

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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STATE OF ARIZONA, *Appellee*,

*v.*

JOHN CHARLES BATE, *Appellant*.

No. 1 CA-CR 19-0045  
FILED 5-12-2020

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Appeal from the Superior Court in Mohave County  
No. S8015CR201400625  
The Honorable Billy K. Sipe, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Eric Knobloch  
*Counsel for Appellee*

Law Offices of Harriette P. Levitt, Tucson  
By Harriette P. Levitt  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Joshua Rogers<sup>1</sup> joined.

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**H O W E**, Judge:

¶1 John Bate appeals his convictions and sentences, arguing that the trial court improperly denied his *Batson* challenge. He also challenges the sufficiency of the evidence of his criminal damage conviction. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 R.J. owned an all-terrain vehicle (“ATV”) that he had loaded in the back of his truck when both his truck and ATV were stolen from his home in Las Vegas in January 2014. R.J. reported the theft to police, who found his truck three weeks later in Las Vegas and who found his ATV three months later in Mohave County.

¶3 In April 2014, Arizona Department of Public Safety Officer Dickinson was in his marked patrol car, traveling along the highway outside Kingman with several other marked and unmarked patrol cars when he saw an ATV traveling at a high rate of speed on the frontage road. As Officer Dickinson and other patrol cars exited the highway, he saw the ATV run a stop sign. He attempted to conduct a traffic stop but the ATV did not stop. Officer Dickinson pursued the ATV down the frontage road and continued to follow the ATV as it turned onto a dirt road. The ATV “kicked up” a lot of dust, but Officer Dickinson could still see the ATV’s taillights. He saw the ATV go up and down abruptly and assumed that part of the road was “washed out.” When he attempted to avoid the “washed out” part of the road, he crashed his patrol car, causing about \$8,000 worth of front-end damage.

¶4 The crash did not disable Officer Dickinson’s patrol car, so he, along with other officers in other patrol cars, continued following the ATV,

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<sup>1</sup> The Honorable Joshua Rogers, Judge of the Arizona Superior Court, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

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until they found it abandoned about one mile down the road. Officer Dickinson ran the vehicle identification number, which showed the ATV was reported stolen from Las Vegas. During the chase, Officer Dickinson saw the ATV driver's face and later matched the driver with a photo of Bate at the police station. Other officers at the station indicated that the person in the photo was John Bate.

¶5 Bate was later arrested and charged with theft of means of transportation, a class 3 felony; unlawful flight from pursuing law enforcement vehicle, a class 5 felony; and criminal damage, a class 5 felony. During jury selection, Bate made a *Batson* challenge because the prosecutor used one of her peremptory strikes to strike the only minority juror, Juror 13. The prosecutor stated that Juror 13 was struck because "he's an engineer and his computer science in engineering background." The prosecutor explained that in her experience, "engineer types sometimes get bogged down in the minutiae." The prosecutor further explained that she struck another non-minority juror for the same reason. The trial court asked the prosecutor if she struck Juror 13 because of his race, and she replied, "[a]bsolutely not." The court then accepted the prosecutor's race-neutral reason for striking Juror 13 and the trial continued.

¶6 After a two-day trial, the jury convicted Bate of theft of means of transportation, unlawful flight from pursuing law enforcement vehicle, and criminal damage with a value of \$2,000 or more. Bate was sentenced to a mitigated term of 2.5 years' imprisonment for theft of means of transportation with 42 days' presentence incarceration credit, a mitigated term of 1-year imprisonment for unlawful flight from pursuing law enforcement vehicle, and a presumptive term of 1.5 years' imprisonment for criminal damage. The court ordered that the unlawful flight and criminal damage sentences run concurrently but both run consecutive to the theft of means of transportation sentence. Bate timely appealed.

**DISCUSSION**

¶7 Bate challenges the State's peremptory strike of a racial minority juror and argues that the trial court improperly denied his *Batson* challenge. We will uphold the denial of a *Batson* challenge absent clear error. *State v. Gentry*, 247 Ariz. 381, 384 ¶ 8 (App. 2019). The court is in the best position to assess a prosecutor's credibility, and we extend "great deference" to the court's ruling. *See Batson v. Kentucky*, 476 U.S. 79, 98 n.21 (1986).

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¶8 The Equal Protection Clause prohibits the State from peremptorily striking a potential juror based solely on the juror’s race. *Batson*, 476 U.S at 89. A *Batson* challenge requires a three-part analysis: (1) the opponent of the strike must make a prima facie showing of racial discrimination; (2) if shown, the striking party must then provide a facially race-neutral reason for the strike; and (3) if provided, the opponent must show the facially-neutral reason is pretextual for purposeful discrimination. *State v. Newell*, 212 Ariz. 389, 401 ¶ 54 (2006).

¶9 The trial court properly followed these steps. When Bate challenged the State’s use of a peremptory strike on Juror 13 because he was the only minority in the jury pool, the court asked the prosecutor to provide a race-neutral reason for striking the juror. The prosecutor provided a race-neutral reason for striking Juror 13: she struck the juror because “he’s an engineer and his computer science in engineering background.” The prosecutor further explained that in her experience, “engineer types get bogged down in the minutiae” and that she struck another juror for the same reason. After the prosecutor stated she did not strike Juror 13 because of his race, the trial court accepted the prosecutor’s race-neutral reason for striking Juror 13.

¶10 Bate argues that the prosecutor’s explanation for striking Juror 13 fails because he was not an engineer and that the case was “straightforward.” This argument, challenging the persuasiveness of the race-neutral reason does not become relevant until determining whether the reason was merely pretextual. *Newell*, 212 Ariz. at 401 ¶ 54. Whether the race-neutral reason is pretextual turns on the credibility of the prosecutor and the trial court is in the best position to make that assessment. *Id.* The trial court made such an assessment when it asked the prosecutor, “[t]he reason you struck Juror No. 13 had nothing to do with his race?” The prosecutor replied, “Absolutely not.” By accepting the prosecutor’s race-neutral reason, the court determined that the reason provided was not a pretext for purposeful discrimination. Additionally, even if Juror 13 was not an engineer, the prosecutor also indicated that Juror 13 was struck because of “his computer science in engineering background,” which is supported by the record. As a result, the trial court properly denied Bate’s *Batson* challenge.

¶11 Bate argues next that insufficient evidence supports his criminal damage conviction because Officer Dickinson caused the damage to his patrol car, not him. Bate also argues that the criminal damage statute “contemplates that the defendant take some action which causes the damage.” We review the sufficiency of evidence de novo and view the facts

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in the light most favorable to sustaining the verdict. *State v. West*, 226 Ariz. 559, 562 ¶¶ 15–16 (2011). A person commits criminal damage by “recklessly damaging property of another person.” A.R.S. § 13–1601(A)(1). “Recklessly” means “that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists.” A.R.S. § 13–105(10)(c).

¶12 The trial evidence clearly shows that Bate acted recklessly and that Officer Dickinson’s patrol car was damaged. *See* A.R.S. §§ 13–105(10)(c); –1601(1) (defining “damaging” as meaning damage under A.R.S. § 13–1701); –1701(1) (defining “damage” as “any physical or visual impairment of any surface”). By evading police and speeding down a dirt road on an ATV that “kicked up” dust and reduced visibility, a reasonable jury could find that Bate knew he created a substantial and unjustifiable risk that law enforcement might crash while attempting to pursue him.

¶13 As to causation, “[i]n Arizona, both ‘but for’ causation and proximate cause must be established in a criminal case.” *State v. Marty*, 166 Ariz. 233, 23 (App. 1990). To establish legal cause, the State must present evidence that “but for” Bate’s conduct, Officer Dickinson’s patrol car would not have been damaged. *See State v. Dodd*, 244 Ariz. 182, 185 ¶ 10 (App. 2017). To establish proximate cause, the State must present evidence showing “that the difference between the result intended” by Bate and the harm actually suffered by the victim is not so extraordinary that it would be unfair to hold Bate responsible for the result. *See id.*

¶14 Bate’s actions were the legal and proximate cause of the damage to Officer Dickinson’s patrol car. The record clearly shows that “but for” Bate evading police, Officer Dickinson would not have pursued Bate down a dirt road and he would not have crashed his patrol car. Additionally, Bate’s decision to evade police on a dirt road caused dust to “kick up” and Officer Dickinson to crash his patrol car. Thus, holding Bate responsible for the resulting damage to Officer Dickinson’s patrol car is not so extraordinary that it would be unfair. *See id.* As a result, sufficient evidence supports Bate’s criminal damage conviction.

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**CONCLUSION**

¶15 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court  
FILED: AA