

**IN THE TENTH JUDICIAL CIRCUIT
FOR HARDEE, HIGHLANDS, AND
POLK COUNTY, FLORIDA**

**COUNTY CASE NO.: TT01-000595-XX
APPEAL NO.: DD-37**

WALTER LEE HAND,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

OPINION OF THE COURT

This is an appeal from the county court of Polk County, Judge Karla F. Wright presiding. Appellant raises one issue on appeal; whether the trial court erred in finding the State's gender-neutral reason for striking a juror was sufficient. This court has jurisdiction. Fla. R. App. P. 9.030(c)(1)(A). The ruling of the county court is affirmed.

I.

On the evening of February 1, 2001, Polk County Sheriff's Deputy Tracy Smith conducted a traffic stop of the Appellant, Walter Hand, who was driving a black truck on Rifle Range Road without his taillights illuminated. As Deputy Smith approached the driver's window, he smelled a strong odor of alcohol. Further, he noticed that Appellant spoke with slurred or mumbled speech. Deputy Smith then asked Appellant to exit the vehicle and perform some field sobriety exercises. The Appellant refused to perform the one-legged stand test citing brain damage but he did perform the walk and turn test, which according to the deputy he performed decent.

Appellant was charged with driving under the influence in violation of §316.193 Florida Statutes (2000). Following a jury trial, Appellant was found guilty and was sentenced to 364 days in county jail. In addition the trial court imposed \$1371 in fines and court costs and suspended Appellant's driving privileges for one year. On appeal, the appellant argues that the trial court erred in finding the State's gender-neutral reason for striking a juror was sufficient.

II.

The standard of review when a peremptory challenge is exercised is whether the trial court's ruling on the genuineness of a peremptory challenge is clearly erroneous. Melbourne v. State, 679 So.2d 759 (Fla. 1996).

Following voir dire, the State moved to strike Mr. Whaley, a white male, and the Appellant objected and requested a gender-neutral reason. The Appellant is a white male and accused the State of attempting to strike Mr. Whaley because he was also white. The State responded that Mr. Whaley stated on his jury questionnaire that he had been charged with petit theft, and that was the reason for excluding him. The trial judge immediately began a Neil inquiry, asking the State if they had a neutral reason to strike Mr. Whaley, to which the State reiterated its aforementioned response. Over the Appellant's objection, the trial court found no systematic pattern of excluding white male jurors and accepted the State's reason as gender-neutral.

Under Melbourne, the three-step procedure for objections to peremptory challenges is as follows:

A party objecting to the other side's use of a peremptory challenge on racial grounds must: a) make a timely objection on that basis, b) show that the venireperson is a member of a distinct gender/racial group, and c) request that the court ask the striking party its reason for the strike. If these initial requirements are met, the trial court must ask the proponent of the strike to explain the reason for the strike.

At this point, the burden of production shifts to the proponent of the strike to come forward with a race/gender-neutral explanation. If the explanation is facially race/gender neutral and the court believes that, given all the circumstances surrounding the strike, the explanation was not a pretext, the strike will be sustained. The court's focus is not on the reasonableness of the explanation but rather its genuineness.

Melbourne at 764.

Appellant argues that since neither the State nor the trial court specifically inquired whether or not it was Mr. Whaley or a family member that was charged with petit theft, the State's reason was pretextual and not genuine. Further, Appellant contends that Mr. Whaley was candid about his brother's criminal history and rehabilitated himself by stating on the record that he would disregard his brother's criminal past and would obey the law.

III.

Having reviewed the record in this case and all the circumstances surrounding the strike, the Court finds that the reason offered by the State for the juror strike was genuine and that the trial court did not err in allowing the strike over Appellant's objection

Accordingly, the ruling of the county court is **AFFIRMED**.

ORDERED this February 19, 2003.

CHARLES B. CURRY, Chief Judge