

NOTICE: NOT FOR PUBLICATION.  
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

RICHARD JOHN ARCHULETA, *Appellant*.

No. 1 CA-CR 12-0419

FILED 11-19-2013

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Appeal from the Superior Court in Maricopa County  
No. CR2011-149959-001  
The Honorable William L. Brotherton, Judge

**AFFIRMED**

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COUNSEL

Attorney General's Office, Phoenix  
By Joseph T. Maziarz, Terry M. Crist

*Counsel for Appellees*

Maricopa County Public Defender's Office, Phoenix  
By Cory Engle

*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Randall M. Howe, presiding, delivered the decision of the Court, in which Judge Samuel A. Thumma and Judge Patricia A. Orozco joined.

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**H O W E**, Presiding Judge:

**FACTS AND PROCEDURAL HISTORY**

¶1 Richard John Archuleta appeals his conviction and sentence for misconduct involving weapons, arguing the court erred in upholding the State’s peremptory strikes against his *Batson*<sup>1</sup> challenge. For the following reasons, we affirm.

¶2 At the beginning of jury selection, the venire was comprised of forty-five individuals, three of whom were Hispanic and expressed concerns about speaking English fluently: Jurors 23, 27, and 44. During voir dire, Juror 23 stated that she had worked as a unit controller for thirty-two years, her husband was a manager for a transportation company, she had one adult child, and that she had not served on a jury before. Juror 27 stated that she had worked as a janitor for ten years and expressed difficulty speaking English, explaining that she spoke “[m]ostly Spanish” at work. Juror 44 expressed difficulty understanding English, stated that her husband had multiple DUI arrests, and was non-responsive to questions about a seven hundred dollar fine her husband owed.

¶3 The court excused Juror 44 for cause. And when the state later exercised peremptory strikes to remove Jurors 23 and 27, Archuleta made a *Batson* challenge, claiming the strikes were racially motivated. The trial court then asked for race-neutral reasons for the strikes. The prosecutor explained that she struck Juror 23 “because of her lack of information given to the court” and struck Juror 27 because she “raised concerns for own ability to [understand English] . . . and speaks mostly Spanish at work.”

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<sup>1</sup> *Batson v. Kentucky*, 476 U.S. 79, 89 (1986).

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¶4 The court ruled that Archuleta had not shown by a preponderance of the evidence that the strikes were racially based or purposefully discriminatory. Regarding Juror 23, the court found that the prosecutor's explanation satisfied *Batson* because the judge had taken no notes on Juror 23 and did not otherwise know anything about her. The court also found that striking Juror 27 for her inability to understand English satisfied *Batson*, and noted that it had even considered striking her for cause.

¶5 The trial proceeded and the jury convicted Archuleta of misconduct involving weapons. Finding that Archuleta had three prior felony convictions, the trial court sentenced him to the presumptive term of ten years' imprisonment.

DISCUSSION

¶6 Archuleta argues that the prosecutor violated *Batson* when exercising peremptory strikes against two Hispanic members of the venire. He claims that the prosecutor's reason for striking Juror 23—that she had disclosed little personal information—was pretextual because he did not strike non-Hispanic members that provided identical or similar information. Archuleta also claims that the prosecutor's motive for removing Juror 27—that she had difficulty understanding English—was pretextual because the trial court did not strike Juror 27 for cause. On an appeal of a *Batson* ruling, we review the trial court's application of the law de novo, but defer to its factual findings unless they are clearly erroneous. *State v. Butler*, 230 Ariz. 465, 474 ¶ 36, 286 P.3d 1074, 1083 (App. 2012). We find no error.

¶7 The Equal Protection Clause prevents the State from peremptorily striking a potential juror based solely on the juror's race. *Batson*, 476 U.S. at 89. A *Batson* challenge proceeds in three steps: (1) the party challenging the strikes attempts to present a prima facie showing of discrimination, and if it does so, (2) the striking party must provide race-neutral reasons for the strikes, and if it does so, (3) the trial court must determine whether the challenging party has carried its burden of proving purposeful discrimination. *Purkett v. Elem*, 514 U.S. 765, 767 (1995); *State v. Bustamante*, 229 Ariz. 256, 260 ¶ 14, 274 P.3d 526, 530 (App. 2012). The second step is satisfied if the striking party provides reasons for the strikes that are facially based on something other than race. *Hernandez v. New York*, 500 U.S. 352, 359 (1991); *State v. Garcia*, 224 Ariz. 1, 10 ¶ 26, 226 P.3d 370, 379 (2010). The third step is "fact intensive and . . . the trial court's finding at this step is due much deference," *State v. Newell*, 212 Ariz. 389,

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401 ¶ 54, 132 P.3d 833, 845 (2006), because the trial court is in a better position than an appellate court to assess the prosecutor's credibility, *State v. Roque*, 213 Ariz. 193, 203 ¶ 12, 141 P.3d 368, 378 (2006).

¶8 The trial court followed these steps. The trial court implicitly satisfied step one—and thereby triggered step two—by asking the prosecutor for its race-neutral reason for peremptorily striking both jurors. Step two was then satisfied when the prosecutor explained that Juror 23 was struck for disclosing little personal information to the court and Juror 27 was struck for expressing difficulty understanding English.

¶9 The trial court then applied the third step by considering the prosecutor's reasons and finding that Archuleta had not shown by a preponderance of the evidence that the strikes were race based. The third step requires the trial court to determine whether the opponent of the strikes has proved purposeful discrimination. *Purkett*, 514 U.S. at 767; *Garcia*, 224 Ariz. at 10 ¶ 21, 226 P.3d at 379. The trial court determined that the reasons offered by the prosecutor were race neutral and did not suggest any purposeful discrimination.

¶10 Archuleta's argument concerning Juror 23 hinges on the prosecutor's failure to strike other jurors who had disclosed similar information as Juror 23. While a trial court may certainly compare juror characteristics in making its *Batson* ruling, it is not required to do so. *United States v. You*, 382 F.3d 958, 969 (9th Cir. 2004) ("Comparative analysis is one of many tools that a court may employ to determine whether the government exercised its peremptory challenges for a discriminatory purpose. Trial courts, however, are not required to conduct such an analysis.").

¶11 Because the United States Supreme Court warned that "a retrospective comparison of jurors based on a cold appellate record may be very misleading when alleged similarities were not raised at trial," *Snyder v. Louisiana*, 552 U.S. 472, 483 (2008), we do not conduct comparative juror analysis if not raised at trial, see *State v. Medina*, 232 Ariz. 391, 405 ¶ 48, 306 P.3d 48, 62 (2013) ("[W]e decline to do [comparative juror analysis] when the similarities between peremptorily stricken jurors and those remaining on the panel were not raised on trial.") Archuleta failed to raise a comparative juror claim at trial; therefore, we decline to do such a review on appeal.

¶12 The trial court considered the race-neutral reasons the prosecutor proffered for the peremptory strikes and judged them credible,

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and we “will not second-guess the trial court’s credibility determination.” *Garcia*, 224 Ariz. at 10 ¶ 27, 226 P.3d at 379. The trial court thus did not err in denying Archuleta’s *Batson* challenge.

**CONCLUSION**

¶13 For the foregoing reasons, we affirm Archuleta’s conviction and sentence.



Ruth A. Willingham · Clerk of the Court  
FILED: mjt