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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

LAMARKUS JAYQUANN MANN,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13720
Trial Court No. 3AN-16-09994 CR

MEMORANDUM OPINION

No. 7092 — February 21, 2024

Appeal from the Superior Court, Third Judicial District, Anchorage, Steve W. Cole, Judge.

Appearances: George W.P. Madeira, Assistant Public Defender, and Samantha Cherot, Public Defender, Anchorage, for the Appellant. Elizabeth T. Burke, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Treg R. Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Terrell, Judges.

Judge ALLARD.

Lamarkus Jayquann Mann was convicted, following a jury trial, of two counts of first-degree murder and one count of first-degree robbery based on allegations

that he and two other men entered an Anchorage home to commit an armed robbery and then shot the couple who lived there.[1] Mann raises four claims of error on appeal.

First, Mann argues that the superior court erred when it denied his motion for a new trial in which he argued that the first-degree murder convictions were against the weight of the evidence. For the reasons explained here, we find no error.

Second, Mann argues that the trial court violated his constitutional right to confrontation when it allowed the State to introduce the plea agreement of a non-testifying co-defendant. Mann did not object to this evidence below, and to prevail on appeal, he must therefore show plain error. For the reasons explained here, we find no plain error.

Third, Mann argues that the trial court erred when it denied his *Batson* challenge to the State's peremptory challenge of a prospective juror who was a Black woman. For the reasons explained here, we find no error.

Lastly, Mann argues that his sentence — 109 years to serve — is excessive. Having conducted an independent review of the sentencing record, we conclude that the sentence is not clearly mistaken.

Relevant background facts

On Christmas Eve in 2016, three armed men wearing face coverings — Mann, De'Anthony Harris, and Jaylyn Franklin — entered the Mountain View residence of Christopher and Danielle Brooks to commit an armed robbery. Christopher Brooks was a known marijuana dealer in the neighborhood.[2]

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[1] AS 11.41.100(a)(1)(A) and AS 11.41.500(a)(1), respectively.

[2] Although Christopher Brooks was a known marijuana dealer in the neighborhood, a police search of his apartment following the shooting found no drugs, no guns, and a very limited amount of money.

The three men knew that Brooks was home because Mann's friend, Savon Wiley, had been in contact with Brooks via text message and had pretended to arrange to meet Brooks at the apartment. Phone records later showed that Wiley was in communication with Mann during the time that Wiley was arranging to meet Brooks. A surveillance video near the Brooks' residence showed two cars — a Honda Ridgeline and a black Nissan Rogue — driving by the residence during the time that Wiley was talking to Mann. Shortly after Brooks texted Wiley that he was home, Wiley called Mann again. The surveillance video then showed three men walking towards the Brooks' apartment.

What happened inside the apartment is not entirely clear. Marika Meabon, the mother of Mann's two children, later told the police that Mann told her that he, Franklin, and another man (Harris) had gone to the Brooks' apartment "trying to get whatever they had" and that Mann had been "told that there was money" in the home. According to Meabon, Mann said that "they went in there with guns and held [Christopher and Danielle Brooks] up, told them to give them their money, and it went downhill from there." Meabon reported that Mann told her that there was an argument over a gun and that Harris was shot in the leg. Meabon said that Mann said that he was not sure who shot Danielle Brooks, and that he believed she was shot because she was helping her husband.

The surveillance video showed Christopher Brooks stumbling out of the apartment and falling to his knees and the men running out of the apartment. The men got into the Honda Ridgeline, which was waiting for them after having been driven around the block. Phone records showed that Wiley and Mann called each other repeatedly in the first hour after the shooting.

A witness found Brooks and called 911. The witness reported that a man had been shot and that he had just seen three hooded men running away.

When the police arrived, they found Brooks unresponsive. Brooks later died en route to the hospital, either from the bullet wounds or from blood loss. The

police found Danielle Brooks deceased in the doorway of the building and the couple's five-year-old son in the apartment. The five-year-old told the police that "ninjas" had killed his family.

A medical examination later established that Christopher Brooks had been shot eleven times, including multiple times in the back. According to testimony by a detective at trial, Brooks had been shot by two different .40 caliber pistols. Danielle Brooks had been shot three times. According to the later testimony, Danielle had been shot by a nine-millimeter pistol.

Approximately twenty minutes after the shooting, Harris and Franklin showed up at the Providence Hospital emergency room. Harris had gunshot wounds to his legs. Franklin was wearing pants that matched the pants of one of the men on the surveillance video. Harris and Franklin were subsequently arrested.

The police later identified and impounded both the Honda Ridgeline and the Nissan Rogue. The Ridgeline belonged to Franklin's grandmother. The Rogue belonged to Elisie Kilpatrick, who was one of Mann's girlfriends. Mann's identification card and paperwork were found inside the Rogue.

Mann was arrested three days later after the police found him in a hotel room with Marika Meabon, the mother of his two children.

Wiley was arrested several months later after the police were able to gain access to the data in Christopher Brooks's cell phone.

Prior proceedings

Mann, Franklin, and Harris were charged, as principals or accomplices, with two counts of first-degree murder, four counts of second-degree murder (two counts for each victim under two different theories), and one count of first-degree robbery. Wiley was charged with two counts of second-degree (felony) murder and first- and second-degree robbery.

Franklin's and Harris's cases were later severed from Wiley's and Mann's cases. Franklin ultimately entered an Alaska Criminal Rule 11 plea agreement. Under the agreement, Franklin agreed to plead guilty to two counts of murder in the second degree for a composite sentence of 80 years to serve.

Mann and Wiley proceeded to a joint trial. At trial, Mann presented an alibi defense, asserting that he was not at the Brooks' apartment and did not participate in the armed robbery that resulted in the Brooks' deaths. His girlfriend, Elisie Kilpatrick, testified in support of this alibi defense, testifying that Mann was with her until 4:00 p.m. (The robbery and shootings were over by 4:00 p.m.) Kilpatrick was impeached by her prior inconsistent statements to the police and the fact that phone records showed that Mann called Kilpatrick at 3:10 p.m. and they had a three-minute phone conversation (which was hard to explain if they were supposedly together at that time). During closing argument, Mann's attorney argued that Mann had not been at the Brooks' apartment, and was instead "going about life" when he called Kilpatrick.

Following deliberations, the jury found Mann guilty on all counts. The jury also found Wiley guilty on all counts. In addition, the jury found, through a special verdict form, that Mann "did not personally cause the death of another person other than a participant during a robbery."

Following the jury's guilty verdicts, Mann filed a motion for a new trial under Alaska Criminal Rule 33, arguing that the first-degree murder convictions were against the weight of the evidence. The superior court judge denied the motion for a new trial.

At Mann's sentencing, the superior court imposed 50 years to serve on each of the first-degree murder convictions and imposed 9 years to serve on the first-degree robbery conviction. The court imposed all of the time consecutively, resulting in a composite sentence of 109 years to serve.

This appeal followed.

Mann's first claim of error: the superior court erred in denying his motion for a new trial

A trial court is authorized to grant a motion for a new trial under Alaska Criminal Rule 33 "in the interest of justice" if the trial court finds that the jury's verdict is contrary to the weight of the evidence.[3] A trial court should grant a new trial in cases where the court has independently assessed the evidence and believes that there is a "'real concern' that the defendant is innocent."[4]

In *Phornsavanh v. State*, this Court described how a trial court should evaluate a motion for a new trial:

> When a trial court rules on a motion for a new trial, it sits as a metaphorical "thirteenth juror," independently weighing the evidence and evaluating for itself the credibility of the witnesses. However, mere disagreement with the jury's verdict is not enough to invalidate a jury's verdict. A trial court's discretion to grant a new trial should be exercised "when necessary to prevent injustice," but it is otherwise intended to be used "sparingly and with caution." A jury verdict is not to be overturned lightly.[5]

Because the trial court is in the best position to determine if the interests of justice require a new trial, if a trial court denies a motion for a new trial based on the weight of the evidence, this Court "will find an abuse of discretion only if the evidence supporting the verdict is 'so slight and unconvincing as to make the verdict plainly unreasonable and unjust.'"[6]

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[3] Alaska R. Crim. P. 33(a); *Phornsavanh v. State*, 481 P.3d 1145, 1157 (Alaska App. 2021).

[4] *Whisenhunt v. State*, 504 P.3d 268, 271 (Alaska App. 2022) (explaining the "well-established principle" underlying *Phornsavanh*, 481 P.3d at 1159).

[5] *Phornsavanh*, 481 P.3d at 1158 (citations omitted).

[6] *Id.* at 1159 (quoting *Hunter v. Philip Morris USA Inc.*, 364 P.3d 439, 449 (Alaska 2015)).

After the jury returned its verdicts in this case, Mann moved for a new trial under Criminal Rule 33, arguing that the first-degree murder guilty verdicts were contrary to the weight of the evidence. Mann argued that the jury's special verdict finding meant that the jury had convicted Mann of first-degree murder solely under an accomplice theory.[7] He argued that the State failed to demonstrate that Mann had the requisite intent for first-degree murder, and that this rendered his convictions under a theory of accomplice liability contrary to the weight of the evidence.

The superior court disagreed. The court concluded that "a plethora of evidence" supported the jury's finding that Mann acted with an intent to kill "when he and the other two men began firing [at the victims] until they were dead." The court also explained that if it were asked to sit as a "thirteenth juror," it would have also convicted Mann of first-degree murder, either as a principal or as an accomplice.

On appeal, Mann argues that the superior court failed to make an independent assessment of the evidence and instead simply deferred to the jury's verdict as not "unreasonable or unjust." But the record is clear that the superior court *did* engage in the independent analysis required of a trial court sitting as a metaphorical "thirteenth juror," and that the trial court concluded that it would have found Mann guilty of first-degree murder under either a principal or accomplice theory of liability.

Mann also argues that the superior court erred in concluding that Mann was guilty under a principal theory of liability because the jury's special verdict form indicates that the jury must have convicted Mann solely under an accomplice theory. But when ruling on a motion for a new trial based on the weight of the evidence, the judge is required to take a "personal view of the evidence" and is not automatically

[7] The jury was given this special verdict form because, under AS 12.55.125(a)(4), a person who commits first-degree murder in the course of a robbery and who personally causes the death of a person other than a participant is subject to a mandatory term of imprisonment of 99 years.

bound to the jury's evaluation of the evidence.[8] The judge was therefore free to assert that, sitting as a metaphorical "thirteenth juror," he would have convicted Mann as a principal (or as an accomplice) even though the jury seemingly rejected the principal theory of liability.

Ultimately, the question for a reviewing appellate court is whether the superior court abused its discretion when it concluded that the jury's first-degree murder verdicts were not against the weight of the evidence. Having reviewed the trial, we find no abuse of discretion here. Regardless of whether Mann fired the fatal shot that killed either of the victims, the evidence at trial showed that the three men showed up armed and masked, that all three men fired their weapons, and that there was a hailstorm of gunfire in the apartment with Christopher Brooks being shot eleven times (including multiple times in the back) and Danielle Brooks being shot three times. Given this evidence, it appears neither unreasonable nor unjust for the jury to have found Mann had an intent to kill and to have found him guilty under an accomplice theory of liability. We accordingly affirm the superior court's denial of the motion for a new trial.

Mann's second claim of error: the superior court committed plain error when it allowed the prosecution to introduce Franklin's written plea agreement as evidence at Mann's and Wiley's trial

As previously explained, Franklin pleaded guilty to second-degree murder prior to Mann's trial. However, Franklin asserted his privilege against self-incrimination when called to testify at Mann's trial. The prosecutor then sought to admit Franklin's written plea agreement into evidence. Neither Mann nor Wiley objected to the introduction of this evidence, and it was admitted at trial. However, the jury was specifically instructed that it was not to consider any statements by Franklin when deciding Mann's or Wiley's guilt. (We note that it is not clear why this evidence was

[8] *Phornsavanh*, 481 P.3d at 1159-60 (quoting *Hunter*, 364 P.3d at 452).

admitted since only Mann and Wiley were on trial; however, Mann does not make this argument on appeal.)

On appeal, Mann argues that it was plain error for the superior court to admit this evidence on the ground that it violated Mann's confrontation rights.[9] Mann is correct that it would have violated his confrontation rights if Franklin's statements in the plea agreement were introduced in evidence against him.[10] But, as already explained, the jury was specifically instructed that it was *not* to consider this evidence when determining Mann's guilt.

On appeal, Mann cites to a recent United States Supreme Court case, *Hemphill v. New York*, to support his argument that the plea agreement statements violated his right to confrontation.[11] But *Hemphill* is easily distinguished. In *Hemphill*, the jury was allowed to hear evidence of a third party's plea allocution without any limiting instruction.[12] Here, in contrast, the jury heard a proper limiting instruction.

However, there are circumstances when a limiting instruction is not sufficient. In *Bruton v. United States*, the United States Supreme Court held that a facially incriminating confession by a non-testifying co-defendant deprives a defendant of his Sixth Amendment right of confrontation even when the jury is instructed to consider that confession only against the co-defendant.[13] But in *Richardson v. Marsh*, the Supreme Court declined to extend the *Bruton* rule to confessions by a non-testifying co-defendant that were not "facially incriminating."[14] In those cases, where the non-

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[9] U.S. Const. amend VI; Alaska Const. art. I, § 11.

[10] *See Crawford v. Washington*, 541 U.S. 36, 68-69 (2004).

[11] *Hemphill v. New York*, 595 U.S. 140 (2022).

[12] *Id.* at 143, 156.

[13] *Bruton v. United States*, 391 U.S. 123, 135-36 (1968).

[14] *Richardson v. Marsh*, 481 U.S. 200, 211 (1987)

testifying co-defendant's confession is only incriminating through connection to other evidence, the Court held that instructing the jury to consider that testimony only with regards to the non-testifying co-defendant's guilt was sufficient to protect a defendant's confrontation rights.[15]

Mann argues that the plea agreement statements were facially incriminating. We disagree. The plea agreement stated that Franklin agreed that the following facts were true:

> (a) Three (3) separate weapons were used in the commission of the robbery and murders;
>
> (b) All three weapons were fired in the commission of the murders in a course of a robbery.[16]

Mann's defense at trial was an alibi defense. As the State points out, neither of Franklin's statements in the plea agreement directly undermined this defense. That is, neither statement identified Mann as one of the assailants and neither statement directly attacked Mann's alibi defense.

Moreover, in keeping with the limiting instruction that the jury received, the prosecutor made no reference to the plea agreement in his closing argument and did not rely on those statements when arguing Mann's guilt. Instead, the prosecutor relied on the other evidence that had been introduced that independently supported the conclusion that all three men were armed and that all three men fired their guns during the course of the robbery. This evidence included Meabon's testimony that Mann told

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[15] *Id.* at 206-11; *see also United States v. Vega Molina*, 407 F.3d 511, 520 (1st Cir. 2005) (explaining that "[s]tatements that are incriminating only when linked to other evidence in the case do not trigger application of *Bruton's* preclusionary rule").

[16] The plea agreement also included Franklin's acknowledgment that there was a jailhouse informant who would testify that Franklin bragged, while in the Department of Corrections' custody, that he "aired out" Danielle Brooks "with a head shot." The plea agreement acknowledged that this informant had pending crimes of dishonesty and that the autopsy of the victim showed that she did not suffer a head shot, although she did suffer two gunshots to her chest.

her that all three men were armed, as well as the testimony from the ballistics expert, who testified that a minimum of three guns had been fired. There was also testimony from one of the detectives who claimed that three bullets from two different .40 caliber firearms were recovered from Christopher Brooks's body. That same detective also testified that the bullet that killed Danielle Brooks was from a nine-millimeter firearm. Thus, even if we were to agree that it was error to introduce the plea agreement at trial, we would find no prejudice because the statements in the plea agreement were cumulative of other evidence at trial that showed that all three men were armed and all three firearms were discharged.

Because Mann did not object to the introduction of the plea agreement, he must show plain error. "Plain error is an error that (1) was not the result of intelligent waiver or a tactical decision not to object; (2) was obvious; (3) affected substantial rights; and (4) was prejudicial."[17] We find no plain error here.

Mann's third claim of error: the superior court erred when it failed to sustain a Batson challenge by the defense

On the fourth day of jury selection, R.W., a Black woman, was questioned by the prosecutors. After the first prosecutor asked R.W. what she thought of the voir dire process so far, R.W. asked if they wanted the "truth" or if she should "sugar coat it?" The second prosecutor then interrupted and said jokingly, "Would you please lie to us." R.W. responded by voicing some frustration with the process:

> In the most respectful way possible, this has been, like, a lot. In terms of how long it takes, how many people are in flux, how many different types of people have to be screened through the screening process in general. Just understanding that we're only getting, like, step by step of what's going to happen and it's not like we all get sent a PDF

[17] *Adams v. State*, 261 P.3d 758, 764 (Alaska 2011).

> of this is what's going to happen or what could happen in the next four weeks.
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> It's just, like, all right, so here's this and then here's this. And as myself, I don't really like, like, piecemealing and understanding. I like to know what's going on, like, the whole sequence of what's going on. So that instance in itself has been stressful, has been frustrating. And the seats are not super comfortable. And, yeah.

The next week, R.W. was questioned by Mann's attorney, who asked her about her earlier comments to the prosecutors. R.W. responded:

> If I'm not mistaken, the present issue that I presented last week is to understanding why this process was taking so long. And why I was so confused with the process was, in my opinion, in the way I like to operate, the scheduling of things. For example, if you tell us to be here at 8:45, I expect to be sitting in a chair at 8:46.

R.W. then went on to explain that she nevertheless understood that the process took time and that she was prepared to listen to however many witnesses there were:

> We need to hear it from all of these people, that's not going as much as an issue. Just like the other . . . gentleman said, like, it's going to take a long time to listen to all these people, but that doesn't mean that they shouldn't be listened to just because the process needs to be sped up.

Mann's attorney then asked, "So your issue is, correct me if I'm wrong, is not time *per se*, but the efficient use of time?" R.W. replied, "Correct."

After the parties finished voir dire of the group of potential jurors which included R.W., the prosecutors exercised a peremptory challenge to remove R.W. from the jury panel. Mann's attorney objected to removing R.W. under *Batson v. Kentucky*.[18] He noted that R.W. was only the second Black prospective juror in the trial, and the

[18] *Batson v. Kentucky*, 476 U.S. 79 (1986).

first had been excused for cause. And he noted that both Wiley and Mann were Black. Wiley's attorney joined in the objection.

The second prosecutor then articulated the following justification:

> This lady was very aggressive. And she specifically stated that she is impatient. She didn't care, she wanted to — for things to be done fast. And obviously this is the case where things are not going to be done fast, we're going to be here for some time. The evidence is going to come in very, very slow.
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> And so she — that's the reason that she was excused. Has nothing to do with race. Absolutely. I — a person who displays such impatience regardless of race would not have been kept. That's it.

Mann's and Wiley's attorneys disputed the prosecutor's characterization of R.W. as "impatient," noting that she had expressly said to Mann's attorney that she understood the importance of carefully listening to all the evidence, no matter how long it took.

The superior court denied the *Batson* challenge and excused R.W. The court found that the State had "sufficient reason to excuse her that [was] not related by any means to race." The court noted that, in response to the defense attorney's questions, R.W. had "toned down a little bit her argument about everyone needs to be here on time," but the court commented that it had "certainly got the impression" that R.W. "was going to want to move things along." The court noted that it was "kind of a close call," but the court nevertheless found that the State had "provided a sufficient reason for excusing her," and the court therefore denied the *Batson* challenge.

A few days later, the superior court revisited the *Batson* issue. The court explained that when it said that it was a "close call," it was referring to the question of whether R.W. would actually have been an impatient juror. The court stated that it had listened to the audio recording of R.W.'s voir dire, and that "it sounded even more that she wasn't going to be patient." The court noted that R.W.'s comment that when she was told to report at 8:45, she expected to be seated by 8:46 was "a pretty powerful

statement." The court then reaffirmed its ruling denying the *Batson* challenge, stating that it just wanted to confirm for the record that the State "did give a more than adequate reason independent of her race to excuse R.W."

Mann now appeals, arguing that the superior court erred when it denied his *Batson* challenge.

In *Batson v. Kentucky*, the United States Supreme Court held that the Equal Protection Clause of the United States Constitution prohibits prosecutors from using peremptory challenges to exclude jurors based on race.[19] The Court established a three-step process for addressing a prosecutor's peremptory juror challenge that appears to be racially motivated. First, the defendant must demonstrate that "the totality of the relevant facts gives rise to an inference of discriminatory purpose."[20] Second, once the first showing has been made, the burden shifts to the prosecutor to provide a race-neutral explanation for exercising a peremptory challenge against that potential juror.[21] Third, the trial court must independently evaluate the credibility of the prosecutor's explanation and determine whether the prosecutor's explanation is pretextual.[22]

When conducting a *Batson* analysis, "the ultimate question for the trial judge is not whether the party's reasons for the challenge are objectively reasonable; rather, the question is whether the articulated [race-neutral] reasons are the attorney's true reasons for the challenge or whether they are 'an invention to mask the attorney's

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[19] *Id.* at 86; *see also Georgia v. McCollum*, 505 U.S. 42, 50 (1992) (extending *Batson* to attorneys other than prosecutors).

[20] *Batson*, 476 U.S. at 94; *see also Miller-El v. Dretke*, 545 U.S. 231, 240 (2005) (holding that a defendant can rely on "all relevant circumstances" in making out a prima facie case of purposeful discrimination, including evidence outside "the four corners of a given case").

[21] *Batson*, 476 U.S. at 94.

[22] *Id.* at 98; *see also Snyder v. Louisiana*, 552 U.S. 472, 477 (2008).

discriminatory intent.'"[23] Accordingly, under *Batson*, a trial judge must determine not only whether the attorney's proffered explanation for the peremptory challenge is race-neutral, but also whether the attorney is being honest when the attorney offers this explanation.[24] "Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy."[25] "[I]mplausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination."[26] Because the *Batson* analysis is so fact-specific and demeanor-dependent, appellate courts will defer to a trial court's findings unless the record shows them to be clearly erroneous.[27]

Here, the prosecutor asserted that the State had exercised a peremptory challenge against R.W. because she was "very aggressive" and "impatient." On appeal, Mann focuses on the "very aggressive" comment, and he asserts that this comment, standing alone, was evidence of discriminatory intent because it allegedly relied on a "well-worn racist trope" of the "Angry Black Woman."[28]

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[23] *Brown v. State*, 2004 WL 2452806, at * 1 (Alaska App. Nov. 3, 2004) (unpublished) (quoting *Gottschalk v. State*, 36 P.3d 49, 55 (Alaska App. 2001)).

[24] *Gottschalk*, 36 P.3d at 55.

[25] *Miller-El v. Cockrell*, 537 U.S. 322, 339 (2003).

[26] *Gottschalk*, 36 P.3d at 54.

[27] *Id.* at 55; *see also Hernandez v. New York*, 500 U.S. 352, 364-65 (1991).

[28] *See, e.g.*, *Curry v. Devereux Found.*, 541 F. Supp. 3d 555, 561 (E.D. Penn. 2021) ("This caricature can conceivably affect conduct: when Black women engage in assertive or forceful behavior, their conduct is tagged as threatening or deviant, even when it would be tolerated in an employee of a different gender or race. Out of a desire to avoid this stereotype, Black women may adopt a passive attitude that impairs their chances for advancement or renders them unable to object to discrimination. . . . For this reason, courts

But this argument was not made to the trial court, which means that the trial court never ruled on it and the prosecutor was never asked to account for his use of the term "aggressive." Indeed, in context, it appears just as likely that the prosecutor meant that R.W. was being "forceful" or "assertive" in expressing her impatience and frustration with the process, not that she appeared "angry" or behaved in a manner that was anything other than calm and respectful.

Ultimately, it was R.W.'s impatience that appears to have been the primary reason for the prosecution's peremptory strike. On appeal, Mann argues that the record does not support the prosecutor's assertion that R.W. was "impatient." We disagree. Having reviewed the record, we believe that it was reasonable for the prosecutor to have concerns about R.W.'s apparent impatience. Moreover, even if the record did not fully support the prosecutor's impression of R.W. as impatient, the critical question would be whether the prosecutor was nevertheless credible and acting in good faith when he forwarded that race-neutral reason for the strike.[29]

Here, the superior court found, based on the arguments made to it at the time, that the prosecution had articulated a credible race-neutral reason for the peremptory strike. We are not in a position to second-guess that finding on the record currently before us. We therefore affirm the *Batson* finding as not clearly erroneous.

Mann's fourth claim of error: the superior court erred when it sentenced Mann to a composite sentence of 109 years to serve

At sentencing, Mann faced a minimum sentence of 30 years to serve and a maximum of 99 years to serve on each of the first-degree murder convictions.[30] The

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have held that the invocation of the 'Angry Black Woman' stereotype may serve as evidence of discriminatory animus.").

[29] *See Gottschalk*, 36 P.3d at 53.

[30] AS 12.55.125(a).

court was required to run at least 30 years of each murder count consecutively.[31] As a first felony offender, Mann also faced a presumptive range of 5 to 9 years to serve on the first-degree robbery, and the court was required to run at least "some additional term of imprisonment" (*i.e.*, at least 1 day) consecutively.[32] Mann therefore faced a maximum sentence of 207 years to serve and a minimum sentence of 60 years and 1 day to serve.

The State argued that the trial court should impose the maximum sentence of 207 years, arguing that Mann was a worst offender based on the nature of the killings. Mann's attorney argued that Mann should receive the minimum sentence, and he argued two different mitigating factors by analogy.[33] Mann's attorney argued that Mann's conduct was "among the least serious" conduct included in the definition of first-degree murder, and Mann's attorney argued that Mann was guilty only as an accomplice who played a "minor role."[34] Mann's attorney framed both arguments around the special verdict form, because the jury had seemingly found, beyond a reasonable doubt, that Mann had not personally killed either of the victims.[35]

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[31] AS 12.55.127(c)(2)(A).

[32] Former AS 12.55.125(c)(2)(A) (post-July 2016); AS 12.55.127(c)(2)(F); *see also Scholes v. State*, 274 P.3d 496, 500 (Alaska App. 2012).

[33] *See Allen v. State*, 51 P.3d 949, 960 (Alaska App. 2002) ("It is true that in second-degree (and first-degree) murder sentencings, the parties often frame their arguments in terms of these statutory aggravating and mitigating factors. We have recognized and approved the practice of '[using] these factors as points of reference . . . when [evaluating] how [a specific] offense should be viewed in comparison to a typical . . . murder.'" (alterations in original) (quoting *Sakeagak v. State*, 952 P.2d 278, 284 (Alaska App. 1998))).

[34] AS 12.55.155(d)(9), (d)(2).

[35] The purpose of the special verdict form was to determine whether Mann's sentencing was governed by AS 12.55.125(a)(4), which provides for a mandatory 99-year sentence for any person who commits first-degree murder in the course of a robbery and who personally causes the death of a person other than a participant. The special verdict

The superior court rejected both proposed mitigating factors, finding that the killings were not "among the least serious" and that Mann had not played a minor role. The superior court instead characterized Mann as the "leader" of the home invasion robbery based on the fact that Mann was good friends with Wiley, who set up the robbery, and Mann recruited the other two men to participate in the home invasion robbery. The superior court emphasized that Mann's conduct was not among the least serious and that this determination was not even a "close call" because there were many actions that Mann and the others could have taken to prevent the deaths including turning around and leaving when they realized that the five-year-old child was in the apartment.

The court ultimately imposed 50 years to serve on each of the first-degree murder convictions, running the time fully consecutively. The court also imposed a consecutive 9 years to serve on the robbery conviction for a composite sentence of 109 years to serve.

Mann now appeals that sentence, raising a number of different arguments. Mann argues that the superior court erred in failing to account for the difference between being found guilty as a principal and being found guilty as an accomplice. Mann asserts that the special verdict form makes clear that the jury convicted him solely

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form should have asked the jury to vote "yes" or "no" on the question of whether the State had proved beyond a reasonable doubt that Mann had personally caused the death of a person other than a participant. However, as the prosecutor noted at sentencing, the special verdict form was "poorly worded" and instead asked the jury to find, beyond a reasonable doubt, whether Mann "Personally Caused" the death of a person other than a participant or whether Mann "Did Not Personally Cause" the death of a person other than a participant. The jury checked the box for "Did Not Personally Cause."

The parties disagreed on how to interpret this special verdict finding. The State and the superior court viewed the finding as essentially a finding that the State had failed to prove that Mann personally caused the death of either Christopher or Danielle Brooks for the purposes of sentencing under AS 12.55.125(a)(4). Mann argued that the special verdict finding should be viewed as an affirmative finding by the jury beyond a reasonable doubt that Mann did not personally cause the death of Christopher or Danielle Brooks. For purposes of this appeal, we will adopt Mann's interpretation of the special verdict form.

under an accomplice theory and he argues that his sentence "should reflect his comparatively lesser culpability as an accomplice, rather than a principal."

But here, the superior court made clear that it did not matter to the court whether Mann personally fired the bullet(s) that killed Christopher Brooks or not. What mattered was that Mann was part of an armed masked group of men who planned a home invasion robbery and who fired a hailstorm of bullets at the victims during the course of that robbery which ultimately resulted in the victims' deaths. According to the court, the happenstance of whose bullets killed whom was not the determining factor in terms of culpability. Indeed, the evidence at trial indicated that Mann was not the principal actor who personally caused Danielle Brooks's death, but the superior court did not view that fact as mitigating Mann's conduct or as reducing his culpability, and the court imposed the same sentence (50 years to serve) for each first-degree murder victim. Because the superior court could reasonably come to these conclusions, we reject Mann's argument that the superior court erred in failing to treat the jury's special verdict finding as directly mitigating Mann's culpability.

Mann also argues that the superior court failed to adequately address the *Chaney* criteria, and failed to properly account for his youth and rehabilitation prospects. But the record shows that the court discussed the *Chaney* criteria at great length. The record also shows that the superior court acknowledged Mann's youth and his minimal criminal history.[36] The court also acknowledged that, prior to the murders, Mann seemingly had good prospects for rehabilitation. (Mann had graduated from high school on the honors list, and had attended a community college.) But the court found that these prospects for rehabilitation were greatly diminished by the horrific nature of

[36] Mann was twenty-two years old at the time of the murders, and twenty-six years old at the time of sentencing; his criminal history consisted of a prior juvenile conviction for shoplifting, for which he completed a diversion program, and convictions for unlawful contact and disorderly conduct (pleaded down from charges of third-degree weapons misconduct).

the killings and the danger that Mann now posed to the community. The court noted that Mann had a police encounter before the killings in which it was discovered that he was carrying a Glock. Mann told the police that he always carried a Glock to be prepared.

Ultimately, the court concluded that, despite his relatively young age and prior academic successes, Mann had, at most, "guarded" prospects for rehabilitation and that the importance of rehabilitation as a sentencing factor was greatly outweighed by the other *Chaney* criteria — in particular, the need for isolation, and reaffirmation of community norms.[37]

Lastly, Mann argues that his sentence is excessive. This Court reviews an excessive sentence claim under the "clearly mistaken" standard of review.[38] The clearly mistaken standard requires this Court to conduct its own independent review of the record.[39] But it also rests on the assumption that there is "a permissible range of reasonable sentences which a reviewing court, after an independent review of the record, will not modify."[40] Having independently reviewed the sentencing record in this case, we conclude that the 109-year sentence imposed here is not clearly mistaken given the jury's first-degree murder convictions and the fact that the conduct in this case resulted in the deaths of two people in front of their five-year-old child.

Conclusion

The judgment of the superior court is AFFIRMED.

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[37] *See McClain v. State*, 519 P.2d 811, 813 (Alaska 1974) (noting that "[t]he trial judge has discretion to determine the priority and relationship of [the *Chaney* criteria] in any particular case").

[38] *Id.* at 813-14.

[39] *Id.* at 813.

[40] *Id.*