IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-23

No. COA20-657

Filed 4 January 2022

Forsyth County, No. 17 CRS 55391; 55399-400; 56332

STATE OF NORTH CAROLINA,

v.

BRODERICK TYWONE RUTH, Defendant.

Appeal by Defendant from judgments entered 9 May 2019 by Judge Stanley L. Allen in Forsyth County Superior Court. Heard in the Court of Appeals 7 September 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Justin Isaac Eason, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi Reiner, for Defendant-Appellant.

WOOD, Judge.

¶ 1 Defendant Broderick Ruth ("Defendant") appeals from his convictions for felony fleeing to elude arrest; assault with a firearm on a law enforcement officer; discharging a firearm into an occupied vehicle in operation; and possession of a firearm by a felon. On appeal, Defendant contends the trial court erred by overruling his *Batson* objections during jury selection; denying Defendant's motion to dismiss

the charge of discharging a weapon into an occupied vehicle in operation; improperly instructing the jury on the charge of discharging a weapon into an occupied vehicle in operation; and finding aggravating factors for felony fleeing to elude arrest. After careful review of the record and applicable law, we remand to the trial court for a new trial.

I. Factual and Procedural Background

¶ 2 At approximately 1:00 a.m. on July 10, 2017, Defendant drove through a stop sign in Kernersville, North Carolina. Officer Frank Sanchez ("Officer Sanchez") was working as a patrol officer when he observed Defendant drive through the stop sign. Officer Sanchez activated his emergency lights and initiated a traffic stop. Defendant stopped his vehicle and Officer Sanchez "camp[ed] [his] vehicle off to the driver's side or the left-hand side" of Defendant's vehicle for his safety.

¶ 3 After Officer Sanchez brought his patrol vehicle to a stop behind Defendant, Defendant stepped out of his vehicle with a handgun. Defendant aimed the firearm at Officer Sanchez and attempted to discharge the firearm, but the gun did not discharge. Defendant "had to bring the gun down and rack the slide to put a round in the chamber so it would be able to fire." Thereafter, Defendant began firing at Officer Sanchez.

¶ 4 Officer Sanchez had not yet called in the traffic stop, and his vehicle remained running. When Defendant began discharging his firearm, Officer Sanchez exited his

patrol car, drew his service weapon, and took cover near the rear of his vehicle. Officer Sanchez discharged his service weapon in Defendant's direction approximately eight times. Defendant returned to his vehicle and rapidly accelerated away from the scene. Officer Sanchez got back into his patrol vehicle and pursued Defendant.

¶ 5 Officer Sanchez testified that, as he pursued Defendant, they reached speeds in excess of 100 miles per hour. During the pursuit, Officer Sanchez temporarily lost sight of Defendant's vehicle. Officer Sanchez continued driving and found Defendant's vehicle on the side of the road near a wooded area. Officer Sanchez exited his patrol car, retrieved his AR-15 from the trunk, and waited for additional law enforcement officers to arrive. Shortly thereafter, Detective Jason Howard ("Detective Howard") arrived on scene and approached Defendant's vehicle. The vehicle was empty, and Detective Howard found a black handgun on the floorboard of the driver's side of the vehicle.

¶ 6 The officers remained in the area, and approximately an hour later, Defendant approached the law enforcement officers from the wooded area. Defendant was subsequently arrested and indicted for felony fleeing to elude arrest; assault with a firearm on a law enforcement officer; discharging a firearm into an occupied vehicle in operation; possession of a firearm by a felon; attempted murder; and assault with a deadly weapon with intent to kill. The State provided notice to Defendant of

aggravating factors on January 18, 2018.

¶ 7 Defendant's trial occurred in May 2019. During jury selection,[1] the State challenged potential jurors Tamra Stinson, Vanessa McClain, and Patricia McGregor. Defendant objected to the peremptory challenges for two of the jurors, Jurors McClain and McGregor, on the basis of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed.2d 69 (1986). A discussion was held at the bench but was not transcribed. Thereafter, five new jurors were seated for *voir dire.*

¶ 8 The State exercised its fourth peremptory challenge, against potential juror Tamekia Quinn, drawing an additional objection from defense counsel. The trial court did not make a ruling on the objection. The State then challenged an additional juror, Brian Speas, for cause. Defense counsel objected, stating, "*Batson* challenge again." The trial court then had a colloquy with Juror Speas and denied the State's challenge. Thereafter, the State exercised a peremptory challenge to excuse Juror Speas, drawing an objection from defense counsel. The jurors were excused, and the trial court asked the State to explain its peremptory challenges.

¶ 9 Prior to providing an explanation for the peremptory challenges, the prosecutor asked the trial court if it found Defendant had shown a prima facie case of racial motivation. The trial court responded, "No – well, I'm saying he made an

[1] The entirety of jury selection was not transcribed.

objection. I want you to put on the record why you excused those." The prosecutor provided her reasoning for jurors McClain and Speas before arguing that it was not clear whether Juror McGregor was black.[2] The prosecutor made no mention of Juror Quinn. Defense counsel, in turn, argued that the peremptory challenges "are all Batson violations, at least some of them." When the trial court asked defense counsel to explain, he stated,

> Madam D.A. said that [Juror] McClain was taken off because she would have problems being fair, indicated – [Juror] McClain said yes, I can figure things out. [Juror] Speas went back and forth . . . but I think ultimately, he said he could be fair. [Juror] Quinn was also African-American. I think the only reason, that racially neutral reason would be her brother's in jail. . . ."

Thereafter, defense counsel argued that the State "didn't present a racially neutral argument, racially neutral reason for peremptory challenge" and that "the State did it because they were black." The trial court noted that defense counsel's objection was "on the record" and permitted the jurors to return at that time.

¶ 10 Defendant was acquitted of attempted murder but convicted of all other charges. The trial court arrested judgment on the conviction of assault with a deadly weapon with intent to kill. Thereafter, Defendant admitted to the presence of three

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[2] When defense counsel raised the objection to Juror McGregor, the prosecutor stated: I don't know if we can say that [McGregor was black], and I don't think any questions were asked with regards to her race. Usually on this sort of situation, it's on the record for the jurors to self-identify, and we did not follow that procedure."

aggravating factors: that the offense was committed to disrupt or hinder the enforcement of laws; that the offenses were committed against a law enforcement officer in the performance of his duties; and that the offenses were committed while Defendant was on pretrial release for another offense. Thereafter, Defendant timely gave oral notice of appeal in open court.

II. Discussion

¶ 11 Defendant raises four issues on appeal. Each will be discussed in turn.

A. Batson Objections

¶ 12 Defendant first argues the trial court erred in overruling his *Batson* objections, because the State failed to provide a race-neutral reason for each peremptory challenge. We agree.

> Our review of race-based or gender-based discrimination during petit jury selection has been the same under both the Fourteenth Amendment to the United States Constitution and Article 1, Section 26 of the North Carolina Constitution. *State v. Maness*, 363 N.C. 261, 271-72, 677 S.E.2d 796, 803 (2009) (citations omitted), *cert. denied*, 559 U.S. 1052, 130 S. Ct. 2349, 176 L. Ed. 2d 568 (2010). The Supreme Court of the United States has held that "the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the State's case against a black defendant." *Batson v. Kentucky*, 476 U.S. 79, 89, 106 S. Ct. 1712, 1719, 90 L. Ed.2d 69, 83 (1986). A defendant's claim that a peremptory challenge is improperly based upon race triggers a three-step inquiry. First, the party raising the claim must make a prima facie showing of

> intentional discrimination under the "totality of the relevant facts" in the case. *Id.* at 94, 106 S. Ct. at 1721, 90 L. Ed. 2d at 86. Second, if a prima facie case is established, the burden shifts to the State to present a race-neutral explanation for the challenge. *Rice v. Collins*, 546 U.S. 333, 333, 126 S. Ct. 969, 970-71, 163 L. Ed. 2d 824, 831 (2006). Finally, the trial court must then determine whether the defendant has met the burden of proving "purposeful discrimination." *Miller-El v. Dretke*, 545 U.S. 231, 239, 125 S. Ct. 2317, 2324, 162 L. Ed. 2d 196, 213 (2005). The trial court's ruling will be sustained "unless it is clearly erroneous." *Snyder v. Louisiana*, 552 U.S. 472, 477, 128 S. Ct. 1203, 1207, 170 L. Ed. 2d 175, 181 (2008) (citations omitted).

State v. Waring, 364 N.C. 443, 474-75, 701 S.E.2d 615, 635-36 (2010); *see also State v. Taylor*, 362 N.C. 514, 527, 669 S.E.2d 239, 253-54 (2008); *State v. Augustine*, 359 N.C. 709, 715, 616 S.E.2d 515, 521-22 (2005).

> A Batson challenge does not call for a mere exercise in thinking up any rational basis. If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.

Id. at 475, 701 S.E2d at 636 (quoting *Miller-El*, 545 U.S. at 252, 125 S. Ct. at 2332, 162 L. Ed. 2d at 221).

¶ 13 "Step one of the *Batson* analysis, a prima facie showing of racial discrimination, is not intended to be a high hurdle for defendants to cross." *State v. Hoffman*, 348 N.C. 548, 553, 500 S.E.2d 718, 722 (1998). To show a "prima facie case of purposeful discrimination," a defendant "first must show that he is a member of a

cognizable racial group." *Batson*, 476 U.S. at 96, 125 S. Ct. at 1723 90 L. Ed. 2d at 87 (citations omitted); *see also Hoffman*, 348 N.C. at 550, 500 S.E.2d at 720 ("First, defendant must establish a *prima facie* showing that the peremptory challenge was exercised on the basis of race." (citation omitted)). Then, a defendant must show "that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race." *Batson*, 476 U.S. at 96, S. Ct. at 1723, 90 L. Ed. 2d at 87 (citation omitted); *see also Augustine*, 359 N.C. at 715, 616 S.E.2d at 522. A defendant "is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits 'those to discriminate who are of a mind to discriminate.' " *Batson*, 476 U.S. at 96, S. Ct. at 1723, 90 L. Ed. 2d at 87.

¶ 14 In determining whether a defendant has made a *prima facie* showing of racial discrimination, the trial court must consider "other relevant circumstances [that] raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race." *Id.*; *see also Augustine*, 359 N.C. at 716, 616 S.E.2d at 522 (citations omitted). Relevant considerations include: (1) "a 'pattern' of strikes against black jurors included in the particular venire"; (2) "the prosecutor's questions and statements during *voir dire* examination and in exercising his challenges"; (3) "the victim's age"; (4) "the race of key witnesses"; (5) the State's "use of a disproportionate number of peremptory challenges . . . and the State's acceptance

rate of potential black jurors." *Id.*; *see also Hoffman*, 348 N.C. at 550, 500 S.E.2d at 720 (quoting *State v. Quick*, 341 N.C. 141, 145, 462 S.E.2d 186, 189 (1995)); *State v. Nicholson*, 355 N.C. 1, 21, 558 S.E.2d 109, 125 (2002) (citations omitted).

¶ 15 Nor is the second step of a *Batson* analysis a high hurdle. *See Hoffman*, 348 N.C. at 553, 500 S.E.2d at 722. "The State's race-neutral explanation need not be persuasive or even plausible; it will be deemed race-neutral unless a discriminatory intent is inherent in it." *Id.* (citation omitted); *Taylor*, 362 N.C. at 527, 669 S.E.2d at 254 ("If the defendant makes the requisite showing, the burden shifts to the [S]tate to offer a facially valid, race-neutral explanation for the peremptory challenge." (citation omitted)).

¶ 16 "Whether the prosecutor intended to discriminate against the members of a race is a question of fact," and as a result "the trial court's ruling . . . must be accorded great deference by a reviewing court." *State v. Floyd*, 343 N.C. 101, 104, 468 S.E.2d 46, 48, *cert. denied*, 519 U.S. 896, 117 S. Ct. 241, 136 L. Ed. 2d 170 (1996). "This is because 'often there will be little evidence except the statement of the prosecutor, and the demeanor of the prosecutor can be the determining factor. The presiding judge is best able to determine the credibility of the prosecutor.' " *Hoffman*, 348 N.C. at 554, 500 S.E.2d at 723 (quoting *Floyd*, 343 N.C. at 104, 468 S.E.2d at 48). "[W]e have held that when a trial court makes 'a ruling that defendant failed to make a *prima facie* showing before the prosecutor articulated his reasons for the peremptory challenges

. . . [,] our review is limited to whether the trial court erred in finding that defendant failed to make a *prima facie* showing.' " *Id.* (quoting *State v. Williams*, 343 N.C. 345, 359, 471 S.E.2d 379, 386-87 (1996)).

¶ 17 However,

> If the prosecutor volunteers his reasons for the peremptory challenges in question before the trial court rules whether the defendant has made a prima facie showing or if the trial court requires the prosecutor to give his reasons without ruling on the question of a prima facie showing, the question of whether the defendant has made a prima facie showing becomes moot, and it becomes the responsibility of the trial court to make appropriate findings on whether the stated reasons are a credible, nondiscriminatory basis for the challenges or simply pretext.

Williams, 343 N.C. at 359, 471 S.E.2d at 386 (citing *Hernandez v. New York*, 500 U.S. 352, 359, 111 S. Ct. 1859, 1866, 114 L.Ed.2d 395, 405 (1991); *State v. Robinson*, 336 N.C. 78, 93, 443 S.E.2d 306, 312 (1994), *cert. denied*, 513 U.S. 1089, 115 S. Ct. 750, 130 L. Ed. 2d 650 (1995)).

¶ 18 Here, defense counsel challenged four of the State's peremptory challenges under *Batson*: jurors McClain, McGregor, Speas, and Quinn. The trial court permitted the State to provide its explanation with respect to each juror prior to defense counsel making an argument. Thus, whether Defendant made a *prima facie* showing is moot, and our review is limited to whether the State provided a race-neutral reason for challenging each African American juror. *See Williams*, 343 N.C.

at 359, 471 S.E.2d at 386; *State v. Wright*, 189 N.C. App. 346, 352, 658 S.E.2d 60, 64 (2008).

¶ 19 In *State v. Wright*, 189 N.C. App. 346, 658 S.E.2d 60 (2008), the defendant challenged seven of the State's peremptory challenges of African American jurors under *Batson*. 189 N.C. App. at 351-52, 658 S.E.2d at 63-64. The prosecutor offered race-neutral reasons for five of the seven, before stating,

> I mean, can go on and on with each of the jurors. There are reasons why that they were picked. It wasn't picked because of their race or anything like that.
>
> . . .
>
> Your Honor, the reasons why each of these jurors were eliminated were not because of their race, were not because of their-it was because of their background. Your Honor, it was because of their background that they were dismissed, not because of their race.

Id. at 351, 358 S.E.2d at 63. On appeal, this Court granted a new trial because the prosecutor did not offer a race-neutral reason for two of the jurors at issue. *Id.* at 353, 658 S.E.2d at 64. Indeed, "two jurors [were] not specifically mentioned at all." *Id.* Accordingly, where "the prosecutor has failed to 'offer a race-neutral explanation for *each* peremptory challenge at issue[,]' " a new trial is warranted. *Id.* (quoting *State v. Cofield*, 129 N.C. App. 268, 275, 498 S.E.2d 823, 828 (1998)) (emphasis in original)

¶ 20 In the present case, the State challenged jurors McClain and Speas because

they expressed hesitancy rendering a guilty verdict.[3] However, the prosecutor never offered a race-neutral reason for Juror Quinn. Although the State argues that defense counsel conceded that "her brother's in jail," and stipulated to the race-neutral reason for challenging Juror Quinn, it is the State's burden—not Defendant's—to offer a race-neutral explanation for each and every peremptory challenge. *See Collins*, 546 U.S. at 333, 126 S. Ct. at 970-71, 163 L. Ed. 2d at 831; *Waring*, 364 N.C. at 475, 701 S.E.2d at 635-36; *Wright*, 189 N.C. App. at 353, 658 S.E.2d 64-65; *Cofield*, 129 N.C. App. at 275, 277, 498 S.E.2d at 828, 830. We are not persuaded by the State's assertion that Defendant stipulated to a race-neutral reason for challenging Juror Quinn. Indeed, the record reveals that defense counsel continued to argue that the State failed to meet its burden under *Batson* after stating that the only race-neutral reason "would be her brother's in jail." Despite defense counsel's argument, the State did not proffer an explanation for its challenge to Juror Quinn. Where the State does not offer a race neutral reason for *each* peremptory challenge, regardless of whether there were valid reasons for some of the peremptory challenges, a new trial is warranted. *See Wright*, 189 N.C App. at 353-54. 658 S.E.2d at 65. Because the State did not offer a reason for its challenge to Juror Quinn, "the [S]tate thus failed to meet its burden in response to [D]efendant's showing of a *Batson* violation." *Wright*, 189

[3] Defendant waived review of Juror McGregor at oral argument before this Court on September 7, 2021.

N.C. App. at 354, 658 S.E.2d at 65.

III. Conclusion

¶ 21 "[W]e are duty bound to follow the plain language of the law. As the prosecutor failed to provide a race-neutral explanation as to *each* challenged juror mentioned by the defendant the trial court clearly erred" by failing to comply with the requirements of *Batson*. *Id.* at 354, 658 S.E.2d at 65 (citation omitted) (emphasis in original). Accordingly, we remand to the trial court for a new trial and need not reach Defendant's remaining arguments on appeal.

REMANDED FOR NEW TRIAL.

Judges HAMPSON and GORE concur.

Report per Rule 30(e).