

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

No. 12-9003

---

ROBERT LARK

v.

SECRETARY PENNSYLVANIA DEPARTMENT OF CORRECTIONS;  
THE DISTRICT ATTORNEY PHILADELPHIA COUNTY;  
THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA,

Appellants

---

Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(No. 2-01-cv-01252)  
District Judge: Honorable John R. Padova

---

Argued: April 17, 2014  
Before: McKEE, *Chief Judge*, SCIRICA and GREENBERG, *Circuit Judges*

(Filed: May 6, 2014)

Thomas W. Dolgenos, Esq. (**ARGUED**)  
Ronald Eisenberg, Esq.  
Edward F. McCann, Jr., Esq.  
R. Seth Williams, Esq.  
Three South Penn Square  
Philadelphia, PA 19107-3499

Counsel for Appellants

Leigh M. Skipper, Esq.  
Stuart Lev, Esq. (**ARGUED**)

Federal Community Defender Office  
Eastern District of Pennsylvania  
Suite 545 West – The Curtis Center  
Philadelphia, PA 19106

Counsel for Appellee

---

OPINION

---

MCKEE, *Chief Judge*

The Commonwealth of Pennsylvania appeals the order of the District Court granting Robert Lark’s Petition for a writ of habeas corpus. This is the second time this case has come before us. We previously held that the District Court had not proceeded to the third step of the inquiry required under *Batson v. Kentucky*, 476 U.S. 79 (1986), and remanded for the court to conduct that analysis. *See Lark v. Sec’y Pa. Dep’t of Corr.*, 645 F.3d 596, 628 (3d Cir. 2011) (“*Lark I*”). On remand, the District Court concluded that Lark had established by a preponderance of the evidence that the Commonwealth had struck five Black potential jurors because of their race. We must now determine if the District Court’s findings were clearly erroneous. *Holloway v. Horn*, 355 F.3d 707, 713 (3d Cir. 2004); *Lark I*, 645 F.3d at 606.

We have explained that, “relief must be granted under *Batson* when even one black person is excluded [from the jury] for racially motivated reasons.” *Holloway*, 355 F.3d at 720 (internal quotation marks omitted). We have carefully considered the findings the District Court made on remand pursuant to its Third Step *Batson* analysis.

We cannot conclude that the court's conclusion that at least one of the Commonwealth's peremptory strikes was racially motivated is clearly erroneous.

Accordingly, we will affirm the conditional grant of Lark's Petition for a writ of habeas corpus.