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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-830

Filed: 15 December 2020

Wake County, Nos. 14 CRS 208087-88, 14 CRS 2275

STATE OF NORTH CAROLINA

v.

NATHAN LORENZO HOLDEN

Appeal by defendant from judgments entered 3 March 2017 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 1 April 2020.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General L. Michael Dodd, for the State.*

*M. Gordon Widenhouse, Jr., for defendant-appellant.*

ZACHARY, Judge.

Defendant Nathan Lorenzo Holden appeals from judgments entered upon a jury's verdicts finding him guilty of two counts of first-degree murder, and one count of attempted first-degree murder. During jury voir dire, Defendant objected to the State's use of peremptory challenges to strike several female and African-American prospective jurors from the venire. Although the trial court consistently found that

Defendant established a prima facie case of discrimination with each challenge, the trial court concluded that the State's nondiscriminatory explanations for the peremptory strikes were not a pretext for discrimination, and overruled Defendant's objections.

However, under the standard set forth by our Supreme Court in *State v. Hobbs*, 374 N.C. 345, 841 S.E.2d 492 (2020), the trial court erred in failing to make findings of fact and conclusions of law reflecting its analysis of the evidence in ruling upon Defendant's challenges to the peremptory strikes. We therefore remand this case to the trial court for a new *Batson* hearing.

I.

On appeal, Defendant asserts that the State exercised peremptory challenges against seven prospective jurors who were female, African-American, or both, for a discriminatory purpose, in violation of the jurors' and Defendant's constitutional rights.

A. Standard of Review

The trial court's determination with regard to a *Batson* claim "will be upheld on appeal unless [it is] clearly erroneous—that is, unless on the entire evidence we are left with the definite and firm conviction that a mistake has been committed." *State v. Taylor*, 362 N.C. 514, 528, 669 S.E.2d 239, 254 (2008) (citation and internal

quotation marks omitted), *cert. denied*, 558 U.S. 851, 175 L. Ed. 2d 84 (2009). “[I]ssues of law are reviewed de novo.” *Hobbs*, 374 N.C. at 349, 841 S.E.2d at 497.

*B. Analysis*

Under Article I, section 26 of the North Carolina Constitution, “[n]o person shall be excluded from jury service on account of sex, race, color, religion, or national origin.” N.C. Const. art. I, § 26. Likewise, the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States “prohibits discrimination in jury selection on the basis of race, see *Batson v. Kentucky*, 476 U.S. 79, 90 L. Ed. 2d 69 (1986), or gender, see *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 128 L. Ed. 2d 89 (1994).” *State v. Maness*, 363 N.C. 261, 271, 677 S.E.2d 796, 803 (2009), *cert. denied*, 599 U.S. 1052, 176 L. Ed. 2d 568 (2010).

During the pendency of Defendant’s appeal, our Supreme Court issued its opinion in *State v. Hobbs*, 374 N.C. 345, 841 S.E.2d 492 (2020), addressing the proper analysis of a *Batson* claim. In *Hobbs*, the male African-American defendant raised *Batson* challenges to the State’s exercise of peremptory challenges to strike a portion of the African-American prospective jurors. *Hobbs*, 374 N.C. at 346–48, 841 S.E.2d at 495–96. The trial court overruled the defendant’s challenges. *Id.*

The *Hobbs* Court held that the trial court did not properly evaluate the defendant’s *Batson* challenges, in that the court failed to consider all of the defendant’s “evidence raising an inference of discrimination” when the trial court

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“determin[ed] whether the defendant ha[d] proved purposeful discrimination in the State’s use of a peremptory challenge.” *Id.* at 356, 841 S.E.2d at 501; see *Flowers v. Mississippi*, \_\_\_ U.S. \_\_\_, \_\_\_, 204 L. Ed. 2d 638, 655–56 (2019) (listing various types of evidence that may be used to support a defendant’s claim of racial discrimination in jury selection). More specifically, the trial court erred in its ruling “by, *inter alia*, failing to ‘explain how it weighed the totality of the circumstances surrounding the prosecution’s use of peremptory challenges, including the historical evidence,’ and failing to conduct a comparative juror analysis, in an order supported by findings of fact and conclusions of law.” *State v. Hood*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 848 S.E.2d 515, 521 (2020) (quoting *Hobbs*, 374 N.C. at 358, 841 S.E.2d at 502).

It is well settled that the analysis of a race-based *Batson* challenge applies equally to a claim of gender discrimination in jury selection. See *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 129, 128 L. Ed. 2d 89, 97 (1994); *State v. Bates*, 343 N.C. 564, 595–96, 473 S.E.2d 269, 286 (1996), *cert. denied*, 519 U.S. 1131, 136 L. Ed. 2d 873 (1997). “[G]ender, like race, is an unconstitutional proxy for juror competence and impartiality.” *J.E.B.*, 511 U.S. at 129, 128 L. Ed. 2d at 97. The Supreme Court’s analysis in *Hobbs* similarly applies to claims of gender-based discrimination in jury selection as well as claims of race-based discrimination.

II.

The trial court concluded that the State's nondiscriminatory explanations for the peremptory strikes of Marcia Wright, Jeana Walton, Jessica Geelen, Hope Long, Cheryl Bitting, Joyce Robertson, and Dorian Hamilton were not a pretext for race-based or gender-based discrimination, and overruled Defendant's *Batson* challenges. The State concedes on appeal that in considering Defendant's *Batson* challenges, "[t]he trial court did not explain how it weighed the totality of the circumstances surrounding the State's use of peremptory challenges, including the historical evidence brought to the trial court's attention by the defendant during his arguments as to each challenged juror."

"The trial court's summary denial of Defendant's [gender- and race-based] challenge[s] precludes appellate review." *Hood*, \_\_\_ N.C. App. at \_\_\_, 848 S.E.2d at 522. Because the trial court did not make the requisite "findings of fact and conclusions of law reflecting its analysis of the evidence in ruling upon Defendant's *Batson* challenge[s]" to the State's use of peremptory challenges to strike seven prospective jurors who were female, African-American, or both, "this Court cannot establish on review that the trial court appropriately considered all of the evidence necessary to determine whether Defendant proved purposeful discrimination." *Id.* (citation and internal quotation marks omitted). Thus, under the standard set forth in *Hobbs*, the instant case must be remanded.

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On remand, the trial court must conduct a new *Batson* hearing consistent with the direction of our Supreme Court in *Hobbs*, and enter an order containing the requisite findings of fact and conclusions of law. “The trial court’s order should demonstrate that the trial court considered all evidence presented by the parties” as to each of the challenged prospective jurors at issue, “and evince the trial court’s analysis in reaching its ultimate determination.” *Id.*

REMANDED FOR REHEARING.

Judges TYSON and BROOK concur.

Report per Rule 30(e).