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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-393

Filed 21 May 2024

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

STATE OF NORTH CAROLINA

v.

WILLIAM ANTHONY BROWN, Defendant.

Appeal by Defendant from order entered 29 June 2022 by Judge David L. Hall in Forsyth County Superior Court. Heard in the Court of Appeals 10 January 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Benjamin Szany, for the State.

Glover & Petersen, P.A., by Ann B. Petersen, & Appellate Defender Glenn Gerding, by Assistant Appellate Defender Sterling Rozear, for Defendant-Appellant.

CARPENTER, Judge.

William Anthony Brown (“Defendant”) appeals from judgment after a jury convicted him of first-degree murder, solicitation to commit first-degree murder, attempted solicitation to commit first-degree murder, and possession of firearm by a felon. After our review of Defendant’s first appeal, we remanded the case for a new *Batson* hearing. *State v. Brown*, No. COA21-47, 2021 N.C. App. LEXIS 696, at *8

(N.C. Ct. App. Dec. 7, 2021). On appeal from his new *Batson* hearing, Defendant now argues the trial court erred by denying his *Batson* challenge, thus violating the Equal Protection Clause of the United States Constitution and Article I, Section 26 of the North Carolina Constitution. After careful review, we discern no error.

I. Factual & Procedural Background

A. Initial Proceedings

Between 21 May 2019 and 3 June 2019, a Forsyth County grand jury indicted Defendant of first-degree murder, solicitation of first-degree murder, attempted solicitation of first-degree murder, discharging a weapon into an occupied property, and possession of a firearm by a felon. On 6 September 2019, the State began trying Defendant in Forsyth County Superior Court.

During jury selection, the State peremptorily struck Ashley Kounce, a black woman. During voir dire, Kounce spoke about a negative interaction she had with law enforcement. She also stated that, in a separate police interaction, an officer got “hostile with her boyfriend for no reason.”

Later, Kounce stated that one of her uncles was convicted of a crime. Kounce also said that her boyfriend was a felon, “but it’s from a long time ago.” When asked about her boyfriend’s conviction, Kounce said: “the house at that time when he was younger, his mom had kicked him out, and he was staying with somebody. And they had a lot of drugs in the house, so in that he was staying with them, and all of them were in the house, they grabbed him as well.”

After the State struck Kounce from the jury pool, Defendant entered a *Batson* objection. *See Batson v. Kentucky*, 476 U.S. 79, 84, 106 S. Ct. 1712, 1716, 90 L. Ed. 2d 69, 79 (1986) (holding that deliberate removal of potential jurors because of race violates the Equal Protection Clause and thus, establishing the “*Batson*” challenge). The trial court observed that Kounce was the first black juror called, and thus, “there could be a prima facie showing that the State has struck 100 percent of the potential African-American jurors.” Therefore, the trial court asked the State to identify a race-neutral reason for striking Kounce.

The prosecutor stated that:

what concerned the State had absolutely nothing to do with [Kounce’s] race or ethnicity. Instead it was the fact that her boyfriend was a convicted felon. Her uncle had been convicted of a crime and served time and sounded like he had taken it to trial. [Kounce] lives close to the [crime scene]. And has stated—she went into detail about a negative experience that she had with law enforcement.

To rebut the State’s reasoning, Defendant observed that two other jurors, Michael Larson and William Slack, had family members with criminal convictions. Larson’s sister was convicted of driving while impaired. During voir dire, Larson said that his sister “knows she made a big boo-boo,” and that she was “embarrassed and learned her lesson” from the crime.

Slack’s cousin was imprisoned “for meth.” Slack said his cousin “has been in prison many times, and he’s still in prison now.” Further, Slack said that his “[cousin]’s always been on drugs, like, illicit, like, methamphetamines,” and that his

cousin “should be [in jail]—I mean, he—he was doing drugs, so. I mean, everybody knows it.” Slack said his cousin’s sentence was “legitimate.”

The trial court denied Defendant’s *Batson* challenge. Kounce was the first and only black potential juror questioned by the State during voir dire; the other sixteen potential jurors questioned during voir dire, including Larson and Slack, were white.

On 26 September 2019, the jury convicted Defendant of first-degree murder, solicitation to commit first-degree murder, attempted solicitation to commit first-degree murder, and possession of firearm by a felon. The trial court entered two judgments: one sentencing Defendant to life imprisonment without parole and another sentencing Defendant to between 96 and 128 months of imprisonment, to run consecutively with the first judgment. Defendant timely appealed.

After our initial review, we remanded the case for a new *Batson* hearing because the “trial court failed to adequately explain its reasoning when denying Defendant’s *Batson* objection.” *Brown*, 2021 N.C. App. LEXIS 696, at *7.

B. Proceedings After Remand

On 18 April 2022 and 13 June 2022, the trial court reheard Defendant’s *Batson* challenge, and on 29 June 2022, the trial court entered a written order (the “Order”) denying Defendant’s challenge. In relevant part, the Order states:

10. During the State’s examination of the passed prospective jurors, prospective juror Larson related that his sister had been convicted of a DWI. Upon further questioning by the State, Larson shared that he believed his sister was fairly treated, and that she had “learned her

lesson.” Larson related that he was a sworn campus police officer.

11. . . . During the defense examination, prospective juror Slack related for the first time that he had a cousin in prison for drug-related offenses. Prospective juror Slack made statements that could reasonably be construed as endorsing his cousin’s conviction and imprisonment.

. . . .

15. Prospective juror Kounce recounted an experience with police which she described as “negative” and discussed another experience in which an officer had become hostile with her boyfriend “for no reason.”

. . . .

17. Prospective juror Kounce made statements regarding her uncle’s felony conviction, as well as statements regarding her boyfriend’s charges. Kounce’s statements regarding her boyfriend’s conviction, although ambiguous, are such that a reasonable prosecutor could interpret Kounce to mean she believed that her boyfriend had limited culpability for the crime which he had been charged and convicted.

. . . .

30. That the State’s attorney’s opinion that prospective juror Kounce was minimizing her boyfriend’s role in the crime she described was not patently unreasonable, and was not a pretext for challenging Kounce in whole or in part because of her race, and was a facially valid, race-neutral consideration in a murder trial of this nature

The Order concluded that the State “offered facially valid, race-neutral reasons for exercising a peremptory challenge as to prospective juror Kounce,” and that “the totality of circumstances found above demonstrate that [those reasons] were not proffered as a pretext for racial discrimination in selecting a jury for the trial of this matter.” Defendant filed a timely written notice of appeal from the Order.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Issue

The issue on appeal is whether the trial court erred by denying Defendant's *Batson* challenge.

IV. Analysis

Before the trial court, Defendant argued that the State violated the Equal Protection Clause of the United States Constitution and Article I, Section 26 of the North Carolina Constitution by deliberately removing a potential juror from the jury pool because of her race. This is commonly known as a *Batson* challenge. *See Batson*, 476 U.S. at 84, 106 S. Ct. at 1716, 90 L. Ed. 2d at 79 (holding that deliberate removal of potential jurors because of race violates the Equal Protection Clause). Our state Supreme Court has adopted the *Batson* test to analyze jury-pool challenges under our state constitution, too. *State v. Fair*, 354 N.C. 131, 140, 557 S.E.2d 500, 509 (2001) (citing *State v. Lawrence*, 352 N.C. 1, 13, 530 S.E.2d 807, 815 (2000)) (“Our courts have adopted the *Batson* test for review of peremptory challenges under the North Carolina Constitution.”).

Now on appeal, Defendant argues that the trial court erred by denying his *Batson* challenge, thus failing to uphold his federal and state constitutional rights. Because our state Supreme Court has adopted the *Batson* test to analyze Article I, Section 26 of the North Carolina Constitution, we can simultaneously resolve

Defendant’s federal and state constitutional arguments by analyzing whether the trial court erred under *Batson*.

A. Standard of Review

“The ‘clear error’ standard is a federal standard of review adopted by our courts for appellate review of the *Batson* inquiry.” *State v. James*, 230 N.C. App. 346, 348, 750 S.E.2d 851, 854 (2013) (quoting *State v. Cofield*, 129 N.C. App. 268, 275 n.1, 498 S.E.2d 823, 829 n.1 (1998)). A trial court commits a clear error “when, on the entire evidence[,] the Court is left with the definite and firm conviction that a mistake has been committed.” *State v. Clegg*, 380 N.C. 127, 141, 867 S.E.2d 885, 897 (2022) (alteration in original) (quoting *State v. Bennett*, 374 N.C. 579, 592, 843 S.E.2d 222, 231 (2020)).

When reviewing for clear error, we cannot simply choose between “two permissible views of the evidence.” *Lawrence*, 352 N.C. at 14, 530 S.E.2d at 816. Therefore, if “there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” *State v. Thomas*, 329 N.C. 423, 433, 407 S.E.2d 141, 148 (1991) (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 574, 105 S. Ct. 1504, 1511, 84 L. Ed. 2d 518, 528 (1985)).

“Since the trial judge’s findings . . . largely will turn on evaluation of credibility[,] a reviewing court ordinarily should give those findings great deference.” *State v. Hurd*, 246 N.C. App. 281, 291, 784 S.E.2d 528, 535 (2016) (quoting *James*, 230 N.C. App. at 348, 750 S.E.2d at 854). Indeed, “[t]he ability of the trial judge to

observe firsthand the reactions, hesitations, emotions, candor, and honesty of the lawyers and veniremen during voir dire questioning is crucial to the ultimate determination” of whether the State violated *Batson*. *State v. Smith*, 328 N.C. 99, 127, 400 S.E.2d 712, 727–28 (1991).

B. The *Batson* Test

“In *Batson*, the U.S. Supreme Court established a three-part test to determine whether the state had impermissibly discriminated on the basis of race when selecting jurors.” *Fair*, 354 N.C. at 139–40, 557 S.E.2d at 509 (citing *Batson*, 476 U.S. at 96–98, 106 S. Ct. at 1722–24, 90 L. Ed. 2d at 87–89).

“First, the defendant must make a *prima facie* showing that the state exercised a peremptory challenge on the basis of race.” *Id.* at 140, 557 S.E.2d at 509 (citing *Lawrence*, 352 N.C. at 14, 530 S.E.2d at 815). If the defendant passes the first step, the state must “offer a facially valid, race-neutral rationale for its peremptory challenge” at the second step. *Id.* at 140, 557 S.E.2d at 509 (citing *Lawrence*, 352 N.C. at 14, 530 S.E.2d at 815).

“In the third and final step, the trial court must decide whether the defendant has proven purposeful discrimination.” *Id.* at 140, 557 S.E.2d at 509 (citing *Lawrence*, 352 N.C. at 14, 530 S.E.2d at 816). Because this “determination is essentially a question of fact, the trial court’s decision of whether the prosecutor had a discriminatory intent is to be given great deference and will be upheld unless the

appellate court is convinced that the trial court's determination is clearly erroneous." *State v. Fletcher*, 348 N.C. 292, 313, 500 S.E.2d 668, 680 (1998).

Here, we are reviewing the Order to discern whether the trial court erred in applying the third step of the *Batson* test. *See Brown*, 2021 N.C. App. LEXIS 696, at *7–8 (remanding the “matter to the trial court for further findings as to step three of the *Batson* inquiry”). In the Order, the trial court concluded that the State “offered facially valid, race-neutral reasons for exercising a peremptory challenge as to prospective juror Kounce,” and that “the totality of circumstances found above demonstrate that [those reasons] were not proffered as a pretext for racial discrimination in selecting a jury for the trial of this matter.”

To support this conclusion, the trial court found that “the State’s attorney’s opinion that prospective juror Kounce was minimizing her boyfriend’s role in the crime she described was not patently unreasonable, and was not a pretext for challenging Kounce” The trial court compared Kounce to Larson and Slack, two white jurors whom the State did not strike.

Concerning Larson’s sister, who was convicted for driving while impaired, “Larson shared that he believed his sister was fairly treated, and that she had ‘learned her lesson.’” And concerning his imprisoned cousin, “Slack made statements that could reasonably be construed as endorsing his cousin’s conviction and imprisonment.” Slack said that his “[cousin]’s always been on drugs, like, illicit, like, methamphetamines,” and that his cousin “should be [in jail]—I mean, he—he was

doing drugs, so. I mean, everybody knows it.” Slack said his cousin’s sentence was “legitimate.”

On the other hand, the trial court found that “Kounce recounted an experience with police which she described as ‘negative’ and discussed another experience in which an officer had become hostile with her boyfriend ‘for no reason.’” Further, the trial court found that “Kounce’s statements regarding her boyfriend’s conviction, although ambiguous, are such that a reasonable prosecutor could interpret Kounce to mean she believed that her boyfriend had limited culpability for the crime which he had been charged and convicted” Indeed, concerning the house in which Kounce’s boyfriend lived when he was arrested for drug crimes, Kounce stated that “they had a lot of drugs in the house, so in that he was staying with them, and all of them were in the house, they grabbed him as well.”

Distilled, the trial court found that Larson and Slack thought their convicted family members were treated fairly by the justice system; whereas the trial court found that Kounce had negative interactions with police and implied her boyfriend was treated unfairly by the justice system. The trial court found that this was a sound reason to strike Kounce and thus, not a pretext to strike her because of her race.

The trial court’s finding that the State reasonably believed that Kounce mistrusted our justice system is a “permissible view[] of the evidence.” *See Lawrence*, 352 N.C. at 14, 530 S.E.2d at 816. Kounce indicated that her boyfriend was unfairly

implicated in a dragnet drug bust. On the other hand, neither Larson nor Slack questioned the guilt of their convicted family members. Whether Kounce mistrusted our justice system is “essentially a question of fact,” and given the evidence and “great deference” we give the trial court’s findings, we hold that the trial court did not clearly err by denying Defendant’s *Batson* challenge. *See Fletcher*, 348 N.C. at 313, 500 S.E.2d at 680.

We acknowledge, however, that the trial court could have viewed the same evidence, came to the opposite conclusion, and would not have clearly erred. The trial court judge heard the tone and judged the demeanor of the prosecutor and the potential jurors. We cannot do so on appeal with a written record. Therefore, the trial court did not clearly err by denying Defendant’s *Batson* challenge because the evidence permitted a finding that Kounce mistrusted our justice system, but Larson and Slack did not. *See Thomas*, 329 N.C. at 433, 407 S.E.2d at 148.

As an alternative argument, Defendant asserts that we should once again remand for the trial court to make additional findings. Specifically, Defendant argues that the trial court needs to “make specific findings of fact that show how the trial court resolved the totality of the circumstances to reach its conclusion that the peremptory strike of Ms. Kounce was not motivated in substantial part by her race.”

The Order, however, includes thirty-six detailed findings of fact, encompassing the relevant evidence concerning Defendant’s *Batson* challenge. And the Order concludes by stating that the “totality of circumstances . . . demonstrate that [the

State's reasons] were not proffered as a pretext for racial discrimination in selecting a jury for the trial of this matter." Accordingly, the Order contains sufficient findings to show that the trial court considered the totality of the circumstances.

V. Conclusion

We conclude that the trial court did not err by denying Defendant's *Batson* challenge.

NO ERROR.

Chief Judge DILLON and Judge MURPHY concur.

Report per Rule 30(e).