

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 05 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DARIO L. CANNON,

Petitioner - Appellant,

v.

GERALD JANDA,

Respondent - Appellee.

No. 15-15374

D.C. No. 3:13-cv-02419-TEH

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Thelton E. Henderson, Senior District Judge, Presiding

Argued and Submitted July 19, 2016
San Francisco, California

Before: GRABER and TALLMAN, Circuit Judges, and EDMUNDS**, Senior
District Judge.

Petitioner Dario L. Cannon appeals the denial of his habeas petition, alleging
that the Alameda County Superior Court failed to properly conduct the inquiry

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Nancy G. Edmunds, Senior United States District
Judge for the Eastern District of Michigan, sitting by designation.

required by *Batson v. Kentucky*, 476 U.S. 79 (1986), after the prosecution exercised peremptory strikes against three minority veniremembers. Cannon further alleges that the trial court erred when finding that the reasons offered by the prosecution for the strikes were race-neutral. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The California Court of Appeal reasonably ruled that the trial court applied the proper legal standards established by the United States Supreme Court. The trial court's references to California cases did not taint the analysis, as our review of the record reveals that the trial court did not ignore *Batson's* third step. *See Johnson v. California*, 545 U.S. 162, 165, 171-72 (2005). Further, the trial court expressly found that the prosecutor was "truthful" in describing her race-neutral reasons for the strikes. No clearly established precedent required the trial court to do more when analyzing a *Batson* challenge. *See, e.g., id.; Snyder v. Louisiana*, 552 U.S. 472, 477-79, 485-86 (2008).

2. Nor has Cannon shown that the California Court of Appeal was unreasonable in deferring to the trial court's judgment in light of the evidence presented. *See* 28 U.S.C. § 2254(d)(2). Our review is "doubly deferential," in that we must uphold the ruling unless it was "objectively unreasonable" to conclude that substantial evidence supported the trial court's credibility determination. *See*

Briggs v. Grounds, 682 F.3d 1165, 1170 (9th Cir. 2012). Because the record supports the conclusion that the prosecution’s strikes did not rest on an impermissible ground, the state appellate court was not “objectively unreasonable in concluding that [the] trial court’s credibility determination was supported by substantial evidence.” *Id.*

3. All remaining issues on which a certificate of appealability was granted *other than* those pertaining to the three veniremembers have been waived by Cannon’s failure to argue them in the opening brief on appeal. *Styers v. Schriro*, 547 F.3d 1026, 1028 n.3 (9th Cir. 2008) (per curiam).

AFFIRMED.