MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dawann L. Martin, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

September 28, 2023

Court of Appeals Case No. 22A-CR-2326

Appeal from the Allen Superior Court

The Honorable Steven O. Godfrey, Judge

Trial Court Cause No. 02D05-2007-MR-21

Memorandum Decision by Judge Pyle

Judges Vaidik and Mathias concur.

Pyle, Judge.

Statement of the Case

[1] Dawann Martin, Jr., ("Martin") appeals his conviction by jury of murder.[1] He argues that the trial court clearly erred in allowing the State to exercise two peremptory challenges excluding two potential jurors and abused its discretion by giving jury instructions on accomplice liability. Concluding that the trial court did not clearly err in allowing the State to exercise two peremptory challenges and did not abuse its discretion in instructing the jury, we affirm the trial court's judgment.

[2] We affirm.

Issues

1. Whether the trial court clearly erred in allowing the State to exercise two peremptory challenges excluding two potential jurors.
2. Whether the trial court abused its discretion by giving jury instructions on accomplice liability.

Facts

[3] The facts most favorable to the judgment reveal that on December 22, 2019, Dominique Taylor ("Taylor") and Szarita Comer ("Comer") drove to the Villa Capri Apartments in Fort Wayne so that Comer could deliver marijuana infused Rice Krispies treats to a buyer ("the buyer"). Unbeknownst to Comer,

[1] IND. CODE § 35-42-1-1.

several individuals had asked the buyer to lure Comer to the apartment complex so that they could steal her marijuana edibles.

[4] When Comer and Taylor arrived at the apartment complex, Comer went into an apartment building to look for the buyer, and Taylor waited in Comer's car. While Taylor was waiting for Comer, fifteen-year-old Martin and sixteen-year-old Senaca James ("James"), who were both armed with handguns, approached Comer's car. Martin stood at the front of the car, and James stood on the driver's side of the car. Both young men fired multiple shots into the car. Comer ran into the parking lot and heard someone yell at Martin and James to "go get her too[.]" (Tr. Vol. 2 at 188). Comer hid until Martin and James had left the scene and then drove her car to the back of the apartment complex while Taylor called 911. Taylor, who had been shot twice, once in the neck and once in the side, died from the gunshot wounds. The State charged Martin with murder and an enhancement for using a firearm during the commission of the offense, and the trial court waived him into adult court.[2]

[5] During voir dire at Martin's August 2022 trial, the State moved to use a peremptory strike on Juror 29 ("Juror 29"). Martin asked the State to provide a "race[-]neutral preemptory (sic) reason" for the strike, and the trial court noted for the record that Juror 29, like Martin, was African American. (Tr. Vol. 2 at

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[2] The State also charged James with murder and an enhancement for using a firearm during the commission of the offense. James subsequently pleaded guilty to murder and admitted to the enhancement. *See James v. State*, No. 21A-CR-2911, 2022 WL 2549436 (Ind. Ct. App. July 8, 2022).

58). The State responded that Juror 29 had a criminal history that included one felony and three misdemeanors and that it "would strike anybody with that criminal history." (Tr. Vol. 2 at 58). The trial court found that the State had provided a race-neutral reason for the peremptory strike and allowed the strike over Martin's objection.

[6] Later during voir dire, the State moved to use a peremptory strike on Juror 108 ("Juror 108"). Martin again asked the State to provide a "race[-]neutral reason" for the strike, and the trial court noted that Juror 108 was African American. (Tr. Vol. 2 at 109). The State responded that the father of Juror 108's youngest child had been convicted of selling drugs, and Juror 108 had felt manipulated by his attorney. The State further explained that when it had asked Juror 108 if there had been anything about that situation that might affect how she would evaluate this case, Juror 108 had responded, "yes." (Tr. Vol. 2 at 109). The trial court again found that the State had given a race-neutral reason for the peremptory strike and allowed the strike over Martin's objection.

[7] At the end of the trial, the State tendered accomplice liability jury instructions to the trial court. Martin objected to the instructions. He specifically contended, among other things, that the evidence did not support the giving of the instructions. The trial court disagreed with Martin and read the accomplice liability instructions to the jury.

[8] The jury convicted Martin of murder and found that the State had proved the elements of the use-of-a-firearm enhancement beyond a reasonable doubt. The

trial court sentenced Martin to eighty (80) years in the Department of Correction.

[9] Martin now appeals.

Decision

[10] Martin argues that that the trial court clearly erred in allowing the State to exercise two peremptory challenges excluding two potential jurors and abused its discretion by giving jury instructions on accomplice liability. We address each of his contentions in turn.

1. Peremptory Challenges

[11] Martin first argues that the trial court clearly erred in allowing the State to exercise two peremptory challenges excluding two potential jurors. "Purposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure." *Batson v. Kentucky*, 476 U.S. 79, 86 (1986). When a criminal defendant objects to the State's peremptory strike pursuant to *Batson*, the trial court must conduct a three-step inquiry. *Cartwright v. State*, 962 N.E.2d 1217, 1220 (Ind. 2012).

> First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race; second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties' submissions, the trial court must

> determine whether the defendant has shown purposeful discrimination.

Id. at 1220-21 (cleaned up).

[12] Regarding the second step, "[a] step two explanation is considered race-neutral if, on its face, it is based on something other than race." *Id*. at 1221. In the third step, the defendant has the opportunity to offer additional evidence to demonstrate that the State's proffered race-neutral explanation is pretextual, and then the trial court ultimately rules on whether the proffered race-neutral explanation is valid. *Id*. We give great deference to a trial court's decision regarding whether a peremptory challenge is discriminatory, and we will set aside the trial court's decision only if it is clearly erroneous. *Forest v. State*, 757 N.E.2d 1003, 1004 (Ind. 2001).

[13] Martin specifically argues that the State did not come forth with adequate race-neutral explanations for using peremptory challenges to exclude Jurors 29 and 108. However, our review of the evidence reveals that the State's race-neutral explanation for challenging Juror 29 was the prospective juror's criminal history, which included one felony and three misdemeanor convictions. In addition, the State's race-neutral explanation for challenging Juror 108 was a family member's previous involvement in the criminal justice system. Our Indiana Supreme Court has explained that the State's exercise of a peremptory challenge does not violate *Batson* where the challenged individual or a family member has had previous involvement with the criminal justice system. *See Nicks v. State*, 598 N.E.2d 520, 523 (Ind. 1992); *see also Douglas v. State*, 636

N.E.2d 197, 199 (Ind. Ct. App. 1994) ("[T]he exercise of a peremptory challenge is not violative of *Batson* where the challenged individual or a family member has had previous involvement with the criminal justice system.").

[14] We further note that after the State had provided its reasoning for using the peremptory challenges, the trial court overruled Martin's objections and found that the State had provided race-neutral explanations for the peremptory challenges. The trial court's conclusion that the State's reasons were not pretextual is essentially a finding of fact that turns substantially on credibility. *Highler v. State*, 854 N.E.2d 823, 828 (Ind. 2006). It is therefore accorded great deference. *Id*.

[15] Based on the foregoing, we conclude that the trial court did not commit clear error in allowing the State to exercise two peremptory challenges excluding Jurors 29 and 108. *See Whitfield v. State*, 127 N.E.3d 1260, 1268 (Ind. Ct. App. 2019) (holding that the State's proffered reasons for striking a prospective juror were race neutral and not pretexts for discrimination), *trans. denied*.

2. Jury Instruction

[16] Martin also argues that the trial court abused its discretion by giving jury instructions on accomplice liability. Specifically, he contends that "there was simply no evidence in the record in this case to support the giving of such . . . instruction[s]." (Martin's Br. 15).

[17] "Instruction of the jury is left to the sound judgment of the trial court and will not be disturbed absent an abuse of discretion." *Schmidt v. State*, 816 N.E.2d 925, 930 (Ind. Ct. App. 2004), *trans. denied*. To constitute an abuse of discretion, the instructions must be erroneous, and the instructions taken as a whole must misstate the law or otherwise mislead the jury. *Brooks v. State*, 895 N.E.2d 130, 132 (Ind. Ct. App. 2008). In reviewing a trial court's decision to give tendered jury instructions, we consider: (1) whether the instructions correctly state the law; (2) whether there is evidence in the record to support the giving of the instructions; and (3) whether the substance of the tendered instructions is covered by other instructions that are given. *Id*.

[18] Here, the trial court instructed the jury as follows over Martin's objection:

> While the Defendant's presence during the commission of a crime or the failure to oppose the crime are, by themselves, insufficient to establish accomplice liability, you may consider them along with other facts and circumstances tending to show participation.
>
> You may consider the following factors when determining whether a Defendant aided another in the commission of the crime: (1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose the commission of the crime; and (4) the course of the Defendant's conduct before, during, and after the occurrence of the crime.
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> Under the theory of accomplice liability, a person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense. This is true even if the other person[:] (1) has not been prosecuted for the

> offense; (2) has not been convicted of the offense; or (3) has been acquitted of the offense. The Indiana law governing accomplice liability does not establish it as a separate crime, but merely as a separate basis of liability for the crime charged.
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> The acts of one accomplice are imputed to all other accomplices when they knowingly act in concert in furtherance of a crime. When two or more persons combine to commit a crime, each is criminally responsible for the acts of his confederate(s) which are probable and natural consequence[s] of their common plan, the act of one being the act of all.

(App. Vol. 2 at 120-22).[3]

[19] In addressing the propriety of these instructions, we note that, under the theory of accomplice liability, an individual who aids, induces, or causes the commission of a crime is equally as culpable as the person who actually commits the offense. *Brooks*, 895 N.E.2d at 133 (citing I.C. § 35-41-2-4). The accomplice liability statute does not set forth a separate crime, but merely provides a separate basis of liability for the crime that is charged. *Id*. Therefore, where the circumstances of the case raise a reasonable inference that the defendant acted as an accomplice, it is appropriate for the trial court to instruct the jury on accomplice liability even where the defendant was charged as a principal. *Id*.

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[3] As the State points out, "[t]he transcript provided for this appeal does not contain a transcription of the trial court's reading of final instructions to the jury (Tr. Vol. III 182), and the instructions included in Martin's appendix are not individually numbered (App. Vol. II 120-22)." (State's Br. 26 n.2).

[20] Here, our review of the evidence reveals that both Martin and James approached Comer's car with handguns. Martin stood at the front of the car, and James stood at the driver's side of the car. Both young men fired multiple shots into the vehicle where Taylor was waiting for Comer. When Comer ran into the parking lot, she heard someone yell at both Martin and James to shoot her too. The evidence supported the accomplice liability instructions, and the trial court did not abuse its discretion by giving them. *See Brooks*, 895 N.E.2d at 134.

[21] Affirmed.

Vaidik, J., and Mathias, J., concur.