

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1156**

State of Minnesota,
Respondent,

vs.

James Andrew Works,
Appellant.

**Filed September 16, 2024
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-22-21091

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

On appeal from the final judgment of conviction, appellant argues that his convictions for first-degree criminal sexual conduct and kidnapping involving two victims must be reversed and remanded for a new trial because the district court clearly erred in

denying his *Batson* challenge to the prosecutor's peremptory strike of a juror and it abused its discretion in admitting other-crimes evidence. Alternatively, appellant argues that he is entitled to resentencing because the district court erred in imposing lifetime conditional release and in failing to sentence the offenses in the order in which they occurred. Because the district court did not err by denying appellant's *Batson* challenge and it acted within its discretion by admitting other-crimes evidence, we affirm appellant's convictions. But, because the district court entered simultaneous convictions, it erred by imposing lifetime conditional release and, because the district court erred in failing to sentence the offenses in the order in which they occurred, we reverse appellant's sentence and remand for resentencing.

FACTS

In October 2022, respondent State of Minnesota charged appellant James Andrew Works with two counts of criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(d) (2008), and two counts of kidnapping in violation of Minn. Stat. § 609.25, subd. 1 (2008). The complaint alleged that on June 26, 2010, Works responded to an online advertisement for escort services, met two women at an agreed-upon street, directed them by gunpoint to a secluded location, and forced them to engage in various nonconsensual sex acts.

Jury selection started on March 21, 2023. After the jury panel completed questionnaires, Juror 11 asked to speak with the district court and, outside of the presence of other jurors but with parties and counsel present, raised concerns about the racial composition of the jury. After hearing the juror's concerns, the district court reiterated that

jurors are selected at random and told Juror 11 that the jury would receive an instruction regarding implicit bias.

After completing voir dire questioning the following day, the state struck Juror 11 and defense counsel raised a *Batson* challenge. After hearing arguments from counsel, the district court determined that defense failed to prove Juror 11 was struck because of his race.

The state's first witness was A.M. A.M. testified that she and J.S. advertised "mannequin dress[ing]," meaning she would dress however a person wanted and accompany them to an event; her services did not involve touching. A.M. testified that on June 26, 2010, a person who identified himself as "Jordan" responded to her ad. A.M. and J.S. were dropped off at the meeting spot arranged with "Jordan," and the two were approached by someone with a gun. A.M. identified Works as the person who approached them with a gun. Works directed A.M. and J.S. to a secluded place around the corner. Works then forced A.M. to perform oral sex while he pointed a gun at J.S. A.M. stated that she did not consent to performing oral sex. Works then directed A.M. and J.S. across the street. Works then alternated penetrating A.M. and J.S. with his penis. A.M. testified that she was afraid Works was going to shoot them and that neither she nor J.S. consented to having sex with him.

J.S. testified that she was with A.M. on June 26, 2010, and that she was under the impression that the two would be going to meet someone who A.M. agreed to dance for. J.S. testified that they were approached by a man with a gun who directed them at gunpoint to a nearby park where he alternated penetrating each of them with his penis. J.S. testified

that she did not consent to the contact and that Works held the two at gunpoint throughout the process. J.S. also testified that Works forced her to perform oral sex on him, which she would not have done if he was not holding her at gunpoint.

A.M. and J.S. reported the incident and received sexual-assault examinations. DNA testing in 2022 identified Works as the perpetrator.

The district court also allowed the state, over Works' objection, to present *Spreigl* evidence of two prior, similar incidents.

The jury found Works guilty of all four counts. Immediately after dismissing the jury, the district court stated, "I do accept and record the jury's verdicts as to Counts 1, 2, 3, and 4, and so you are adjudicated guilty of each of those offenses at this time."

Works appeared for sentencing in May 2023. The district court sentenced the offenses in the order in which they appear in the complaint, imposing sentences first on the counts of criminal sexual conduct and then the kidnapping counts. For the two counts of criminal sexual conduct, the district court sentenced Works to consecutive 172-months prison terms. On the two counts of kidnapping, the district court imposed 23-month prison terms, consecutive to the proceeding counts. The district court also imposed a lifetime conditional-release term.

Works appeals.

DECISION

I. The district court did not clearly err in denying Works' *Batson* challenge.

A party may use a peremptory challenge "to strike a prospective juror that the party believes will be less fair than some others" in an effort "to select as final jurors the persons

they believe will be most fair.” *State v. Martin*, 773 N.W.2d 89, 100 (Minn. 2009) (quotation omitted). But a party may not use a peremptory challenge to strike a prospective juror based on race, as doing so violates the Equal Protection Clause of the Fourteenth Amendment. U.S. Const. amend. XIV, § 1; *Batson v. Kentucky*, 476 U.S. 79, 84 (1986); see *State v. Carridine*, 812 N.W.2d 130, 136-37 (applying *Batson*).

Minnesota courts use a three-step framework set forth by the United States Supreme Court in *Batson* to determine whether a peremptory challenge was motivated by racial discrimination. *Martin*, 773 N.W.2d at 101; see also Minn. R. Crim. P. 26.02, subd. 7(3). Under this framework,

(1) the defendant must make a prima facie showing that the prosecutor executed a peremptory challenge on the basis of race; (2) the burden then shifts to the prosecution to articulate a race-neutral explanation for striking the juror in question; and (3) the district court must determine whether the defendant has carried the burden of proving purposeful discrimination.

Martin, 773 N.W.2d at 101. Appellate courts generally will not reverse a district court’s ruling on a *Batson* challenge unless it is clearly erroneous. *State v. Harvey*, 932 N.W.2d 792, 811 (Minn. 2019). Appellate courts afford a district court “great deference” in a *Batson* ruling “because the record may not reflect all of the relevant circumstances that the court may consider.” *Id.* (quotation omitted).

At step one, “the defendant must make a prima facie showing that the prosecutor executed a peremptory challenge on the basis of race.” *Martin*, 773 N.W.2d at 101. “[T]he question as to step one is moot on appeal” when the district court proceeds to step two of the *Batson* analysis. *State v. Lufkins*, 963 N.W.2d 205, 210 (Minn. 2021).

In raising the *Batson* challenge, Works' trial counsel noted that "race has been a specter over this trial" and Juror 11 "was the first person in the jury to make note of it."

Defense counsel continued,

He said that he was uncomfortable with the juror panel not looking like Mr. Works and there not being any black people on the jury panel that we had in front of us. He's been one of the most outspoken proponents of making sure that people were aware of their implicit bias. He has been talking repeatedly about race, what it means, culture, what that means. He spoke about being a third or fourth generation Chinese and Japanese immigrant. He talked about his experience with his wife and being judged as an interracial couple. Almost every piece of information that [Juror 11] gave us today was related to his race, and how he perceives other people interact with him and how he perceives the rest of the world because of it.

I think based off of those reasons I think it is appropriate to raise a *Batson* challenge. And I don't – I cannot remember or recall anything that [Juror 11] spoke about that wasn't at least in part guided by his experience with his heritage and his own race. Thank you.

The district court determined that Works failed to show that Juror 11 was struck because of race. But, because the district court nonetheless considered the remaining factors, the question as to whether step one has been met, is moot on appeal. *Id.* at 210. Therefore, we consider the remaining steps.

At step two of the *Batson* analysis, the state must "offer a reasonably specific *explanation* that the court can use to determine whether that reason is related to the case being tried." *Id.* at 211. The explanation need not be "persuasive or even plausible," *Martin*, 773 N.W.2d at 101, and "will be deemed race-neutral unless a discriminatory intent

is inherent in the . . . explanation,” *State v. Pendleton*, 725 N.W.2d 717, 726 (Minn. 2007) (quotation omitted).

The prosecutor explained that Juror 11 was struck because he “appeared very engaged, nodded emphatically to some of [defense counsel’s] more suggestive questioning, seemed to . . . favor defense” and was “less responsive” than other juror’s to questions posed by the state. The district court determined that the state provided a race-neutral reason for striking Juror 11. “[D]emeanor can be [a] valid, race-neutral explanation[] for a peremptory strike.” *Lufkins*, 963 N.W.2d at 210 (citing *Snyder v. Louisiana*, 552 U.S. 472 (2008)); *see also State v. Taylor*, 650 N.W.2d 190, 202 (Minn. 2002) (“Unless discriminatory intent is *inherent* in the prosecutor’s explanation, the reason offered will be deemed race-neutral.”). We therefore conclude that the district court did not clearly err in its determination that the state provided a race-neutral reason for striking Juror 11, and we turn our attention to the final step of the analysis.

At step three of the *Batson* analysis, the challenging party must prove “that the peremptory strike was motivated by racial discrimination and that the proffered reasons were merely a pretext for the discriminatory motive.” *Pendleton*, 725 N.W.2d at 726 (quotation omitted). This court affords “considerable deference to the district court’s finding on the issue of the prosecutor’s intent because the court’s finding typically turns largely on credibility.” *Taylor*, 650 N.W.2d at 202.

The district court determined that Works had not proved purposeful discrimination and denied the *Batson* challenge. Works claims that the prosecutor’s demeanor-based reason for striking Juror 11 was a pretext for discrimination, noting Juror 11 raised

concerns about race and the criminal justice system. The record shows that Juror 11 talked to the district court and parties outside the presence of other jurors about race and the criminal justice system, spoke about his personal experiences as an Asian American, and responded to the prosecutor's questions regarding the quality versus quantity of evidence in more depth than the other jurors. Still, the state asserted that it struck Juror 11 because he appeared sympathetic towards the defense and was less responsive to the prosecutor's questions than other jurors, and we give great deference to the district court's finding on the state's offered reason for the strike. *Id.* Moreover, "[p]eremptory challenges may be exercised for any reason, other than for purposes of impermissible discrimination." *Pendleton*, 725 N.W.2d at 727. We, therefore, conclude that the district court's finding that Works failed to prove that the prosecutor's reason for striking Juror 11 was pretextual is not clearly erroneous. *See id.* ("The state's decision to challenge jurors that it believed were sympathetic to the defendant's case is a permissible use of its challenges.").

II. The district court acted within its discretion by allowing the state to introduce other-crimes evidence.

A district court's decision to admit *Spreigl* evidence under Minn. R. Evid. 404(b) is reviewed for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). If the district court abused its discretion by admitting the evidence, this court "must then determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *Id.* at 262. As the party claiming the error, Works bears the burden of proving that the district court abused its discretion by admitting the evidence and that the resulting prejudice significantly impacted the jury's verdict. *Id.* at 261.

“Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b)(1). But this type of evidence is only admissible if “the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.” Minn. R. Evid. 404(b)(2).

Minnesota Rule of Evidence 404(b)(2) outlines a three-part test for determining whether evidence of another crime, wrong, or act is admissible. However, Works only challenges the last prong—that the district court abused its discretion by admitting the *Spreigl* evidence because the probative value was outweighed by the risk of unfair prejudice.

There are two *Spreigl* incidents. The first piece of *Spreigl* evidence was admitted through direct testimony. B.W. testified that she previously worked as an escort and, in 2008, a person who identified himself as “Jason” responded to her advertisement for a nude massage. B.W. testified that the man sexually assaulted her during the encounter. B.W. reiterated that she did not offer or consent to having sex with him. After the incident, the man pulled what looked like a gun out of the closet and told B.W. to leave. The man later called B.W. and told her that he had a gun and was going to kill her. B.W. identified Works as the man she met in 2008.

The second *Spreigl* incident was admitted via officer testimony regarding a statement S.H. made to police about being sexually assaulted by a man named “Justin” at

his apartment in 2008. The officer connected Works to the incident using the address S.H. provided. S.H. told the officer that the man held what she thought was a gun, forced her to perform oral sex, penetrated her vagina with his fingers, and then forced her out of his apartment at gunpoint. S.H. later identified Works in a photo lineup.

The district court did not weigh the probative value of the evidence against the risk of unfair prejudice on the record. But we need not determine whether the district court erred by admitting the *Spreigl* evidence because, even if we assume without so ruling that the evidence was wrongfully admitted, there is no reasonable possibility that the evidence significantly affected the verdict. *See Griffin*, 887 N.W.2d at 262.

The district court gave cautionary instructions to the jury before each *Spreigl* witness testified, and “we presume that the jurors followed the district court’s instruction.” *Id.* (explaining that concerns regarding the prejudicial impact of *Spreigl* evidence was mitigated by an instruction and the presumption that juries follow instructions). Moreover, the evidence in this case was substantial. Both victims testified that Works forced them at gunpoint to a secluded area and sexually assaulted them. *See State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d*, 508 U.S. 366 (1993) (reasoning that appellate courts defer to the fact-finder’s credibility determinations). And DNA evidence identified Works as the perpetrator and connected him to the scene of the crime. Thus, there is no reasonable possibility that the *Spreigl* evidence impacted the verdict.

III. The district court erred by imposing lifetime conditional release.

Whether a sentence conforms to the requirements of a statute or the sentencing guidelines is a question of law reviewed *de novo*. *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009).

Persons convicted of first-degree criminal sexual conduct are subject to conditional release. Minn. Stat. § 609.342, subd. 2(c) (2008). If the offender has a previous sex-offense conviction, they are subject to lifetime conditional release. Minn. Stat. § 609.3455, subd. 7(b) (2008).

“A conviction is considered a ‘previous sex offense conviction’ if the offender was convicted of committing a sex offense before the offender has been convicted of the present offense.” Minn. Stat. § 609.3455, subd. 1(g) (2008). A conviction occurs when the district court accepts and records “a verdict of guilty by a jury or a finding of guilt by the court.” Minn. Stat. § 609.02, subd. 5(2) (2008). The Minnesota Supreme Court has clarified that “a court ‘records’ a guilty plea upon accepting the guilty plea and adjudicating the defendant guilty on the record.” *State v. Nodes*, 863 N.W.2d 77, 81 (Minn. 2015) (quotation omitted). “This record—the court reporter’s transcription of the proceedings—is all that is required for a conviction to be ‘recorded.’” *Id.*

Immediately after receiving the jury’s verdict, the district court stated, “I do accept and record the jury’s verdicts as to Counts 1, 2, 3, and 4, and so [Works is] adjudicated guilty of those offenses at this time.” Because the district court accepted and recorded the jury’s verdicts simultaneously, there was no prior conviction under Minn. Stat. § 609.3455, subd. 1(g). *Id.*; see also *State v. Brown*, 937 N.W.2d 146, 155-57 (Minn. App. 2019)

(“With no temporal gap whatsoever between a district court’s adjudication of offenses, no conviction is entered ‘before’ the other, and no conviction can be prior to the other.”). The district court, therefore, erred by imposing lifetime conditional release when sentencing the second count of criminal sexual conduct.

IV. The district court erred by failing to sentence in the order in which the offenses occurred.

Whether a sentence conforms to the requirements of a statute or the sentencing guidelines is a question of law reviewed *de novo*. *Williams*, 771 N.W.2d at 520.

Works argues that the district court erred by sentencing the offenses in the order in which they appear on the complaint and by imposing consecutive sentences. Although the order in which the offenses were to be sentenced was not addressed at Works’ sentencing hearing, we consider Works’ claim because an illegal sentence may be reviewed at any time. Minn. R. Crim. P. 27.03, subd. 9. He claims that, because the Minnesota Sentencing Guidelines provide that when sentencing multiple offenses at the same hearing, the “offenses are sentenced in the order in which they occurred,” Minn. Sent’g Guidelines II.B.1 (Supp. 2009), the district court erred by sentencing his offenses in order of severity. We agree. The record shows that the kidnapping offenses occurred first. The state’s response to Works’ argument references consecutive sentencing and criminal-history points but does not address the issue Works raised, which is the proper order of sentencing the four counts.

The Minnesota Sentencing Guidelines are “to be used by a district court when imposing a sentence upon a conviction of a crime in a particular case.” *Williams*, 771

N.W.2d at 521. The district court, therefore, erred by sentencing the offenses by the order they appeared in the complaint, which is not the order in which the crimes occurred, and we reverse Works' sentence and remand for resentencing.

Works also argues that the district court erred by imposing consecutive sentences. When sentencing multiple felony convictions, a district court may impose consecutive sentences for certain offenses for which the presumptive disposition is commitment to the department of corrections. *See* Minn. Sent'g Guidelines II.F.2 (Supp. 2009). Works claims that if the kidnapping offenses were sentenced first, he would have received a stayed sentence for each and, therefore, the kidnapping offenses would not qualify for consecutive sentencing. We have already determined that the district court erred by failing to sentence Works' convictions in the order in which the offenses occurred, which entitles Works to resentencing. And, because we remand for resentencing, we need not reach the issue of whether the district court abused its discretion by imposing consecutive sentences.

Affirmed in part, reversed in part, and remanded.