IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-681

No. COA21-47

Filed 7 December 2021

Forsyth County, Nos. 17 CRS 52401, 17 CRS 52702, 19 CRS 54463

STATE OF NORTH CAROLINA, Plaintiff,

v.

WILLIAM ANTHONY BROWN, Defendant.

Appeal by Defendant from judgment entered 26 September 2019 by the Honorable Judge David L. Hall in Forsyth County Superior Court. Heard in the Court of Appeals 3 November 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney Generals Daniel P. O'Brien and Robert C. Montgomery, for Plaintiff-Appellee.

Glover & Petersen, P.A., by James R. Glover and Ann B. Petersen, for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Defendant challenges a prosecutor's peremptory strike of the only black juror in the venire as racially motivated and prohibited by *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).[1] Because the trial court did not make a record

[1] *See Batson,* 476 U.S. at 96–98, 106 S. Ct. at 1723–24, 90 L. Ed. 2d at 87–88 (requiring a three-step inquiry of peremptory jury challenges against minority jurors).

adequately addressing the totality of circumstances presented to it as required by *State v. Hobbs*, 374 N.C. 345, 349, 841 S.E.2d 492, 497 (2020), we remand the matter for further proceedings addressing Defendant's *Batson* claim.

I. Factual and Procedural Background

¶ 2 On 2 May 2018, William Brown ("Defendant") was charged with (1) murder; (2) discharging a firearm into an occupied building; and (3) possession of a firearm by a convicted felon. On 3 June 2019, Defendant was additionally charged with (4) solicitation to commit first-degree murder; and (5) attempting to solicit a person to commit first-degree murder. All charges were joined for trial.

¶ 3 Jury selection began on 16 September 2019. After the State excused four potential jurors, the court called four new potential jurors to be seated in the jury box, including Ashley Kounce. Ms. Kounce discussed her employment status, where she lived, and her family situation. She also discussed a previous negative interaction she had with law enforcement, and explained she had a family member who had previously served time in prison as well as a boyfriend who was convicted of a felony when he was younger. The State used a peremptory challenge to remove Ms. Kounce from further consideration. Ms. Kounce was the first and only black potential juror questioned by the prosecutor during voir dire. Defense counsel objected to the State exercising one of its peremptory challenges to excuse Ms. Kounce pursuant to *Batson*.

¶ 4 In a hearing outside the presence of the jury, Defendant's counsel asserted, "[i]n an attempt to get a jury of [Defendant's] peers, there appears to have been a suitable [juror] on the witness stand . . . that the State has exercised one of its peremptories to excuse." The trial judge acknowledged that Ms. Kounce was the first black juror to be called, which was undisputed by the parties, and found a prima facie showing of discrimination based on the State striking "100 percent of the potential African-American jurors." The trial judge thus asked the State to articulate the reasons for the peremptory strike. The State provided three reasons: (1) Ms. Kounce's boyfriend was a convicted felon, and her uncle was convicted of a crime after a trial and served time in prison; (2) she lived close to the location of the murder; and (3) she went into detail about a negative experience she had with law enforcement

¶ 5 The trial judge then asked defense counsel if they could "identify any other person with similar background" and with "lighter skin perhaps or Caucasian" that the State did not challenge. Defense counsel named one juror, Mr. Carson, whose sister had been convicted of a DWI, and another juror, Mr. Slack, whose cousin was currently in prison for meth. The trial judge ultimately denied the *Batson* objection to the State's peremptory challenge of juror Ashley Kounce, stating the court did "not find the State ha[d] exercised a peremptory challenge based upon race or that race was a factor" in the decision to excuse Ms. Kounce.

¶ 6 Jury selection resumed, and the jury ultimately found Defendant guilty of first-degree murder, possession of a firearm by a convicted felon, solicitation to commit murder, and attempted solicitation to commit murder. Defendant was sentenced to life without parole with a consecutive term of 96 to 128 months for the solicitation charges. Defendant appeals.

II. Issue

¶ 7 The sole issue on appeal is whether the trial court erred in denying Defendant's *Batson* motion without making specific findings of fact that explained its evaluation on whether Defendant proved purposeful discrimination.

III. Jurisdiction

¶ 8 This is an appeal from a final judgment and is an appeal of right pursuant to N.C. Gen. Stat. §§ 7A-27(b) (2019) and 15A-1444(a) (2019).

IV. Standard of Review

¶ 9 In evaluating a *Batson* challenge, "[t]he trial court has the ultimate responsibility of determining whether the defendant has satisfied his burden of proving purposeful discrimination." *Hobbs*, 374 N.C. at 349, 841 S.E.2d at 497. "The trial court's [*Batson*] determination is given great deference [on appeal] because it is based primarily on evaluations of credibility. Such determinations will be upheld as long as the decision is not clearly erroneous." *State v. Fair*, 354 N.C. 131, 140, 557 S.E.2d 500, 509–10 (2001). "Trial courts faced with resolving a *Batson* claim 'must

make specific findings of fact at each stage of the Batson inquiry that it reaches' in aid of the standard's application upon appellate review." *State v. Alexander*, 274 N.C. App. 31, 38, 851 S.E.2d 411, 416 (2020) (citation omitted).

V. Analysis

¶ 10 "The Equal Protection Clause guarantees a criminal defendant that the State will not exclude members of his race from the jury venire on account of race." *Batson v. Kentucky*, 476 U.S. 79, 86, 106 S. Ct. 1712, 1716, 90 L.Ed 2d 69, 79 (1986). When a *Batson* challenge is raised, the trial court conducts a three-step inquiry: (1) the defendant must make a *prima facie* showing that the State exercised a race-based peremptory challenge; (2) if the defendant makes a *prima facie* showing, the State must offer a facially valid, race neutral explanation for its peremptory challenge; and (3) the trial court must then decide whether the defendant has proved purposeful discrimination. *Id.* at 96–98, 106 S. Ct. at 1722–24, 90 L.Ed 2d at 87–89; *see State v. Cummings*, 346 N.C. 291, 307–08, 488 S.E.2d 550, 560 (1997). "It is imperative that 'the trial court . . . make specific findings of fact at each step of the *Batson* inquiry that it reaches.'" *Alexander*, 274 N.C. App. at 41, 851 S.E.2d at 419 (citations omitted).

¶ 11 In this case, steps one and two of the *Batson* inquiry were satisfied; the issue stems from the trial court's consideration of the third step of the *Batson* inquiry. The

North Carolina Supreme Court has given guidance on what the third step of the *Batson* inquiry requires:

> The trial court must consider the prosecutor's race-neutral explanations in light of all of the relevant facts and circumstances, and in light of the arguments of the parties. At the third step, the trial court must determine whether the prosecutor's proffered reasons are the actual reasons, or whether the proffered reasons are pretextual and the prosecutor instead exercised peremptory strikes on the basis of race. The ultimate inquiry is whether the State was motivated in substantial part by discriminatory intent.

Hobbs, 374 N.C. at 353, 841 S.E.2d at 499 (internal quotations and citations omitted). "[T]he trial court is 'requir[ed] . . . to consider *all of the evidence before it* when determining whether to sustain or overrule a *Batson* challenge.'" *Alexander*, 274 N.C. App. at 42, 851 S.E.2d at 419 (quoting *Hobbs*, 374 N.C. at 358, 841 S.E.2d at 502). "When a defendant presents evidence raising an inference of discrimination, a trial court, and a reviewing appellate court, must consider that evidence in determining whether the defendant has proved purposeful discrimination in the State's use of a peremptory challenge." *Hobbs*, 374 N.C. at 356, 841 S.E.2d at 501.

¶ 12 The trial court did not have the benefit or assistance of the analysis provided by our Supreme Court in *Hobbs* or this Court in *Alexander* when it made its ruling, as those decisions came after the trial court conducted its analysis and made its ruling on the *Batson* issue. The decisions in *Hobbs* and *Alexander* "require[] us to remand this case to the trial court to make the findings necessary to resolve a *Batson* claim."

Alexander, 274 N.C. App. at 43, 851 S.E.2d at 419. Defendant offered a contention that a comparative juror analysis revealed racial bias in the State's decision to strike Ms. Kounce on the grounds of criminal history. There is no dispute that the trial court did not adequately explain how it conducted its comparative juror analysis between Ms. Kounce and the two other jurors Defendant identified. When making his determination, the trial judge simply stated, "I do not find the State has exercised a peremptory challenge based upon race or that race was a factor based upon the other considerations that the State has articulated. So the motion is respectfully denied."

¶ 13 For this reason, we must remand for further evaluation by the trial court. *See Alexander*, 274 N.C. App. at 42, 851 S.E.2d at 419 (When the trial court fails to specifically state its evaluation of side-by-side comparisons of prospective jurors struck by the prosecution, an appellate court must remand for further proceedings.).

VI. Conclusion

¶ 14 The trial court failed to adequately explain its reasoning when denying Defendant's *Batson* objection. In light of *Hobbs* and *Alexander*, we remand this matter to the trial court for further findings as to step three of the *Batson* inquiry consistent with *Hobbs* and *Alexander*. *See Hobbs*, 374 N.C. at 360, 841 S.E.2d at 504; *Alexander*, 274 N.C. App. at 42, 851 S.E.2d at 419.

REVERSED AND REMANDED TO THE TRIAL COURT FOR A NEW *BATSON* HEARING.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).