Affirmed and Memorandum Opinion filed August 22, 2023.

In The

Fourteenth Court of Appeals

NO. 14-22-00766-CR

ALMA LETICIA MENDOZA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 2
Bell County, Texas
Trial Court Cause No. 21CCR04052

M E M O R A N D U M O P I N I O N

A jury found Appellant Alma Leticia Mendoza guilty of assault causing bodily injury and assessed punishment at 60 days' confinement. *See* Tex. Penal Code Ann. § 22.01(a)(1). Appellant appealed her conviction and asserts (1) the trial court abused its discretion in failing to sustain Appellant's *Batson* challenge, and (2) the trial court abused its discretion when it admitted evidence of a witness's prior conviction as evidence of a crime of moral turpitude. For the reasons below, we affirm Appellant's conviction.

BACKGROUND

After Appellant was fired from her job at Freeway Insurance in Belton, Texas, she returned to her former place of employment to remove her personal belongings. While she was at the insurance agency, Appellant got into a physical altercation with Complainant, her former boss. Appellant was arrested and charged with assault causing bodily injury.

Appellant proceeded to a jury trial in August 2022. We summarize the relevant witness testimony below.

Complainant

Testifying at trial, Complainant said she was a branch manager at Freeway Insurance's Belton office. Complainant said Appellant began working at the insurance agency in January 2021. Complainant acknowledged borrowing money from Appellant during Appellant's employment. According to Complainant, she told Appellant she "probably would not be able to pay her back, and if [she] could, it would be a very long time."

Complainant said Appellant was fired in June 2021 for repeatedly missing work with no advance notice. Complainant recalled that, on June 25, 2021, Appellant returned to the office to remove her personal belongings and was accompanied by her boyfriend.

Complainant testified that she was on the phone when Appellant and her boyfriend entered the business. Complainant recalled that Appellant "start[ed] yelling about her money," to which Complainant reminded Appellant that there was the possibility she would never pay her back. According to Complainant, the "next thing [she] knew, [she was] being pulled out of [her] chair by [her] hair." Complainant said Appellant threw her across the office before sitting on top of her

and "striking [her] in [her] face." Complainant testified that Appellant hit her four or five times. Complainant recalled tearing Appellant's shirt during the struggle.

Complainant said the assault stopped when Appellant's boyfriend and a customer walked in the office. Complainant said Appellant "kicked [her] one time in the back, and then she ran out — they ran out the door."

Complainant said 911 was called and that she spoke to the operator. According to Complainant, an ambulance responded to the office and she was taken to the hospital. Complainant was discharged that same day after her injuries were evaluated. Photographs of Complainant's injuries were admitted into evidence and showed (1) a large red abrasion on her forehead, (2) scratches on her arms, (3) a scratch on her back, (4) bare patches of Complainant's scalp, and (5) clumps of Complainant's curly hair on the desk.

Officer Torres

Officer Torres responded to the insurance agency after the 911 call reporting the altercation between Appellant and Complainant. Officer Torres said he made contact with Complainant and observed injuries to her face. According to Officer Torres, he called emergency services to provide Complainant with medical attention.

After he left the insurance agency, Officer Torres said he tried to make contact with Appellant and called her "several times." Officer Torres said Appellant and her boyfriend came by the police station approximately four hours later and gave statements about what transpired with Complainant. Officer Torres also took photographs of Appellant, which show a rip in her shirt and a slight bruise on her chest.

When asked about his opinion on the altercation, Officer Torres testified:

> Once I met with [Appellant], based on the injuries that she had — she only had a scratch to her hand and what appeared, some redness to her chest. She didn't sustain any injuries like the other party. And so in my experience, she appeared to be the aggressor.

Patrick O'Neal

O'Neal is a Freeway Insurance customer and walked in the insurance agency as the altercation was underway. According to O'Neal, he had been insured by the agency for approximately four years and described Complainant as his "work friend." O'Neal said he was bringing Complainant lunch when he walked in and saw the women fighting.

O'Neal testified that he was walking across the parking lot when he saw Complainant "go flying across to one side, then be thrown into the middle." According to O'Neal, when he walked in the office he saw Appellant sitting on top of Complainant and hitting her with her fists. O'Neal said it did not appear that Complainant was fighting back. O'Neal recalled telling Appellant to get off Complainant, after which Appellant "got up [and] kicked [Complainant] as she got up." O'Neal said Appellant and her boyfriend left the office together.

O'Neal said he waited with Complainant until the police arrived. O'Neal also recalled seeing a "knot" on Complainant's head after the incident.

O'Neal also was questioned about his criminal history and acknowledged prior convictions for driving while intoxicated, unlawfully carrying a weapon, and theft.

Appellant

Testifying about the day of the incident, Appellant said she returned to the insurance agency to retrieve her personal belongings. While she was there, Appellant said she "spontaneously" decided to ask Complainant for the money she

owed her. According to Appellant, Complainant responded with "I don't give an F if your kids don't eat" before standing up from her desk. Appellant recalled that Complainant attempted to reach for her purse before swinging at Appellant. Appellant said she raised her hands before they both tripped and fell to the carpet.

Appellant said Complainant was grabbing her hair as they hit the floor. Appellant acknowledged hitting Complainant in the face at least twice. Appellant estimated that the altercation lasted 45 seconds before her boyfriend pulled her away from Complainant. Appellant said they left the insurance agency and called 911.

During the incident, Appellant said she feared for her safety and was concerned that Complainant "would get up and . . . reach for her knife or gun." Appellant said she previously had seen Complainant take a lime green knife out of her purse. Appellant also said she believed Complainant carried a gun. Appellant acknowledged that she did not include this information about Complainant's gun and knife when she gave a written statement at the police department the day of the incident.

Appellant said Complainant was not known amongst their co-workers as an honest person. Appellant said Complainant also was not known as a peaceful person. Appellant said Complainant's version of events regarding the altercation was not accurate.

Jerome Lopez

Lopez was Appellant's boyfriend and accompanied her to the insurance agency the day of the altercation with Complainant. Lopez said he was returning from loading things in the car when he saw the women arguing in Spanish. Lopez said Complainant initiated the altercation by grabbing Appellant's shirt. Lopez

also recalled that Complainant was reaching for her purse and Appellant grabbed Complainant's hair. Lopez said Complainant threw the first punch at Appellant and both women ended up on the ground.

According to Lopez, Appellant was on top of Complainant and it was "mutual combat." Lopez acknowledged that Appellant had multiple opportunities to get off Complainant and leave the scene, but she "chose to just keep hitting" Complainant. But Lopez said Complainant was hitting Appellant, too.

Lopez said Appellant was "backing off" Complainant when he told her they needed to leave the office. After they left the insurance agency, Lopez said they called police, went to the police department, and gave their statements regarding the incident.

Prior to the altercation, Lopez said he had spent time with Complainant on numerous occasions. When asked about his opinion of Complainant, Lopez said she was "untruthful" and did not have a reputation for peacefulness. Lopez also said Complainant had a "very nasty attitude" and was rude to customers. According to Lopez, before the altercation he previously had seen Complainant pull a knife out of her purse and had heard her talk about her gun "multiple times." Lopez recalled hearing Complainant say she "carries [a gun] with her all the time and she's not scared to use it."

When asked about Appellant, Lopez testified that she is truthful and "very peaceful."

Alejandro Escobedo

Escobedo is Appellant's brother and lived in the same trailer park as Complainant. Escobedo said he met Complainant once prior to the day of the altercation. According to Escobedo, he met Complainant in passing when

Appellant introduced them to each other as they were coming from the store. Escobedo agreed he did not have "any substantial personal knowledge or familiarity" with Complainant.

Describing Complainant's reputation, Escobedo said she was "really aggressive" and was frequently "arguing and [] fussing." Escobedo said there were "always fights and stuff" ongoing between Complainant and her husband.

Discussing the day of the altercation, Escobedo said Appellant came home "crying" and "devastated." Escobedo said Appellant was concerned that she "was going to get in trouble because she defended herself" in the incident with Complainant.

Escobedo also was questioned about his criminal history. When asked if he had committed "a crime of moral turpitude," Escobedo responded that he had been convicted of driving under the influence and assault causing bodily injury to a family member.

Conclusion of Trial

After the parties rested, the jury deliberated and found Appellant guilty of assault causing bodily injury. *See* Tex. Penal Code Ann. § 22.01(a)(1). The jury assessed punishment at 60 days' confinement. Appellant timely appealed.

ANALYSIS

Raising two issues on appeal, Appellant asserts that the trial court erred by:

1. failing to find purposeful discrimination in the State's use of a peremptory strike against a black juror; and
2. admitting evidence of a witness's prior assault conviction as evidence of a crime of moral turpitude.

We consider these issues individually.

I. *Batson* Challenge

In her first issue, Appellant asserts the trial court erred in failing to find purposeful discrimination in the State's use of a peremptory strike against Juror No. 2, a black man. Appellant argues that this peremptory strike "invalidates the jury selection process and requires a new trial."

A. Standard of Review and Governing Law

In *Batson v. Kentucky*, the Supreme Court held that the Fourteenth Amendment's Equal Protection Clause forbids the State from exercising its peremptory strikes based solely on the race of a potential juror. 476 U.S. 79, 89 (1986); *see also Nieto v. State*, 365 S.W.3d 673, 675 (Tex. Crim. App. 2012). Even a single impermissible strike for a racially-motivated reason invalidates the jury selection process and requires a new trial. *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008); *Jones v. State*, 431 S.W.3d 149, 154 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd).

A *Batson* challenge consists of three steps. *Nieto*, 365 S.W.3d at 675; *see also Jones v. State*, 531 S.W.3d 309, 318 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd). First, the defendant must make a prima facie showing of racial discrimination in the State's use of a peremptory strike. *Nieto*, 365 S.W.3d at 675. If the defendant makes the requisite showing, the burden shifts to the State to provide a race-neutral explanation for its strike. *Id.* This race-neutral explanation is a burden of production; it does not have to be "persuasive, or even plausible." *Purkett v. Elem*, 514 U.S. 765, 767-68 (1995) (per curiam). Rather, "'the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral.'" *Id*. (quoting *Hernandez v. New York*, 500 U.S. 352, 360 (1991) (plurality op.)).

Finally, in evaluating the genuineness of the prosecutor's explanation, the trial court must determine if the defendant has proven purposeful discrimination by a preponderance of the evidence. *Blackman v. State*, 414 S.W.3d 757, 764-65 (Tex. Crim. App. 2013). For this step, the burden of persuasion remains on the defendant. *Jasper v. State*, 61 S.W.3d 413, 421 (Tex. Crim. App. 2001).

We review a trial court's ruling on a *Batson* challenge for clear error, focusing on the genuineness of the asserted non-racial motive for the strike rather than its reasonableness. *Nieto*, 365 S.W.3d at 676; *Blackman*, 414 S.W.3d at 765. We consider the entire voir dire record in assessing the trial court's determination; we are not limited to arguments or considerations that the parties specifically called to the trial court's attention so long as those arguments or considerations are grounded in the appellate record. *Finley v. State*, 529 S.W.3d 198, 205-06 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd). Moreover, race-neutral reasons for peremptory challenges often involve evaluating a juror's demeanor, warranting the trial court's firsthand observations greater deference. *Snyder*, 552 U.S. at 477; *Finley*, 529 S.W.3d at 206. Accordingly, we will not disturb the trial court's ruling unless we are left with a definite and firm conviction that a mistake has been committed. *Hernandez v. New York*, 500 U.S. 352, 369 (1991) (plurality op.); *Finley*, 529 S.W.3d at 206.

B. Application

First: Appellant's prima facie showing is moot

Step one of the *Batson* analysis, *i.e.*, a prima facie showing of racial discrimination, was rendered moot when the State moved to step two and offered race-neutral reasons for its strike. *See Watkins v. State*, 245 S.W.3d 444, 447 (Tex. Crim. App. 2008) ("Once the opponent of the challenged strike raises a question of purposeful discrimination, if the trial court then proceeds immediately to the

second step by inquiring of the proponent whether he had a non-discriminatory purpose, a reviewing court is to assume that the opponent has satisfied his step-one obligation to make a prima facie case of purposeful discrimination and address only the second and third steps.").

Second: The State provided a facially race-neutral explanation

Turning to step two, we conclude the State's explanation for striking Juror No. 2 is facially race-neutral. A race-neutral explanation is one based on something other than the juror's race. *See Hernandez*, 500 U.S. at 360; *Jones*, 431 S.W.3d at 155. At this step in the process, the issue is simply the facial validity of the prosecutor's explanation — "[u]nless discriminatory intent is inherent in the explanation, the offered reason is race-neutral." *Jones*, 431 S.W.3d at 155.

Here, the State provided two reasons for striking Juror No. 2: (1) based on his answers to the voir dire questions, he might hold "the lack of video evidence" against the State, and (2) "he said he didn't want to be here for this trial." Because race plays no overt role in these explanations, they are race-neutral. *See Hernandez*, 500 U.S. at 360; *Jones*, 431 S.W.3d at 155.

Third: The record does not show that the prosecutor's explanation was pretext for purposeful discrimination

In the third step, we examine whether the trial court clearly erred in failing to find purposeful discrimination in the State's use of peremptory strikes. *See Jones*, 431 S.W.3d at 155. At this step, "[t]he trial court has a pivotal role in evaluating *Batson* claims," because the trial court must evaluate the prosecutor's credibility and "the best evidence of discriminatory intent often will be the demeanor of the attorney who exercises the challenge." *Snyder*, 552 U.S. at 477; *see Finley*, 529 S.W.3d at 206-07.

Our analysis focuses on the State's second asserted reason for striking Juror

No. 2: "[Juror No. 2] said he didn't want to be here for this trial." The record provides adequate support for this basis for striking Juror No. 2.

Defense counsel had the following exchange with Juror No. 2 during voir dire:

> Counsel: I'm going to ask you to be real honest here. Do you really want jury duty after — this afternoon?
>
> Juror No. 2: No, sir.
>
> Counsel: Is it safe to apply that answer to everybody here? We'd all like to be at work, I assume? Usually at least one person hates their job, but okay.
>
> Juror No. 2: Not me.

The prosecutor referenced this exchange at the hearing on Appellant's *Batson* challenge and said the second reason Juror No. 2 was struck was because "he said he didn't want to be here for this trial." This is a race-neutral reason for striking Juror No. 2 and is supported by the record. *See Randle v. State*, No. 14-19-00140-CR, 2021 WL 388504, at *8 (Tex. App.—Houston [14th Dist.] Feb. 4, 2021, pet. ref'd) (mem. op., not designated for publication) ("The State described juror 21's conduct that led it to believe she 'didn't want to be here,' also a race-neutral reason for striking her."); *Fambro v. State*, No. 11-06-00161-CR, 2007 WL 935560, at *1-2 (Tex. App.—Eastland Mar. 29, 2007, pet. ref'd) (not designated for publication) (the State asserted that a juror was struck because it appeared he "didn't want to be here"; this explanation was "reasonable and racially neutral"); *Conyers v. State*, No. 13-01-408-CR, 2006 WL 1451595, at *4-5 & *4 n.41 (Tex. App.—Corpus Christi May 25, 2006, no pet.) (mem. op., not designated for publication) (the State asserted that a juror was struck because he "said 'he'd rather not be here'"; this explanation was "supported by the record" and did not reflect "an inherently discriminatory intent").

After considering the entire voir dire record, we are not left with a definite or firm conviction that a mistake has been committed with respect to the trial court's ruling on Appellant's *Batson* challenge. *See Hernandez*, 500 U.S. at 369; *Finley*, 529 S.W.3d at 206. Therefore, the record does not show that the trial court committed clear error in overruling Appellant's *Batson* challenge. *See Nieto*, 365 S.W.3d at 676; *Blackman*, 414 S.W.3d at 765.

We overrule Appellant's first issue.

II. Evidentiary Error

Appellant's second issue focuses on the testimony from Escobedo, her brother. On cross-examination, the State asked Escobedo if he had been convicted of a "crime of moral turpitude," to which Escobedo responded "DUI." The State then asked Escobedo if he also had been convicted of "assault causing bodily injury to a family member," to which he said, "Actually, yes, I was." Appellant asserts that it was error to introduce evidence of Escobedo's assault conviction because "we do not know whether the victim in his family violence assault was a woman or a child." *See Willis v. State*, No. 14-13-00267-CR, 2014 WL 4854579, at *8 (Tex. App.—Houston [14th Dist.] Sept. 25, 2014, no pet.) (mem. op., not designated for publication) ("[T]he Court of Criminal Appeals and many other courts have concluded that misdemeanor simple assault is not a crime of moral turpitude. An exception has developed under which misdemeanor assaults are considered crimes of moral turpitude if the aggressor is male and the victim is female.") (internal citations omitted).

We presume without deciding that the admission of this evidence constituted error and that Appellant properly preserved the issue at trial. We proceed to consider whether the erroneous evidentiary ruling affected Appellant's substantial rights. *See* Tex. R. App. P. 44.2(b); *Walters v. State*, 247 S.W.3d 204, 219 (Tex.

Crim. App. 2007).

A substantial right is affected if the error had a substantial and injurious effect or influence in determining the jury's verdict. *Morales v. State*, 32 S.W.3d 862, 867 (Tex. Crim. App. 2000); *Bleimeyer v. State*, 616 S.W.3d 234, 251 (Tex. App.—Houston [14th Dist.] 2021, no pet.). We do not reverse the conviction for evidentiary error unless, after examining the record as a whole, we have fair assurance that the error did not influence the jury or had only a slight effect. *Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998). We consider all admitted evidence, the nature of the evidence supporting the verdict, and the character of the alleged error and how it might be considered in connection with other evidence in the case. *Morales*, 32 S.W.3d at 867.

Here, the evidence showing that Escobedo had been convicted of assault causing bodily injury to a family member did not affect Appellant's substantial rights. *See* Tex. R. App. P. 44.2(b); *Walters*, 247 S.W.3d at 219.

As discussed above, the jury heard testimony from six witnesses. Two of these witnesses (Appellant and Complainant) were actual participants in the altercation; two other witnesses (Lopez and O'Neal) saw all or part of the altercation as it occurred. The battle lines were clearly drawn: Appellant and Lopez said Complainant was the aggressor, and Complainant and O'Neal said Appellant was the aggressor. Appellant and Lopez also stated that they had known Complainant for a few months and testified as to her reputation for truthfulness and peacefulness. Finally, Officer Torres testified about his observations when he responded to the incident and while he took statements from Appellant and Lopez.

Against this backdrop, Escobedo's testimony was of minimal relevance. Escobedo testified as to Complainant's reputation in the trailer park — but Escobedo also acknowledged that he had met Complainant only once before the

altercation. Similarly, Escobedo agreed that he did not have "any substantial personal knowledge or familiarity" with Complainant. Escobedo's limited opinion on Complainant's reputation — and the slight foundation for its basis — suggest his testimony would have had, if any, only a slight effect on the jury's determination of issues of fact. Therefore, any evidence of Escobedo's prior conviction for bodily assault of a family member also would have had none or only a slight effect on the jury's verdict. *See Johnson*, 967 S.W.2d at 417. Accordingly, any error in the admission of this evidence did not affect Appellant's substantial rights. *See* Tex. R. App. P. 44.2(b).

We overrule Appellant's second issue.

CONCLUSION

We affirm the trial court's judgment.

/s/ Meagan Hassan
Justice

Panel consists of Justices Bourliot, Hassan, and Poissant.
Do Not Publish — Tex. R. App. P. 47.2(b).