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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1297**

State of Minnesota,
Respondent,

vs.

Stanley Gleason, Jr.,
Appellant.

**Filed July 22, 2019
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-17-30374

Keith Ellison, 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, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

On appeal from his conviction of possession of a firearm by an ineligible person, appellant argues that the district court erred by ruling that he did not present a prima facie

case of racial discrimination in jury selection where the state, in a preemptory challenge, struck the only African American male juror and he claimed that the strike was based on race. We affirm.

FACTS

In April of 2017, Brooklyn Park police officer Jason Buck was conducting an investigation of an unrelated matter when he observed appellant Stanley Gleason Jr. driving a Chrysler minivan. Officer Buck stopped the vehicle pursuant to the other matter, seized it, and called other officers to assist with processing it. Officer Buon Xiong conducted an inventory search of the van and found no firearms during his search.

Officer Xiong then transferred possession of the vehicle to Cardinal Towing, which moved it to an impound lot. To prepare for scrapping appellant's vehicle in July of 2017, the vehicle was moved, and a Cardinal employee subsequently searched it for valuables. During the search, the employee discovered a firearm. Another Cardinal employee reported the gun, and an officer retrieved it. The gun was not registered to appellant.

The firearm, a revolver, was sent to the Hennepin County Sheriff's Office Crime Laboratory for forensic testing. After swabbing the firearm, the crime lab created a major profile, compared it to Gleason's DNA profile, and determined the profiles to be a match. Based on this evidence, the state charged appellant with possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2) (2016).

At jury selection, C.H., a potential juror, was the only African American male juror. In response to a *voir dire* question from appellant's counsel, C.H. stated:

My experience with police officers hasn't always been the greatest. I have friends that are police officers. I know that it's not all of them that are kind of, you know—but, yeah, just in a sense of [Gleason] is a black male, I am a black male and some of our lives—we probably have gone through a lot of similar kind of experiences even though I have never met him before. It's just how it is. And I am not sure if that affects me really.

C.H. said he has learned about criminal cases from his many attorney friends, “pretty much” all of whom are “criminal defense lawyers.” He also admitted that he is “[v]ery cynical” about the judicial system.

The state used a peremptory challenge to remove C.H. from the jury. Gleason objected under *Batson*¹ and argued that C.H. was a member of a protected class and that the circumstances raised an inference that the strike was based on race. Gleason offered two circumstances to support his racial bias argument: (1) C.H. identified himself as an African American man; and (2) C.H. spoke about the shared experiences of African American men. When asked to be more specific, Gleason's attorney responded, “I just don't think the prima facie stage is a very high burden, other than, you know, I see it, it smells fishy, it feels funny, and therefore I call it on behalf of Mr. Gleason.” After a break to allow the parties to submit additional authority, the district court noted that a prima facie showing requires two things: (1) a member of a protected class that “has been peremptorily excluded”; and (2) circumstances of the case that “raise an inference that the exclusion was based on race.” The district court concluded that the first prong had been met, but that the

¹ In *Batson v. Kentucky*, the Supreme Court held that “the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race.” 476 U.S. 79, 89, 106 S. Ct. 1712, 1719 (1986)

second prong had not been met because there were no circumstances raising “an inference that the exclusion of [C.H.] was based on race.” It also noted an African American woman was seated as a juror.

The district court made a series of findings to support its conclusion: (1) “removing the only minority juror is not sufficient to establish a prima facie showing of discrimination”; (2) there was no “pattern of strikes against minorities made by [respondent]”; (3) respondent did not deviate “from its normal pattern of jury selection or questioning of [C.H.]”; (4) Gleason’s case lacked racial overtones; and (5) there was no victim in the case. Based on these findings, the district court ruled that Gleason failed to make the prima facie showing required to satisfy the first step of a *Batson* challenge, denied Gleason’s motion, and substituted an alternate juror.

After trial, the jury found Gleason guilty of the sole charge. This appeal follows.

D E C I S I O N

The district court properly denied appellant’s *Batson* challenge.

Appellant argues that the district court committed prejudicial error by denying his *Batson* challenge to the state’s peremptory challenge of C.H., the only African American male juror in his trial. We disagree.

In a jury trial, parties generally have “a limited number of peremptory challenges.” *State v. Diggins*, 836 N.W.2d 349, 354 (Minn. 2013). “Unlike a challenge for cause, a peremptory challenge allows a party to strike a prospective juror without having to explain the reason for the strike.” *Id.* But, “The use of peremptory challenges to exclude potential jurors is subject to the Equal Protection Clause of the Fourteenth Amendment to the United

States Constitution,” which prohibits striking a potential juror based solely on race. *State v. Pendleton*, 725 N.W.2d 717, 723 (Minn. 2007) (citing *Batson*, 476 U.S. at 89, 106 S. Ct. at 1719); *see also* U.S. Const. amend. XIV, § 1.

In *Batson*, the Supreme Court established a three-step process to determine whether a peremptory challenge was motivated by discriminatory intent. 476 U.S. at 96–98, 106 S. Ct. at 1723–24; *see also State v. Onyelobi*, 879 N.W.2d 334, 345 (Minn. 2016); Minn. R. Crim. P. 26.02, subd. 7(3). First, the defendant must make a prima facie showing that the state exercised the challenge on the basis of race. *State v. Wilson*, 900 N.W.2d 373, 378 (Minn. 2017). Second, the burden shifts to the state to articulate a race-neutral reason for the challenge. *Id.* Third, if the state successfully articulates a race-neutral reason, the burden shifts back to the defense to establish “the proffered reason was merely a pretext for the party’s true motive: purposeful discrimination.” *Id.* (quotations omitted).

A district court’s ruling on a *Batson* challenge “is a factual determination . . . and should be given great deference on review.” *State v. Reiners*, 664 N.W.2d 826, 830 (Minn. 2003). We grant such deference because the district court “occupies a unique position to observe the demeanor of the prospective juror and evaluate the credibility of the party that exercised the peremptory challenge.” *Diggins*, 836 N.W.2d at 355. “[T]he district court’s determination will not be reversed unless clearly erroneous.” *State v. McDonough*, 631 N.W.2d 373, 385 (Minn. 2001).

We agree with the district court’s analysis that appellant’s claim fails on the first step of the *Batson* test. Under the first step, a defendant may establish a prima facie case of racial discrimination by showing that (1) one or more members of a racial minority has

been peremptorily excluded, and (2) the “circumstances of the case raise an inference that the exclusion was based on race.” *Reiners*, 664 N.W.2d at 831 (quotations omitted). The “mere fact that the veniremember subject to the strike is a racial minority does not establish a prima facie case of discrimination.” *Angus v. State*, 695 N.W.2d 109, 117 (Minn. 2005); *see also Reiners*, 664 N.W.2d at 831. Instead, a party “must prove that the real reason was racial discrimination by identifying some circumstance that raises an inference of discrimination.” *Angus*, 695 N.W.2d at 118.

At this first step, the “burden to establish a prima-facie case is low.” *State v. Black*, 919 N.W.2d 704, 711 (Minn. App. 2018). It should not be “so onerous that a defendant would have to persuade the judge—on the basis of all the facts, some of which are impossible for the defendant to know with certainty—that the challenge was more likely than not the product of purposeful discrimination.” *Johnson v. California*, 545 U.S. 162, 170, 125 S. Ct. 2410, 2417 (2005). Instead, the defendant must produce only “evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred.” *Id.* If “the district court determines that a prima facie showing has not been made” at step one, “the objection is overruled and the prospective juror is dismissed.” *State v. White*, 684 N.W.2d 500, 505 (Minn. 2004); *see also* Minn. R. Crim. P. 26.02, subd. 7a(3)(a). We reverse the district court’s ruling at this first step “only in the face of clear error.” *White*, 684 N.W.2d at 507.

Gleason argues that the district court erred in two ways at step one of the *Batson* challenge: (1) by ruling that Gleason did not present a prima facie case under *Batson* and

failing to proceed to the final two *Batson* challenge steps; and (2) by misconstruing the legal standard in multiple ways.

First, Gleason argues that he presented a prima facie case because he only needed to show “that the totality of the relevant facts gives rise to an inference of discriminatory purpose.” *Batson*, 476 U.S. at 94, 106 S. Ct. at 1721. He contends that the district court failed to assess the totality of the circumstances, arguing that two circumstances give rise to an inference that the strike of C.H. was based on race: (1) C.H. is a member of a protected group as an African American man; and (2) C.H. shares a race with the defendant. These circumstances, Gleason argues, support an inference that the state struck Gleason based on race. To support this argument, he cites two cases where the Minnesota Supreme Court recognized prima facie cases when the state struck jurors who shared a racial identity with the defendant. See *State v. DeVerney*, 592 N.W.2d 837, 843 (Minn. 1999); *State v. Greenleaf*, 591 N.W.2d 488, 501 (Minn. 1999).

Second, Gleason argues that the district court misunderstood and misapplied the law on prong one of the *Batson* test. Specifically, he argues that the district court mistakenly relied on the following circumstances: (1) the presence of another African American who was selected to be on the jury; (2) the state’s lack of a pattern of discriminatory strikes; (3) the district court’s own finding that “removing the only minority juror is not sufficient to establish a prima facie showing of discrimination”; (4) the nonexistence of racial overtones; and (5) the state’s lack of deviation from its normal line of questioning. Gleason contends that “[t]he absence of any or all” of these circumstances “does not defeat

Gleason's prima facie case" at step one of *Batson* because step one is about "an affirmative showing that a strike was race-based," and the "burden is meant to be low, not onerous."

The state contends that Gleason did not meet his burden at the first step by simply arguing that C.H. was African American; he had to also identify an additional circumstance that raised an inference of discrimination. This is especially true, the state argues, because there were no racial overtones involved in the case and because C.H. was not the only African American juror. The state cites two cases to highlight the importance of including another African American juror besides C.H. In *Wilson*, the court ruled that the defendant failed to present a prima facie case when the plaintiff struck two African American jurors in the trial of an African American defendant, but an African American female remained on the jury. 900 N.W.2d at 382. In *State v. Everett*, the court did not determine whether a prima facie case was met in a case where an African American juror was struck from a jury, but a Native American juror remained. 472 N.W.2d 864, 868–69 (Minn. 1991). It did, however, note the significance of the fact that "the jury ultimately included a member of a minority, a Native American." *Id.* at 869.

Gleason's argument fails because there are two prongs to the first step of the *Batson* analysis, and he only met the first prong. Gleason proved that C.H., a member of a racial minority, was peremptorily excluded from the jury. This satisfies the first prong requiring Gleason to show that one or more members of a racial minority has been peremptorily excluded. But, "[t]he fact that the prospective juror is a member of a racial minority, alone, does not raise an inference that the exclusion was based on race." *State v. Wren*, 738 N.W.2d 378, 388 (Minn. 2007).

Thus, Gleason must also satisfy the second prong by showing “circumstances of the case raise an inference that the exclusion was based on race.” *Reiners*, 664 N.W.2d at 831 (quotation omitted). But he fails to satisfy this prong. The only other circumstance that Gleason provided to the district court was that he was the same race as C.H. This is not enough to establish a prima facie case.

In both *Greenleaf* and *DeVerney*, a prima facie case was established when the state struck two Native American jurors from the jury at the trial of a Native American defendant. *DeVerney*, 592 N.W.2d at 843; *Greenleaf*, 591 N.W.2d at 501. Here, Gleason struck only one African American juror, and another African American juror remained on the jury. *Wilson* and *Everett* both show that the presence of another minority juror on a jury can support a district court’s finding that a defendant failed to establish a prima facie case under *Batson*. Without presenting additional circumstances that the exclusion of a juror is based on race, showing that a juror is the same race as the defendant is not enough. Because he failed to present any additional circumstances supporting the second prong of the prima facie test under *Batson*, we hold that it was not clear error for the district court to find that Gleason failed to establish a prima facie case that C.H. was struck from his jury because of racial discrimination.

Since we conclude that appellant failed to establish a prima facie case of purposeful discrimination at the first step of the *Batson* analysis, we need not address the remaining two steps. See, e.g., *Black*, 919 N.W.2d at 710–12.

Affirmed.