DIVISION ONE
FILED: 05/17/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 10-0830
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
	)	Rule 111, Rules of the
ANGEL LOUIS JAMES,	)	Arizona Supreme Court)
	)	
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-142213-001 DT

The Honorable John R. Hannah, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
and Joseph T. Maziarz, Assistant Attorney General
and Christopher Burton, Rule 38(d) Student
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
by Karen M. Noble, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 Angel Louis James appeals his convictions and sentences for transportation of marijuana for sale. He argues that the denial of his *Batson*[1] challenge constitutes reversible error because the prosecutor's explanation for the peremptory strike was legally insufficient. For the following reasons, we affirm.

FACTUAL[2] AND PROCEDURAL BACKGROUND

¶2 On two separate occasions in 2008, James mailed a package containing approximately twenty pounds of marijuana. As a result, he was charged with two counts of knowingly transporting two or more pounds of marijuana, a class two felony. He pled not guilty and the case proceeded to trial.

¶3 During voir dire, the prosecutor used a peremptory strike to remove a Black female from the petit jury.[3] Defense counsel objected that the strike was discriminatory but the court found that the prosecutor provided a race-neutral explanation for the exclusion and denied the *Batson* challenge.

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[1] *Batson v. Kentucky*, 476 U.S. 79 (1986), *holding modified by Powers v. Ohio*, 499 U.S. 400 (1991) (equal protection clause prohibits use of peremptory strike to exclude a potential juror solely based on race).

[2] "[W]e view the evidence in the light most favorable to sustaining the verdict and reverse only if no substantial evidence supports the conviction." *State v. Pena*, 209 Ariz. 503, 505, ¶ 7, 104 P.3d 873, 875 (App. 2005).

[3] Even though James was voluntarily absent during the jury selection and subsequently tried in absentia, the petit jury was told that he was of Jamaican descent.

As a result, only one Black juror was seated on the jury, and that juror did not deliberate because he was selected as an alternate at the end of the trial.

¶4 James was convicted and sentenced to two concurrent five-year terms in prison with credit for 135 days of presentence incarceration. We have jurisdiction over his appeal pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012), 13-4031 (West 2012), and -4033(A) (West 2012).

DISCUSSION

¶5 James argues that the court clearly erred when it found that the prosecutor's explanation was sufficiently neutral under step two of the *Batson* analysis. He further argues that the court's subsequent refusal to reinstate the struck panelist violated his constitutional rights and warrants reversal.

I. Standard of Review

¶6 We independently review the court's application of the law and will affirm the denial of a *Batson* challenge unless it is clearly erroneous. *State v. Prasertphong*, 206 Ariz. 70, 86, ¶ 60, 75 P.3d 675, 691 (2003) (citations omitted), *vacated on other grounds*, 541 U.S. 1039 (2004). Mindful that a court is entitled to deference with respect to its factual determinations, we review findings regarding the proffered

explanation for clear error. *State v. Hernandez*, 170 Ariz. 301, 304-05, 823 P.2d 1309, 1312-13 (App. 1991) (citations omitted).

II. *Batson* Challenge

¶7 In *Batson v. Kentucky*, the Supreme Court held that a peremptory strike based on racial discrimination or stereotypes violates a defendant's Fourteenth Amendment right to equal protection of the laws "because it denies him the protection that a trial by jury is intended to secure." 476 U.S. 79, 86 (1986) (citations omitted). Accordingly, a *Batson* challenge triggers a three-part test designed to discern whether the State sought to "exclude any particular cognizable group from a jury panel for discriminatory reasons." *Hernandez*, 170 Ariz. at 304, 823 P.2d at 1312 (citing *Batson*, 476 U.S. at 96; *State v. Reyes*, 163 Ariz. 488, 489, 788 P.2d 1239, 1240 (App. 1989)). First, the defendant must make a prima facie showing of discrimination; then the burden of production shifts to the State to present a race-neutral reason for the strike; finally, the court must decide if the stated reason is sufficiently neutral or a pretext for purposeful discrimination. *Id.* (citations omitted).

¶8 After James raised the *Batson* challenge, the court allowed the prosecutor to address the objection. The prosecutor said that he removed the panelist because of "her last comment where she said she was a very strong advocate of innocent until proven guilty, and gave examples of people she thought was [sic]

inappropriately charged."[4] The prosecutor also pointed out that another Black panelist was not excluded and would be on the jury. Persuaded that the strike was not racially motivated, the court denied the challenge.

¶9 We begin with step two of the analysis because the court asked the State to justify the strike without deciding if James presented a prima facie case of discrimination.[5] *State v. Trostle*, 191 Ariz. 4, 12, 951 P.2d 869, 877 (1997) (citing *Hernandez*, 170 Ariz. at 304, 823 P.2d at 1312) (prima facie element presumed to be satisfied if court requests explanation from the State). The State's reason must be racially neutral, but it is not required to "rise to the level justifying exercise of a challenge for cause." *Batson*, 476 U.S. at 97. A neutral reason is one "based on something other than the race of the juror," *Hernandez v. New York*, 500 U.S. 352, 360 (1991), and the

[4] In fact, the panelist provided one example in response to the court's catch-all prompt toward the end of voir dire for "any information that anyone wants to give me at this point in response to any of the questions that you've been asked today, either by the lawyers or myself[.]" The panelist told the court that she had "a high respect for the Postal Service" but could remain impartial because she strongly believed in the presumption of innocence. To demonstrate her commitment to the principle, she shared an incident involving her son's football coach, who had been accused of hitting a child. The panelist indicated that, unlike parents who automatically took their child off the team, she chose to ask the coach about the charges and subsequently allowed her son to remain on the team.

[5] Both parties acknowledge that the court's request for the prosecutor's explanation implicitly satisfied the prima facie requirement.

court's finding on this issue is entitled to deference on review. *Hernandez*, 170 Ariz. at 304, 823 P.2d at 1312 (citations omitted). Any explanation that is neutral on its face ushers the court to the third and final step. *See State v. Newell*, 212 Ariz. 389, 401, ¶ 54, 132 P.3d 833, 845 (2006) (citations omitted) ("To pass step two, the explanation need not be 'persuasive, or even plausible'"; credibility determinations do not become relevant until step three).

¶10 James argues that the State "failed at the second step" because "[t]he excuse . . . that [the panelist] was a firm believer in the presumption of innocence and had offered an example from a recent life experience" was not sufficiently neutral. We disagree.

¶11 The prosecutor indicated that he excluded the panelist from the jury because she had identified herself as "a very strong advocate of being innocent until proven guilty" and described an incident when she acted in accordance with her conviction. The court did not err by finding that the justification was facially neutral and not premised on attributes ascribed to the panelist on account of her race. *See Hernandez*, 170 Ariz. at 305, 823 P.2d at 1313 ("It is permissible to rely on a prospective juror's mode of answering questions as a basis for peremptory selections."); *Hernandez v. New York*, 500 U.S. at 360-61 (a panelist's responses and

demeanor during voir dire may support neutral, trial-related basis for removal). Consequently, we are not moved to set aside the finding and conclude that the court did not err when it accepted the explanation.

¶12 James argues that the court nevertheless should have granted the *Batson* challenge because the explanation was pretextual. He claims that the prosecutor's failure to ask follow-up questions or use his peremptory strikes to remove other panelists who had agreed with the presumption of innocence exposes the error.

¶13 His arguments, however, relate to the third step of the analysis, and James concedes that he did not counter the State's rebuttal or argue that the State's reason was pretextual at the time of the objection. *See Purkett v. Elem*, 514 U.S. 765, 768 (1995) (citation omitted) ("[T]he ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike."). Additionally, because the court was not required to make, and James did not request, specific findings in support of the denial, we presume that the court followed the prescribed analytical framework and found the facts needed to show that James did not satisfy his burden of persuasion. *See Horton v. Mitchell*, 200 Ariz. 523, 526, ¶ 13, 29 P.3d 870, 873 (App. 2001) (citation omitted).

Consequently, we cannot conclude that the challenge was erroneously resolved and therefore sustain the court's ruling.

CONCLUSION

¶14 Based on the foregoing, James's convictions and sentences are affirmed.

/s/
_____
MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/
_____
ANN A. SCOTT TIMMER, Judge

/s/
_____
ANDREW W. GOULD, Judge