30 a.m. in courtroom #1 of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
William Miele, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File