STATE OF MINNESOTA

IN SUPREME COURT

A19-1809

Court of Appeals — Gildea, C.J.

State of Minnesota,

Respondent,

vs.

Filed: August 18, 2021
Office of Appellate Courts

Timothy John Lufkins,

Appellant.

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, Saint Paul, Minnesota; and

Damain D. Sandy, Pipestone County Attorney, Pipestone, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

Because the defendant did not carry his burden to prove that the State's peremptory strike of a venire-person was a pretext for racial discrimination, the district court did not err in overruling the defendant's objection to the strike.

Affirmed.

O P I N I O N

GILDEA, Chief Justice.

The question presented in this case is whether the district court erred in overruling appellant Timothy Lufkins's objection to the State's peremptory strike of a prospective juror. Lufkins was convicted of criminal sexual conduct, and on appeal, he argued that he was entitled to a new trial because the State struck the only nonwhite person from the jury venire. The court of appeals affirmed. Because we hold that Lufkins did not meet his burden to prove that the State's race-neutral reason for the strike was a pretext for racial discrimination, we affirm.

FACTS

In August 2018, A.H. told her parents that Lufkins had sexually assaulted her on four occasions over the summer of 2018. Lufkins is A.H.'s great-uncle and lived with A.H.'s grandfather at the time of the assaults. A.H. was 9 years old at the time of the trial.

Following A.H.'s report, the State conducted an investigation and subsequently charged Lufkins with two counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a) (2020), and four counts of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(g) (2020). The case proceeded to trial.

During jury selection, the State used a peremptory strike to excuse prospective juror R.L., a venire-person who self-identified as multi-racial. Lufkins challenged the State's strike of R.L., asserting that R.L. was the only nonwhite person in the jury pool. Lufkins argued that the State's strike of R.L. violated *Batson v. Kentucky*, 476 U.S. 79, 89 (1986).

The district court questioned Lufkins's attorney, asking if "the sole basis for the challenge is that [R.L.] is the—the sole minority on the panel?" Counsel responded in the affirmative and later added that, as far as he could see, R.L. did not raise his hand in answer to any of the questions asked during the selection process.

The district court then turned to the State and asked if "the State want[ed] to address any race-neutral explanations for exercising the peremptory challenge on [R.L.]?" The State offered three reasons for the peremptory strike: law enforcement "flagged" R.L.'s name before trial, R.L. was 20 years old, and R.L. was "glaring" at the prosecutor throughout the jury selection process.

The district court asked the State what concern law enforcement expressed. The prosecutor responded that there was no specific concern and explained that, as a matter of "practice," her office talked with law enforcement before jury selection "to see if they know the prospective jurors," and "if they will render an opinion as to whether or not they are gonna be okay, whatever." The prosecutor said that law enforcement has "more contact with the community than we do and sometimes they will just flag someone, saying, no, don't do this one without any" explanation. She also said that law enforcement gave no reason for flagging R.L. The district court asked if there was any "racial component expressed" by law enforcement, and the prosecutor responded "[a]bsolutely not."

The district court then verified that R.L. was listed as two or more races (multi-racial) before turning to Lufkins's counsel to respond to the State's explanation for striking R.L. The following exchange occurred between the court and Lufkins's counsel:

> COUNSEL: Your Honor, the fact that, uh, law enforcement said that he shouldn't be on there and gave no reason for it, their reason might be because of his race. We don't know. We can't—just because they didn't say it, it's not—it's totally unknown why they would say, well, don't pick this guy. Maybe they don't like him, maybe because he's multi-racial. It's unknown. And . . . he didn't give any answers that . . . to give reason for him to be removed from the panel . . . and, well, I didn't notice him glaring at anybody. I'm not saying he wasn't glaring, but I don't think that would be a sufficient race-neutral alone to remove him from the panel so we'd . . . continue with our challenge.
>
> THE COURT: In—in the Court's opinion the—the State has articulated a race-neutral explanation. There is absolutely nothing of record to suggest . . . that law enforcement flagged this prospective juror based on . . . a non-race-neutral reason. . . . [F]urther, I think [the prosecutor] is entitled to—during voir dire to . . . observe potential jurors and if in her mind the conduct of a potential juror expresses, . . . any hostility . . . towards the State or her representation . . . I—I think a peremptory challenge is—is . . . permitted. For that reason the Court is satisfied that the State's strike is not based on race and will disallow the objection by the defendant.

R.L. was dismissed and did not serve on the jury.

The jury found Lufkins guilty of two counts of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct. The district court convicted Lufkins of all five counts and sentenced him to 360 months in prison.

Lufkins appealed, challenging both his convictions and sentences. *State v. Lufkins*, No. A19-1809, 2020 WL 4743496, at *1 (Minn. App. Aug. 17, 2020). Lufkins argued that his convictions should be reversed because the district court erred by overruling his *Batson* challenge. The court of appeals held that the district court did not err in overruling the

Batson challenge because the prosecutor's explanations for striking R.L., that law enforcement flagged his name and he was glaring at the prosecutor, were race-neutral reasons for the peremptory strike. *Id.* at *4–5. Furthermore, the court of appeals held that Lufkins did not prove that the prosecutor's "glaring at" reason was pretext for racial discrimination. *Id.* Accordingly, the court affirmed Lufkins's conviction.[1] We granted Lufkins's petition for review.

ANALYSIS

Lufkins challenges the State's peremptory strike of prospective juror R.L. Under our court rules, each party at a criminal trial has a limited number of peremptory strikes. These strikes allow a party to excuse a prospective juror without providing a reason for removal of the juror. *See* Minn. R. Crim. P. 26.02, subd. 6. But the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, prohibits using a peremptory strike to remove a prospective juror because of race. *Batson*, 476 U.S. at 89; *State v. Harvey*, 932 N.W.2d 792, 810–11 (Minn. 2019) ("A peremptory challenge, if used against a prospective juror because of the juror's race, denies equal protection both to the prospective juror, because it denies her the right to participate in jury service, and to the defendant, because it violates his right to be tried by a jury made up of members selected by nondiscriminatory criteria." (citation omitted) (internal quotation marks omitted)).

[1] Lufkins also argued on appeal that the district court erred in entering multiple convictions and that he was denied effective assistance of counsel. *Lufkins*, 2020 WL 4742496, at *8–10. Those issues are not before us on appeal.

In *Batson*, the Supreme Court articulated a three-step process for courts to follow in assessing whether a peremptory strike runs afoul of equal protection principles. 476 U.S. at 96–98; *see also State v. Onyelobi*, 879 N.W.2d 334, 345 (Minn. 2016) (noting that the three-step process "determine[s] whether the exercise of a peremptory challenge was motivated by racial discrimination"). We codified the three-step *Batson* peremptory challenge process in our rules. *See* Minn. R. Crim. P. 26.02, subd. 7(3)(a)–(c).

At step one, the party objecting to a peremptory strike has the burden to make a prima facie showing of racial discrimination. *Id.*, subd. 7(3)(a). To make such a showing, the party "must establish that one or more members of a racial group have been peremptorily excluded from a jury and that the circumstances of the case raise an inference that the exclusion was based on race." *State v. Diggins*, 836 N.W.2d 349, 354 (Minn. 2013) (citation omitted) (internal quotation marks omitted).

Once the objecting party makes the required prima facie showing, "the burden shifts to the [striking party] to 'articulate a race-neutral explanation' for exercising the peremptory challenge." *Id.* (quoting *Hernandez v. New York*, 500 U.S. 352, 358 (1991)); *see also* Minn. R. Crim. P. 26.02, subd. 7(3)(b). This step "does not demand an explanation that is persuasive, or even plausible." *Purkett v. Elem*, 514 U.S. 765, 767–68 (1995). The proffered explanation "does not, at this stage, have to be 'valid' in the sense of establishing a reasonable basis for a strike." *State v. Taylor*, 650 N.W.2d 190, 202 (Minn. 2002) (quoting *State v. McRae*, 494 N.W.2d 252, 254 (Minn. 1992)). But the explanation must be "related to the particular case to be tried." *Batson*, 476 U.S. at 98. The reason offered

will be deemed race-neutral unless "a discriminatory intent is inherent in the prosecutor's explanation." *Hernandez*, 500 U.S. at 360.

Then at step three of the analysis, "the district court must determine whether the [objecting party] has carried his burden of proving purposeful discrimination." *Diggins*, 836 N.W.2d at 355 (citation omitted) (internal quotation marks omitted). In other words, the district court must determine whether the objecting party "has shown that the peremptory challenge was motivated by racial discrimination and that the [striking party's] proffered explanation was merely a pretext for the discriminatory motive." *Id.* (citation omitted) (internal quotation marks omitted). The objecting party "ultimately carries the burden of persuasion to demonstrate the existence of purposeful discrimination; this burden never shifts from the opponent of the peremptory challenge." *Id.*

The parties argue about all three steps of the analysis in this appeal.

A.

Regarding step one, the State argues that Lufkins did not make the required prima facie showing of racial discrimination. But, as Lufkins argues, the question as to step one is moot on appeal because the district court proceeded to steps two and three of the analysis. *Id.* at 356; *see State v. Gaitan*, 536 N.W.2d 11, 15 (Minn. 1995) ("Where, as here, the trial court proceeded to the second step in the process, the issue whether the defendant established a prima facie case of the discriminatory use of a peremptory strike is moot."); *see also State v. Reiners*, 664 N.W.2d 826, 831 (Minn. 2003) (declining to address whether a prima facie showing had been made when the district court essentially began its *Batson* analysis at step two and neither party petitioned for review of that ruling); *State v. Scott*,

493 N.W.2d 546, 548 (Minn. 1992) ("Because the trial court ruled on the ultimate question of intentional discrimination, the question whether the defendant made a prima facie showing is moot."). Accordingly, we do not consider step one further.

B.

At step two, Lufkins argues that the State did not offer a race-neutral reason for the strike. The prosecutor offered three reasons to the district court to explain why the State chose to strike R.L.: (1) law enforcement flagged his name before trial, (2) he was only 20 years old, and (3) he was glaring at her throughout the jury selection process.

The parties do not dispute that age and demeanor can be valid, race-neutral explanations for a peremptory strike. *See Snyder v. Louisiana*, 552 U.S. 472, 477 (2008) ("[R]ace-neutral reasons for peremptory challenges often invoke a juror's demeanor . . . ."); [2] *State v. Everett*, 472 N.W.2d 864, 869 (Minn. 1991) (holding that age is a race-neutral explanation for a peremptory strike). The parties instead focus their arguments at the second step on the State's "law enforcement flag" explanation.

Lufkins argues that the State did not meet its burden to articulate a race-neutral explanation for the peremptory strike of R.L. when the prosecutor stated that law enforcement had "flagged" R.L.'s name without any explanation. We agree with Lufkins that the State's reliance on the law enforcement flag is not sufficient here.

---

[2] *But see Batson*, 476 U.S. at 106 (Marshall, J., concurring) ("A prosecutor's own conscious or unconscious racism may lead him easily to the conclusion that a prospective black juror is 'sullen,' or 'distant,' a characterization that would not have come to his mind if a white juror had acted identically.").

Although the race-neutral explanation required under step two of the *Batson* analysis need not be plausible, it must be a " 'clear and reasonably specific' *explanation*," *Batson*, 476 U.S. at 98 n.20 (emphasis added) (quoting *Texas Dept. of Cmty. Affs. v. Burdine*, 450 U.S. 248, 258 (1981)), that "relate[s] to the particular case to be tried." *Id.* at 98. Here, the State said why it exercised the strike—law enforcement told me to—but the State did not connect the reason to the case. In other words, the State did not explain why law enforcement thought R.L. would not be an acceptable juror for the State. The *Batson* analysis requires a connection to the case. In the absence of a connection to the case, we hold that the State did not meet its burden at step two.

In urging us to conclude otherwise, the State cites *State v. Moore*, 438 N.W.2d 101, 107 (Minn. 1989), and argues that we have previously held that law enforcement contact is a race-neutral basis for exercising a peremptory strike. But in *Moore*, we held that a potential juror's arrest record was a valid, race-neutral explanation for a peremptory strike. *Id.* Here, the State did not offer an arrest record for R.L. or any explanation as to why law enforcement flagged R.L.'s name and, therefore, this case is distinguishable from *Moore*.

The State also argues that we risk conflating the second and third steps of the *Batson* analysis by holding that the law enforcement flag was not a sufficient race-neutral explanation. We disagree. By holding that the law enforcement flag is not a sufficient step two explanation, we do not shift the burden to the State to show that the proffered explanation is plausible and not pretext for racial discrimination. We instead hold the State to its existing burden to offer a reasonably specific *explanation* that the court can use to determine whether that reason is related to the case being tried. Because the State did not

articulate a case-related reason for its strike of R.L., we hold that the district court erred to the extent that the court upheld the State's reliance on the law enforcement flag.

C.

That the district court erred in relying on the law enforcement flag to reject Lufkins's *Batson* challenge does not end the case, however. This is so because the State also offered what Lufkins agrees was a race-neutral reason—the juror's demeanor toward the prosecutor during the jury selection process.[3] Lufkins argues that this reason is not sufficient and is a pretext for discrimination.

Lufkins first argues that because the prosecutor failed to engage in any meaningful voir dire on whether R.L. was in fact glaring at her, the demeanor-based explanation was a pretext for racial discrimination. We are not persuaded.

The prosecutor's "failure to ask certain questions" can be taken into consideration during step three of the *Batson* analysis to determine "whether the state's proffered, racially-neutral explanation is merely a pretext." *State v. Henderson*, 620 N.W.2d 688, 704 (Minn. 2001). But we have never held that the State *must* ask questions of a potential juror before striking that juror based on the juror's demeanor. Such a decision would risk conflating a peremptory strike with a strike for cause. *See* Minn. R. Crim. P. 26.01, subd. 5.

[3] Neither the district court nor the court of appeals addressed the prosecutor's "age" explanation during step three of the *Batson* analysis. Because we find that the State gave a race-neutral explanation for striking R.L. and that Lufkins did not meet his burden to show that reason was a pretext for racial discrimination, we decline to address the age justification. *See State v. James*, 520 N.W.2d 399, 404 (Minn. 1994) ("[S]ince the trial court found his first reason was not pretextual, and we do not find that decision clearly erroneous, we need not review the second reason.").

The fact that the prosecutor failed to follow up with R.L. about his alleged glaring therefore does not fulfill Lufkins's burden to show that the glaring was not the real reason for the strike and, instead, the real reason was that R.L. is multi-racial.

Lufkins next argues that, under *Snyder*, the district court is required to evaluate whether the prosecutor's demeanor belied a discriminatory intent and whether R.L.'s demeanor exhibited the basis for the strike attributed to him. 552 U.S. at 477. Because the district court did not make these findings, Lufkins argues that the glaring reason cannot be used to sustain the State's peremptory strike. We do not read *Snyder* to impose those requirements on the district court.

In *Snyder*, the prosecutor gave two explanations for the peremptory strike. *Id.* at 478. One reason was based on the potential juror's demeanor (his nervousness) and the other reason was that he was a student teacher. *Id.* Rather than address each explanation, the trial judge, after defense counsel disputed both explanations, stated, "All right. I'm going to allow the challenge." *Id.* at 479. Because the trial judge did not address the separate reasons given by the prosecutor, the Supreme Court stated that it could not "presume that the trial judge credited the prosecutor's assertion that [the juror] was nervous." *Id.* The Court noted that "race-neutral reasons for peremptory challenges often invoke a juror's demeanor (e.g., nervousness, inattention), making the trial court's firsthand observations of even greater importance" and added that "[i]n this situation, the trial court must evaluate not only whether the prosecutor's demeanor belies a discriminatory intent, but also whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the prosecutor." *Id.* at 477.

The Supreme Court later clarified in *Thaler v. Haynes* that neither *Batson* nor *Snyder* requires the district court to make record findings about a juror's demeanor. 559 U.S. 43, 47 (2010) ("In holding that respondent is entitled to a new trial, the Court of Appeals cited two decisions of this Court, *Batson* and *Snyder*, but neither . . . held that a demeanor-based explanation for a peremptory challenge must be rejected unless the judge personally observed and recalls the relevant aspect of the prospective juror's demeanor.").[4] Instead, *Snyder* requires that the district court clearly state which of the prosecutor's proffered race-neutral reasons it found to be credible enough to withstand the *Batson* objection.

The district court in this case said:

> I think [the prosecutor] is entitled to—during voir dire to . . . observe potential jurors and if in her mind the conduct of a potential juror expresses . . . any hostility . . . towards the State or her representation . . . I think a peremptory challenge is . . . permitted. For that reason the Court is satisfied that the State's strike is not based on race and will disallow the objection by the defendant.

This statement is somewhat ambiguous.

The district court's statement could be read as simply saying glaring is a race-neutral reason, and therefore the *Batson* challenge is denied without any consideration of the third step in the *Batson* analysis. If that was the district court's conclusion, it was erroneous. Under the *Batson* analysis, if step two was satisfied, the district court was required to

[4] If a prosecutor justifies the strike based on a juror's demeanor, and the district court has had the opportunity to observe and note a juror's demeanor, it would be best practice for the court to put its findings on the record. But that is not required under *Snyder*.

proceed to step three and determine whether Lufkins met his burden at step three. *See, e.g.*, *Reiners*, 664 N.W.2d at 832.

The district court's statement, however, could also be read as concluding that glaring is a race-neutral reason, and at the third step, the strike was not motivated by racial discrimination. Ordinarily, we defer to a district court's findings on the third step. *See Harvey*, 932 N.W.2d at 811. But when a district court's finding or analysis is based on the wrong legal standard, we examine the record without deferring to the district court's analysis. *Id.* Based on the ambiguity in the district court's statement, we examine the record without deferring to the district court's analysis.[5]

We must consider whether the record could support a finding "that the peremptory challenge was 'motivated by racial discrimination' and that the State's proffered explanation was 'merely a pretext for the discriminatory motive.' " *Diggins*, 836 N.W.2d at 355 (quoting *State v. Pendleton*, 725 N.W.2d 717, 726 (Minn. 2007)). Our independent review of the record leads us to conclude that Lufkins did not prove that R.L.'s purported glaring was a pretext for racial discrimination.

Lufkins did not even dispute that R.L. was in fact glaring at the prosecutor. The prosecutor told the court that R.L. was glaring at her during voir dire. Lufkins's counsel stated, "I didn't notice him glaring at anybody. *I'm not saying he wasn't glaring*, but I don't think that would be a sufficient race-neutral reason alone to remove him from the

---

[5] The facts of this case illustrate the importance of clearly announcing on the record the district court's "analysis of each of the three steps of the *Batson* analysis and, if it reaches step three, to state fully its factual findings, including any credibility determinations." *Reiners*, 664 N.W.2d at 832.

panel." (Emphasis added). Because defense counsel did not even contend that R.L. was not glaring at the prosecutor, there is no basis in this record to hold that the glaring reason was not the true reason for the strike but was instead a pretext for racial discrimination. In addition, there is no other evidence in the record or even any argument from Lufkins that the prosecutor's strike was racially motivated.

Because our independent review of the record convinces us that Lufkins did not meet his burden at step three of the *Batson* analysis, we hold that the district court did not err in denying his *Batson* challenge to the State's peremptory strike of the juror. Accordingly, we affirm.[6]

---

[6] The Supreme Court in *Batson* expressly noted that the states have flexibility to implement their own voir dire procedures to meet the promise of equal protection. 476 U.S. at 99–100 n.24. That is, *Batson* sets a floor, not a ceiling, in the type of prophylactic action that states can take to eliminate racial bias in the jury selection process. *See State v. Buggs*, 581 N.W.2d 329, 347 (Minn. 1998) (Page, J., dissenting).

While the *Batson* three-step process is well-recognized and longstanding, we continually see cases where the district courts have not properly applied it. *See, e.g.*, *Pendleton*, 725 N.W.2d at 725; *Onyelobi*, 879 N.W.2d at 347 n.11; *Harvey*, 932 N.W.2d 815. This case is another such case. These repeated failings are concerning.

In addition, the *Batson* process, as incorporated by Minn. R. Crim. P. 26.02, subd. 7, is directed at combatting "purposeful racial discrimination." *Batson*, 476 U.S. at 88; *see* Minn. R. Crim. P. 26.02, subd. 7(1) ("No party may *purposefully* discriminate on the basis of race or gender in the exercise of peremptory challenges." (emphasis added)). But since *Batson* was decided, much research has been done on the topic of unconscious bias. *See, e.g.*, Antony Page, Batson*'s Blind-Spot: Unconscious Stereotyping and the Peremptory Challenge*, 85 B.U. L. Rev. 155, 181-82 (2005). The presence of conscious or unconscious racial discrimination in a jury selection process is an affront to the integrity and dignity of the court. *See Powers v. Ohio*, 499 U.S. 400, 406 (1991) (stating that any racial discrimination in the use of peremptory challenges harms not only the litigants but also "the excluded jurors and the community at large.").

In light of the continuing difficulty in applying the current test and the growing body of research showing that racial discrimination is not always purposeful, we direct the Supreme Court Advisory Committee on the Rules of Criminal Procedure to review the

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

procedure laid out in Minn. R. Crim. P. 26.02 and make recommendations to our court on appropriate and necessary amendments to it.