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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1965**

State of Minnesota,
Respondent,

vs.

Jimmy Leeartis Martin,
Appellant

**Filed March 19, 2018
Reversed and remanded
Worke, Judge**

Hennepin County District Court
File No. 27-CR-15-32388

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Ross, Judge.

UNPUBLISHED OPINION

WORKE , Judge

Appellant argues that the district court clearly erred by granting the state's *Batson* challenge, violated his due-process rights by allowing a first-time eyewitness identification

at trial, abused its discretion by admitting evidence relating to photographs of his sister posing on a bed with cash, and erred by convicting and sentencing him for two charges arising from a single behavioral incident. We reverse and remand.

FACTS

On August 26, 2015, four African-American individuals broke into a house in Brooklyn Center. Six Hispanic individuals were inside at the time. The intruders took several thousand dollars in cash, and four of the victims suffered gunshot wounds.

In November 2015, appellant Jimmy Leeartis Martin was charged with four counts of first-degree aggravated robbery and four counts of first-degree burglary. The state proceeded to trial on four counts of first-degree aggravated robbery and two counts of first-degree burglary. During jury selection, defense counsel asked if anyone had any prior legal training. Several jurors answered affirmatively. Two jurors indicated that they had taken a law-related class in school. Juror B-L, a teacher, indicated that he had attended law school for three years in Guatemala and completed a six-month internship. B-L confirmed that he was trained to think like a lawyer. Defense counsel asked him if there was anything about his prior legal training that would affect his ability to be a fair and impartial juror, and B-L answered that he could not answer that question. When defense counsel asked why he could not answer, B-L replied, “Probably yes, because I have some training in law I know interpretation.”

Martin used a peremptory strike on B-L, and the state raised a *Batson* challenge. The state argued that there was no race-neutral reason to strike B-L and that the strike was racially motivated because the victims and B-L were Hispanic. In response, defense

counsel explained that he “hadn’t even thought about a race issue when [he] tried to strike [B-L] that was actually [his] client’s choice.” Defense counsel informed the district court that he had expressed his concerns to Martin about B-L’s legal training and that he would generally “make a practice of not accepting lawyers regardless of their race, color, creed or gender.” Defense counsel explained that he hesitates to have people trained in the law serve on juries because “they tend to become forepersons, other jurors tend to listen to them.” The district court rejected Martin’s explanation for the strike and granted the state’s *Batson* challenge:

I think I have to go back and look, but I guess I don’t find that a law background of someone who said the only, that I’m only knowledgeable in the French law in Guatemala from over 35 years ago, that I don’t know anything about the British law that our American [jurisprudence] is based on, I don’t view that as being a race neutral reason.

Martin’s next peremptory strike was Juror H., who was also Hispanic. The state raised another *Batson* challenge, but the district court denied the challenge, accepting Martin’s explanation that he struck that potential juror “because [the juror] deferred to his wife on decisions” as race-neutral.

The jury found Martin guilty on all counts. Martin moved for a new trial, but the district court denied his motion. In its post-trial order, the district court clarified that it determined Martin’s proffered race-neutral reason for striking B-L “was a pretext to strike a Hispanic juror from the jury.” This appeal followed.

DECISION

Martin argues that the district court committed clear error by granting the state's *Batson* challenge to his strike of B-L. Specifically, Martin argues that (1) the district court erroneously determined that he failed to produce a valid race-neutral reason for the strike and (2) the state failed to meet its burden of proving discriminatory intent. The existence of discrimination in the exercise of a peremptory strike is a factual determination, so this court gives great deference to the district court and will not reverse the district court's *Batson* ruling unless it is clearly erroneous. *State v. Martin*, 773 N.W.2d 89, 101 (Minn. 2009)

Peremptory strikes allow parties to strike potential jurors they believe will be less fair than others. *Id.* at 100. However, the Equal Protection Clause prohibits peremptory strikes based solely on race. *Batson v. Kentucky*, 476 U.S. 79, 89, 106 S. Ct. 1712, 1719 (1986). To determine whether a peremptory strike was discriminatory, courts apply a three-step test. *State v. Carridine*, 812 N.W.2d 130, 136 (Minn. 2012). First, the challenger must make a prima facie showing that the strike was made on the basis of race. *Id.* Second, if the challenger makes a prima facie showing, the burden shifts to the strike's proponent to articulate a race-neutral reason for the strike. *Id.* In the second step, this explanation "need not be persuasive or even plausible." *Martin*, 773 N.W.2d at 101. "Unless a discriminatory intent is inherent in the . . . explanation, the reason offered [is] deemed race neutral." *Purkett v. Elem*, 514 U.S. 765, 768, 115 S. Ct. 1769, 1771 (1995) (quotation omitted). Third, if the strike's proponent has established a race-neutral reason, the district court must determine whether the reason given was a pretext for purposeful

discrimination. *Carridine*, 812 N.W.2d at 136. The supreme court has emphasized the importance of clarity at each step of the *Batson* test. *State v. Wilson*, 900 N.W.2d 373, 378 (Minn. 2017). “When a district court erroneously denies a peremptory challenge, the aggrieved party is automatically entitled to a new trial.” *State v. Campbell*, 772 N.W.2d 858, 862 (Minn. App. 2009).

Prima facie showing

Martin concedes that the state made a prima facie showing that the peremptory strike of B-L was made on the basis of race. “Whether the circumstances of the case raise an inference of discrimination depends in part on the races of the defendant and the victim.” *Angus v. State*, 695 N.W.2d 109, 117 (Minn. 2005). The state pointed out that the victims in this case are Hispanic and that B-L is Hispanic as well. The state also noted that B-L was employed as a teacher and that his legal training did not occur in the United States. On the basis of these arguments, the district court did not clearly err in concluding that the state satisfied the first element of the *Batson* test.

Race-neutral reason

Martin argues that he articulated a valid, race-neutral reason for the strike. Defense counsel explained that B-L had legal training and that as a result of that training he wanted to serve on the jury. Counsel stated that he “make[s] a practice of not accepting lawyers regardless of their race, color, creed or gender. [He] just . . . hesitate[s] to have people trained in the law.” Although defense counsel conceded that the juror had not practiced law and that his education was in Guatemala, counsel expressed concern that “jurors tend to give deference to” people with legal training.

Although neither Martin nor the state discusses any Minnesota caselaw addressing whether legal training constitutes a sufficient race-neutral explanation, the Eighth Circuit has acknowledged that “prior legal training qualif[ies] as [a] potential race-neutral factor[] justifying the exercise of peremptory challenges.” *U.S. v. Feemster*, 98 F.3d 1089, 1092 (8th Cir. 1996) (quotation omitted). Furthermore, the race-neutral explanation “need not be persuasive or even plausible.” *Martin*, 773 N.W.2d at 101. We conclude that Martin offered a satisfactory race-neutral explanation for the strike and that the district court clearly erred by concluding otherwise.

Purposeful discrimination

The district court determined that it did not view Martin’s reason “as being . . . race neutral” and granted the *Batson* challenge. The district court did not address whether the state had met its burden of demonstrating intentional discrimination until its denial of Martin’s post-trial motion for new trial.¹ Although the district court did not follow the *Batson* procedure by ruling on each step of the analysis, appellate courts do not reverse a *Batson* ruling because of the district court’s failure to follow the prescribed procedure. *State v. Pendleton*, 725 N.W.2d 717, 726 (Minn. 2007). Instead, this court “examine[s] the record without deferring to the district court’s analysis.” *Id.*

The state bore the burden of demonstrating that Martin’s reason was “pretextual of an underlying motive to discriminate.” *Angus*, 695 N.W.2d at 117. This step of the *Batson*

¹ In its denial of the motion, the district court did not explain the factual underpinnings of its conclusion. Instead, the district court reiterated that it did not accept Martin’s explanation as race-neutral and determined that it was “a pretext to strike a Hispanic juror from the jury.”

test requires two showings: (1) a demonstration that the proffered race-neutral reason was not the actual reason for the strike and (2) a demonstration that the real reason was the prospective juror's race. *State v. Seaver*, 820 N.W.2d 627, 635 (Minn. App. 2012). The party bringing the *Batson* challenge may meet its burden in several ways. One way to demonstrate purposeful discrimination is to show that a party's proffered justification for striking a prospective juror of one race applies equally to a similar prospective juror of a different race who is allowed to serve. *State v. Bailey*, 732 N.W.2d 612, 618 (Minn. 2007). Another way to demonstrate the first element of pretext is to challenge the validity or relevance of the proffered race-neutral reason. *Angus*, 695 N.W.2d at 117. However, the failure of that reason does not demonstrate that the real reason for the strike was the prospective juror's race. *Id.* The state must still prove that the real reason was racial discrimination by identifying some circumstance that raises an inference of discrimination. *Id.* at 118.

First, the state argues that B-L's legal training was in a different legal system 35 years ago and that this training would have had no effect on his ability to fairly deliberate as a juror. However, B-L agreed that he was trained to think like a lawyer, which was the "biggest part" of his legal training. Defense counsel asked him if "anything about [his] legal training . . . would affect [his] ability to be a fair and impartial juror," to which B-L responded, "I cannot answer that question." When asked why he could not answer, B-L replied, "Probably yes, because I have some training in law I know interpretation." Based upon B-L's responses, it appears that he believed his legal training, even though it was 35

years earlier and in a different legal system, would likely have an impact on his ability to serve as a fair and impartial juror.

Next, the state argues that B-L's answers emphasized his ties to the Hispanic community. In particular, he worked with Hispanic students and human rights organizations. However, even if Martin did attempt to strike B-L for this reason, that would not necessarily indicate purposeful discrimination. *Batson* forbids the use of peremptory challenges to exclude a potential juror "based solely on the potential juror's race." *Angus*, 695 N.W.2d at 114. The state fails to adequately explain how striking a prospective juror because of activities in connection with the Hispanic community demonstrates that the true basis for the strike was the juror's race.

The state also argues that the panel should discount the validity of Martin's race-neutral reason because the peremptory strike was actually Martin's choice, rather than counsel's strategic decision. After the state made its *Batson* challenge, defense counsel stated, "I hadn't even thought about a race issue when I tried to strike [B-L] that was actually my client's choice." Counsel also admitted that he was "not exactly sure why Mr. Martin picked him out." However, counsel explained to the district court that in his discussions with Martin, he expressed concerns about B-L serving on the jury because of his legal training and that counsel generally "make[s] a practice of not accepting lawyers regardless of their race, color, creed or gender."

The record indicates that counsel explained his concerns to Martin, Martin chose who he wanted to strike, and then counsel attempted to make that strike. Even if we accepted that Martin, rather than defense counsel, struck B-L, that would not necessarily

suggest purposeful racial discrimination. The record does not reflect what Martin was thinking when he chose to strike B-L, and it is plausible that he shared his attorney's concerns about jurors with legal training and chose to strike B-L for that reason alone.

The state also highlights that after the district court granted the state's *Batson* challenge, Martin next struck H., the only other Hispanic member of the venire. The state suggests that these strikes together demonstrate that Martin wanted to exclude all Hispanics from the jury.

This court previously addressed this argument in *Campbell*. See 772 N.W.2d at 864. In *Campbell*, the district court determined that the defendant had a consistent pattern of striking non-white jurors. *Id.* at 863. This court rejected that reasoning, noting that the district court denied *Batson* challenges for the strikes of other non-white jurors because those jurors were removed based on legitimate concerns, including health issues and one juror's close relationship with law-enforcement officers. *Id.* Ultimately, this court concluded that "[t]he inference that the strike [at issue] was part of a 'pattern' of discrimination cannot be sustained because, according to the district court, [the defendant's] other peremptory strikes of nonwhites had valid, nonpretextual, race-neutral explanations." *Id.* at 864.

Here, the district court denied the state's *Batson* challenge relating to H. because Martin offered a race-neutral justification for the strike. Consequently, that strike cannot form the basis of a pattern of purposeful racial discrimination.

Finally, the state argues that other, non-Hispanic jurors had also taken law-related classes in the United States and were permitted to deliberate. Unlike those jurors, B-L

completed several years of legal education as well as a legal internship. Furthermore, B-L admitted in voir dire that he was trained to think like a lawyer and that his legal training might affect his ability to serve as a fair and impartial juror. Although a party may demonstrate purposeful discrimination by showing that the proffered race-neutral reason for the strike applies equally to other non-minority jurors, the extent of B-L's legal training weighs against the conclusion that the strike was the result of purposeful racial discrimination.

Having rejected each of the state's arguments in favor of the *Batson* challenge, we conclude that the state did not meet its burden of demonstrating either that Martin's proffered reason for the strike was not the actual reason or that the real reason was B-L's race. The district court committed clear error by granting the state's *Batson* challenge.

Structural error

The state argues that this court should determine whether the erroneous denial of Martin's peremptory strike was harmless. The state concedes, however, that this court's precedent indicates that Martin is entitled to a new trial if the panel determines that the grant of the state's *Batson* challenge was clearly erroneous.

In *Riviera v. Illinois*, the Supreme Court held that the erroneous denial of a defendant's peremptory challenge is not a "structural error" requiring automatic reversal under the United States Constitution. 556 U.S. 148, 156-58, 129 S. Ct. 1446, 1453-54 (2009). However, the Supreme Court also stated that "[s]tates are free to decide, as a matter of state law, that a trial court's mistaken denial of a peremptory challenge is reversible error *per se*." *Id.* at 162, 129 S. Ct. at 1456. In *Campbell*, this court held that "automatic reversal

remains the appropriate remedy when a trial court erroneously denies a defendant's peremptory challenge," even after *Riviera*. 772 N.W.2d at 862. Therefore, because the district court erroneously denied Martin's peremptory challenge, Martin is entitled to automatic reversal and a new trial. Because this case is remanded for a new trial, we decline to address whether the district court erroneously allowed the state to elicit a first-time eyewitness identification at trial or abused its discretion by admitting evidence relating to photographs of Martin's sister posing with money. Further, because Martin's convictions are reversed, we need not address whether the district court erred by convicting and sentencing Martin for two charges arising from a single behavioral incident.

Reversed and remanded.