DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. DERICK ROY YOUNG, JR., Appellant.	)	1 CA-CR 12-0455 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-142249-002

The Honorable Cynthia Bailey, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals Section
Alice Jones, Assistant Attorney General
Attorney for Appellee

Benjamin P. Taylor, II — Phoenix
By Benjamin Taylor
Attorney for Appellant

C A T T A N I, Judge

¶1 Derick Roy Young, Jr., appeals his conviction of second-degree burglary and the resulting term of probation. Young argues the superior court (1) erroneously denied his *Batson*[1] challenge to the State's peremptory strike of an African-American potential juror and (2) improperly restricted his trial testimony. For reasons that follow, we disagree and therefore affirm.

FACTS AND PROCEDURAL BACKGROUND[2]

¶2 Young was a former tenant of an off-campus apartment complex catering to university students. In August 2011, as tenants were moving into their apartments, Young returned to the complex and entered the victim's apartment, which had been leased to his friend the previous year. Young testified at trial that his friend Dave accompanied him into the victim's room, but that Dave left before him. The victim observed Young leaving her apartment. The victim then realized her laptop computer was missing from her room.

¶3 From her balcony, the victim saw Young "rummaging through his car" and asked if he had taken the laptop. Before driving away, Young responded, "I'm not dealing with this" but

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

[2] We view the evidence in the light most favorable to upholding the jury's verdict. *State v. Chappell*, 225 Ariz. 229, 233 n.1, ¶ 2, 236 P.3d 1176, 1180 n.1 (2010).

stated that he would give the laptop back to her. The victim then contacted police.

¶4 Later that evening, Young and Dave drove back to the apartment complex. Instead of returning the laptop, however, the two drove away again, and Young threw the laptop out of the car's window. After Dave retrieved the laptop, the two were pulled over and detained by police.

¶5 Investigating officers found the victim's laptop in the back seat of the car. A detective interviewed Young, who confessed to taking the laptop and stated Dave was not involved. At trial, Young instead claimed Dave had stolen the laptop, explaining the confession as an attempt (1) to protect Dave and (2) simply to tell the detective what he wanted to hear because Young thought "it wouldn't be a big deal or anything."

¶6 The State charged Young with second-degree burglary. After a four-day trial, a jury found him guilty as charged. The court suspended sentence and imposed two years' probation.

¶7 Young timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033.[3]

[3] Absent material revision after the relevant date, statutes cited refer to the current version unless otherwise indicated.

DISCUSSION

I. *Batson* Challenge.

¶8 Young argues the superior court erred by denying his *Batson* challenge to the State's peremptory strike of an African-American prospective juror. We will uphold the superior court's denial of a *Batson* challenge unless clearly erroneous. *State v. Newell*, 212 Ariz. 389, 400, ¶ 52, 132 P.3d 833, 844 (2006).

¶9 Equal protection prohibits the exercise of a peremptory strike to exclude a potential juror solely on the basis of race. *Batson v. Kentucky*, 476 U.S. 79, 89 (1986). A *Batson* challenge has three stages: first, the opponent of the strike must make a prima facie showing of racial discrimination; second, if such a prima facie showing is made, the striking party must articulate a facially race-neutral explanation for the strike; and third, if such an explanation is articulated, the opponent must show the facially-neutral explanation is merely a pretext for purposeful discrimination. *Id.* at 93-94; *Purkett v. Elem*, 514 U.S. 765, 768 (1995); *Newell*, 212 Ariz. at 401, ¶ 53, 132 P.3d at 845; *State v. Henry*, 191 Ariz. 283, 285-286, 955 P.2d 39, 41-42 (App. 1997).

¶10 Here, Young objected to the State striking Juror 10, pointing out that both Young and Juror 10 were African-American males and arguing there was no indication Juror 10 could not be fair and impartial. In response, the State articulated three

reasons for the strike: (1) Juror 10's demeanor, in that he looked "like he didn't really care so much," "was not paying attention," "was not giving anybody eye contact," and "at one point, kind of rolled his eyes, as he was leaving, a little bit. Just kind of like he was a bit irritated or didn't care"; (2) Juror 10 offered "very little information" and seemed not to have an answer for the court's follow-up inquiry about his employment;[4] and (3) Juror 10 had not attended college, which was arguably relevant because the crime occurred in a university setting. In reply, Young mentioned that four jurors remaining on the panel had only 12 years of schooling.

¶11 The trial judge found the State's explanation to be race neutral and observed that she had "noticed some of the same things the State did," including Juror 10's "blank[]" answer to the employment question and that "he seemed somewhat disengaged." Additionally, the court noted that another African-American male remained on the panel and had not been

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[4] The following exchange occurred during voir dire:

> A JUROR: Juror No. 10. Unemployed. Marital status, single. Number of children, four: 11, 10, 9, and 6. Never sat on a jury before.
> THE COURT: What do you do when you are working?
> A JUROR: Looking for work.
> THE COURT: I mean is there a job that you're looking for? Have you ever been employed?
> A JUROR: Like a warehouse.

struck by the State. In light of the State's overall explanation and the court's observations, the court allowed the strike.

¶12 Young argues the State's explanation for striking Juror 10 was itself discriminatory. The State's explanation for the strike, however, involved three considerations facially unrelated to race: Juror 10's demeanor and attitude, work history or mode of answering questions, and lack of college education. None of these considerations are inherently racially discriminatory. *See Newell*, 212 Ariz. at 401, 132 P.3d at 845 ("'Unless a discriminatory intent is inherent in the prosecutor[']s explanation,' this burden is satisfied by a facially valid explanation for the peremptory strike." (citation omitted)); *see also State v. Hernandez*, 170 Ariz. 301, 305, 823 P.3d 1309, 1313 (App. 1991) ("mode of answering questions" and "factors which reflect attitude" are permissible bases for peremptory strike).

¶13 Young also contends the State's "excuse for striking the juror was obviously pre-textual," but the superior court verified the State's observations about Juror 10's manner of answering the employment question and confirmed that Juror 10 "seemed somewhat disengaged." *See Newell*, 212 Ariz. at 401, ¶ 54, 132 P.3d at 845 (superior court's findings are due substantial deference because of the court's unique position to

assess credibility); *Hernandez*, 170 Ariz. at 305, 823 P.3d at 1313 (noting that the superior court's findings are owed deference because of the superior court's unique "position to observe matters that cannot be captured by a written appellate record"). Moreover, as the court noted, the State did not strike all African-American jurors, which, although not alone dispositive, "is indicative of a nondiscriminatory motive." *State v. Roque*, 213 Ariz. 193, 204, ¶ 15, 141 P.3d 368, 379 (2006). Given this record, the court did not err by crediting the State's race-neutral explanation and allowing the State to strike Juror 10.

II. Prohibiting Testimony.

¶14 Young also argues the superior court improperly compromised his defense by prohibiting him from testifying about how his anxiety medication affected him when speaking with the police about the incident. Contrary to Young's argument, the superior court did not prohibit such testimony. Before trial, the State moved *in limine* to preclude evidence of Young's anxiety disorder and anxiety medication as irrelevant and unduly prejudicial, and because diminished capacity would not be a defense to the crime charge. Young agreed that the preexisting anxiety disorder would not be relevant, but suggested that his actual state of mind at the time he was questioned by police would be admissible. The State did not object to testimony

about Young's state of mind at the time he was questioned, and the court ruled that it would allow state of mind testimony but not reference to the anxiety disorder.

¶15 Young's counsel then suggested that evidence regarding Young's anxiety medication and "how it affected his train of thought, his state of mind when he was answering the officer's question" would be important. The court did not rule on the medication issue, instead inviting further explanation from Young. The following day, defense counsel informed the court that "I've instructed [him] not to talk about any type of mental health condition and/or any type of medication he was on at the time. I do believe that him describing how he felt at the different times would be sufficient. I believe that would probably satisfy the State." In so doing, the medication issue became moot with Young affirmatively proposing the course of action he now alleges as error on appeal.

¶16 Because the superior court did not preclude the testimony at issue, Young's claim of error necessarily fails. To the extent Young now challenges a perceived prohibition, Young invited any alleged error by affirmatively proposing restricted testimony, and he is thus barred from claiming such error on appeal. *See State v. Parker*, 231 Ariz. 391, 405, ¶¶ 58, 61, 296 P.3d 54, 68 (2013) (invited error doctrine applies to defense stipulation to admit recorded interviews at trial,

even after pretrial challenge to admissibility); *see also State v. Lucero*, 223 Ariz. 129, 138, ¶ 31, 220 P.3d 249, 258 (App. 2009) (invited error doctrine bars source of error -- party that "affirmatively and independently initiated the error" -- from raising the error on appeal).

¶17 Even assuming the alleged error was not invited, because Young agreed to restrict his own testimony, we review only for fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, 567, ¶¶ 19-20, 115 P.3d 601, 607 (2005). Young testified that when talking to police officers, he felt "anxious," "worried," "nervous," "scared," "afraid," "disengaged," "a little out of it," not "in the right state of mind," with his head "spinning around," not "really focused" or "on [his] feet, per se." Thus, he was able to explain his state of mind, albeit without reference to medication. Accordingly, the perceived restriction on Young's testimony is not grounds for reversal.

CONCLUSION

¶18 For the foregoing reasons, we affirm Young's conviction and sentence of probation.

/S/
KENT E. CATTANI, Judge

CONCURRING:

/S/
SAMUEL A. THUMMA, Presiding Judge

/S/
JON W. THOMPSON, Judge