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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-609

Filed 16 September 2026

Mecklenburg County, No. 19CR100076-590

STATE OF NORTH CAROLINA

v.

EBONY SHENISE TURNER

Appeal by Defendant from judgment entered 9 September 2024 by Judge Reggie E. McKnight in Mecklenburg County Superior Court. Heard in the Court of Appeals 14 January 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Allison C. Hawkins, for the State.

Edward Eldred for Defendant.

PER CURIAM.

Defendant Ebony Shenise Turner¹ appeals and argues the “trial court made reversible error by overruling [Defendant’s] objection to the State’s use of a peremptory challenge to excuse the only black woman in the jury pool.” Defendant

¹ Pertinent to her *Batson* challenge, we note that Defendant is a black woman.

additionally argues the “trial court committed reversible error by failing to find the mitigating factor that [Defendant] was operating [her] car in a safe and lawful manner except for the impairment.” We hold the trial court did not err in either respect.

I. Factual and Procedural Background

Officer Stephen Ingram and Officer Chi Ming Lai-Ugalde of the Charlotte-Mecklenburg Police Department responded to an “assist medic call” on 23 January 2019 between two and three in the morning. When the officers arrived on scene, they witnessed a teal Nissan Maxima with all but the rear, driver’s side wheel off the side of the road. There was vomit outside the driver’s side door. Defendant was in the driver’s seat.

Upon closer inspection Officer Lai noticed there was vomit on the “doorjamb” of Defendant’s vehicle. He recalled the vomit “had a strong odor of alcohol.” When Officer Lai attempted to communicate with Defendant, he noticed her breath smelled of alcohol, her eyes were red and glassy, and her speech was repetitive. While assessing Defendant’s well-being, Officer Lai asked where she was coming from. Defendant responded she was “coming from having fun.” When asked about the vomit Defendant stated, “I been vomit.”

Following this line of questioning, Defendant started her vehicle, prompting Officer Lai to reach in and cut the ignition. At this point Officer Lai asked Defendant to step out of her vehicle. Defendant refused and was forcibly removed and placed

under arrest. Defendant refused to perform any field sobriety tests. Officer Lai took Defendant to the law enforcement center for intoxication testing. Defendant submitted a breath sample indicating she had a .14 blood alcohol concentration. Defendant was then processed and taken to the Mecklenburg County jail.

At trial, the Mecklenburg County District Court found Defendant guilty of driving while impaired and imposed a “level five” punishment based on its finding of two mitigating factors: (1) Defendant’s driving was safe and lawful except for the impairment of her faculties; and (2) Defendant had a safe driving record for the five years preceding this offense. Defendant appealed to the Mecklenburg County Superior Court.

During the superior court’s voir dire, the State exercised two peremptory strikes. One of the two strikes was used to excuse potential juror number five, Courtney Wright—the only black female in the jury pool. Defendant objected to Ms. Wright’s dismissal according to the holding of *Batson v. Kentucky*, 476 U.S. 79 (1986). After listening to Defendant’s reasoning, the trial court found she made “a prima facie showing as it relates to the peremptory challenge based on race and gender.”

The State responded by stating it had struck Ms. Wright “because she had not one but two encounters with law enforcement where she admitted on questioning that she felt she was treated unfairly.” Consequently, the State asserted it had “serious and valid concerns about [Ms. Wright’s] ability to set aside any feelings no matter what she [] said she would be able to do[.]” The State asserted that because the only

two witnesses in the case were police officers it felt it should strike Ms. Wright.

When given a chance to rebut, Defendant pointed out another potential juror—Heather Davis, a white female—had not been stricken despite admitting to being detained for impaired driving. Defendant argued because a magistrate judge had dismissed Ms. Davis’s impaired driving charge, Ms. Davis would hold contempt toward law enforcement for errantly arresting her. Comparing Ms. Davis’s experience to Ms. Wright’s, Defendant argued the State’s reasoning for dismissing Ms. Wright was not race neutral.

The trial court responded by stating, “I don’t remember [Ms. Davis] saying anything in terms of her feeling—for lack of a better term—negatively about that encounter[.]” Defendant then conceded Davis “did not express any dissatisfaction with law enforcement.” The State corroborated this by stating it “asked every individual who had an encounter with law enforcement how they felt about it[.]” and did not “recall Ms. Davis having negative feelings.” The State further distinguished Ms. Wright by clarifying “she had not one but two encounters with law enforcement officers that left her with negative feelings both times.”

After finding the State “credible in stating the racially-neutral reason for the exercise of [its] peremptory challenge[.]” the trial court found Defendant had “not proven purposeful discrimination in the jury selection process[.]” Accordingly, Defendant’s *Batson* challenge was overruled.

At the conclusion of Defendant’s trial, the jury found her guilty of driving while

impaired. The trial court found no mitigating or aggravating factors. Accordingly, it imposed a “level four” punishment. Defendant timely appealed.

II. Analysis

Defendant raises two issues on appeal: (1) whether the trial court committed a *Batson* violation by upholding the State’s peremptory challenge of Ms. Wright; and (2) whether the trial court committed reversible error by failing to find the mitigating factor for Defendant operating her car in a safe and lawful manner except for her impairment. We hold the trial court did not commit a *Batson* violation and made no reversible error pertaining to mitigating factors.

A. The trial court did not err by overruling Defendant’s *Batson* challenge.

“The trial court has the ultimate responsibility of determining ‘whether the defendant has satisfied his [or her] burden of proving purposeful discrimination.’” *State v. Hobbs*, 374 N.C. 345, 349, 841 S.E.2d 492, 497 (2020) (quoting *State v. Golphin*, 352 N.C. 364, 427, 533 S.E.2d 168, 211 (2000)). We give the trial court’s determination great deference and only overturn “if it is clearly erroneous.” *Id.* (citation omitted); see *Snyder v. Louisiana*, 552 U.S. 472, 477–79 (2008). “Trial judges, who are experienced in supervising voir dire, and who observe the prosecutor’s questions, statements, and demeanor firsthand, are well qualified to decide if the circumstances concerning the prosecutor’s use of peremptory challenges create a prima facie case of discrimination against black jurors.” *State v. Chapman*, 359 N.C. 328, 339, 611 S.E.2d 794, 806 (2005) (citation modified). A finding is not

clearly erroneous unless “the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *State v. Clegg*, 380 N.C. 127, 141, 867 S.E.2d 885, 897 (2022). We are not.

“Equal justice under law requires a criminal trial free of racial discrimination in the jury selection process.” *Flowers v. Mississippi*, 588 U.S. 284, 301 (2019). Further, “the Equal Protection Clause prohibits discrimination in jury selection on the basis of gender.” *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 146 (1994). “When a defendant claims that the State has exercised its peremptory challenges in a racially discriminatory manner, a trial court conducts a three-step analysis pursuant to the decision of the Supreme Court of the United States in *Batson v. Kentucky*.”² *Hobbs*, 374 N.C. at 349–50, 841 S.E.2d at 497 (citation omitted). First, a defendant must make a prima facie showing of racial discrimination “by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred.” *Johnson v. California*, 545 U.S. 162, 170 (2005). The trial court found Defendant met this low bar and the State does not contest this finding, so we proceed to the second step.

² “In considering an objection to the proposed strike of jurors based on gender, a trial court applies the same three-prong analysis set forth in *Batson*.” *State v. Richardson*, 385 N.C. 101, 203, 891 S.E.2d 132, 207 (2023) (citation omitted); *Flowers*, 588 U.S. at 301 (citations omitted) (“Moreover, *Batson* now applies to gender discrimination, to a criminal defendant’s peremptory strikes, and to civil cases.”).

Once a prima facie showing of discrimination is made, the burden shifts to the State “to provide race-neutral reasons for its use of a peremptory challenge.” *Hobbs*, 374 N.C. at 352, 841 S.E.2d at 499 (citation omitted). “The State’s explanation must be clear and reasonably specific, but does not have to rise to the level of justifying a challenge for cause.” *Id.* (citations omitted). “Unless a discriminatory intent is inherent in the prosecutor’s explanation, the reason offered will be deemed race neutral.” *Hernandez v. New York*, 500 U.S. 352, 360 (1991). After the State offers its reasoning, the defendant is given “an opportunity for surrebuttal to show the State’s explanations for the challenge are merely pretextual.” *Hobbs*, 374 N.C. at 353, 841 S.E.2d at 499. At this point, the trial court found the State to be “credible in stating racially neutral reasons for the exercise of [its] peremptory challenge” and “Defense counsel [had] not shown that the [State’s] explanations [were] pretextual.” Having made this determination, the trial court proceeded to the third step of its *Batson* analysis.

“At the third step of the analysis, the defendant bears the burden of showing purposeful discrimination.” *Id.* (citations omitted). “The trial court must consider the [State’s] race-neutral explanations in light of all of the relevant facts and circumstances, and in light of the arguments of the parties.” *Flowers*, 588 U.S. at 302. Ultimately, the trial court “must determine whether the [State’s] proffered reasons are the actual reasons, or whether the proffered reasons are pretextual and the [State] instead exercised peremptory strikes on the basis of race [or gender].” *Id.*

at 303.

In determining the presence or absence of intentional discrimination, this Court will consider various factors including the “susceptibility of the particular case to racial discrimination, whether the State used all of its peremptory challenges, the race of witnesses in the case, questions and statements by the prosecutor during jury selection which tend to support or refute an inference of discrimination, and whether the State has accepted any African-American jurors.”

State v. Golphin, 352 N.C. 364, 427, 533 S.E.2d 168, 211 (2000) (quoting *State v. White*, 349 N.C. 535, 548–49, 508 S.E.2d 253, 262 (1998)); *See Richardson*, 385 N.C. at 204, 891 S.E.2d at 207 (citation omitted) (applying similar factors to allegations of gender-based discrimination).

Based on its analysis of the factors in this case, including the observations of the trial court; “manner and appearance of counsel and jurors”; race of the witnesses and jurors, exercise of peremptory challenges, the State’s argument for exercising its challenge against Ms. Wright; and Defendant’s rebuttal, the trial court made the following conclusion of law:

Based on the aforementioned [findings of fact] and consideration of arguments of both counsels, this [c]ourt finds[] Defendant has not proven purposeful discrimination in the jury selection process in this case, and the State’s reasons for its peremptory challenge do constitute a sufficiently racially neutral basis for the challenge to [Ms. Wright].

Defendant argues the State’s explanation for its strike of Ms. Wright “must be rejected” because “[w]hen a prosecutor offers reasons as a basis for exercising a strike

that contradict or mischaracterize the record, those reasons must be rejected in evaluating the strike.” Defendant cites *Foster v. Chatman*, 578 U.S. 488, 510 (2016), in support.³ Defendant argues “[t]he State misrepresented the record when the prosecutor said Ms. Wright had two prior encounters with law enforcement officers where she thought she was treated unfairly [when she] had only a single such encounter.” Here, the State’s characterization of the record is distinguishable from the same in *Foster*.

In *Foster*, the Supreme Court of the United States stated “[a]n examination of the record” convinced it that the State’s justification for striking a potential juror “[could not] be credited.” 578 U.S. at 507. An examination of the record in the present case does not convince us to discredit the State’s proffered justification. The State in *Foster* changed its reasoning several times, suggesting its reasoning was pretextual. *Id.* Additionally, the stricken potential juror’s statements during voir dire in *Foster* contradicted the State’s proffered reasons for striking. *See id.* at 508–09. Here, we cannot say Ms. Wright’s statements were in direct contradiction with the State’s explanation for its peremptory strike.

Here, Defendant argues the State wrongly asserted “Ms. Wright stated she had *two* prior encounters with law enforcement where she thought she was treated unfairly.” (Emphasis in original). Instead, Defendant contends “Ms. Wright said she

³ Defendant cites to *Foster v. Chatham*, 578 U.S. 488 (2016). 578 U.S. 488 is *Foster v. Chatman*.

had only *one* prior encounter with law enforcement where she thought she was treated unfairly.” (Emphasis in original). Because “[t]wo other people said they were once treated unfairly by law enforcement officers, yet they were both kept on the jury[,]” Defendant argues “[t]he trial court wrongly concluded the State’s peremptory challenge was not motivated by race and gender.”

During Ms. Wright’s first encounter with law enforcement, she was the middle car in a three-car accident. Despite being the middle car, Ms. Wright was given a ticket. When asked by the State if she felt “like the officers were being fair,” Ms. Wright responded, “[n]ot really.”

Ms. Wright’s second encounter with law enforcement—and the encounter in contention—occurred after Ms. Wright passed a school bus shortly “after it pulled its sign in[.]” The vehicle directly in front of Ms. Wright had done the same thing, yet the officer let that vehicle go free while ticketing Ms. Wright. Ms. Wright disclosed this event took place several years ago and she did not “remember it so well[.]” Ms. Wright was required to go to court for this ticket and when asked how that experience was, she stated, “[i]t was fine.”

While it is true Ms. Wright only explicitly stated she felt she was treated unfairly during just one of her two encounters with law enforcement, the trial court could reasonably infer she felt similarly about her second encounter because she testified an officer “let the other person go and gave [her] a ticket” for the same offense. Consequently, we cannot say the trial court’s determination was clearly

erroneous.

Defendant further supports her argument by stating “[t]wo other people said they were once treated unfairly by law enforcement officers, yet they were both kept on the jury.” The two jurors Defendant references are Mr. Gerbier, who identified himself as a black male, and Ms. Loan, who identified herself as a white female.⁴ “Evidence about similar answers between similarly situated white and nonwhite [or male and female] jurors is relevant to whether the prosecution’s stated reasons for exercising a peremptory challenge are mere pretext for racial [or gender] discrimination[.]” *Hobbs*, 374 N.C. at 359, 841 S.E.2d at 502–03;⁵ however, we cannot say either of these jurors being on the jury amounts to reversible error. Mr. Gerbier stated he felt like an officer “lied” when pulling him over because if the speed the officer said he was going was the speed he was actually going, given his possession of a CDL, he would have been arrested. Ms. Loan testified she “didn’t feel that the officer was treating [her] fairly” when she received a speeding ticket. Of course, “[p]otential jurors do not need to be identical in every regard” for a prosecutor’s stated reasons to be pretext for discrimination, *id.* at 359, 841 S.E.2d at 503 (citing *Miller-El v. Dretke*, 545 U.S. 231, 247 n.6 (2005)), but here, both jurors only indicated singular instances where they felt negative treatment, and Ms. Loan stated her

⁴ Defendant did not raise these two jurors in her *Batson* argument at trial; rather, she raised Ms. Davis as support to rebut the State, whom she does not raise on appeal.

⁵ See *Richardson*, 385 N.C. at 203, 891 S.E.2d at 207 (citation omitted) (applying *Batson* analysis to alleged gender discrimination in jury selection).

experience had not “put a bad taste in [her] mouth about police officers.” Therefore, because the State’s reason for its peremptory challenge for Ms. Wright was because “she had not one but two encounters with law enforcement officers that left her with negative feelings both times,” the State’s reasoning for using a peremptory challenge for Ms. Wright would not apply to Mr. Gerbier and Ms. Loan. *See id.* (“If a prosecutor’s proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*’s third step.” (quoting *Miller-El*, 545 U.S. at 241)).

Additionally, the trial court found the following: “[D]efendant in this case is African American or black[;]” “there is no victim involved in this case[;]” “[t]he key witness[es] in this case are . . . an African[]American male law[]enforcement officer” and an Asian American male law enforcement officer; “[a]t the time the State attempted to exercise its peremptory challenge, there were ten jurors that had been accepted by the State of which the remaining nine were white and one was black[;]” “[a]t the time the State attempted to exercise its peremptory challenge, the State had exercised no prior peremptory challenges of which there were no persons of African[]American race or descent that were involved in any prior challenges[;]” and the trial court had not inferred any racial discrimination in the State’s statements or use of peremptory challenges. Thus, we cannot say the trial court erred in overruling Defendant’s *Batson* challenge. *See Golphin*, 352 N.C. at 427, 432–33, 533 S.E.2d at

211, 214–15; *State v. Bennett*, 282 N.C. App. 585, 622, 871 S.E.2d 831, 856 (2022) (citation omitted) (“[A] case is particularly susceptible to racial discrimination if the identities of the defendant, victims, and witnesses cross racial lines.”).

As an appellate court, we are confined to the record. The trial court witnesses the tone, demeanor, actions, and mannerisms of all parties involved, and routinely practices voir dire. Accordingly, we give great deference to the judgment of the trial court in this matter. Because the trial court could witness the aforementioned characteristics, we hold it could have found the State’s reasoning did not mischaracterize the record and the additional factors involved in this trial supported overruling Defendant’s *Batson* challenge. Given the record before us—and the deference we give the trial court—the trial court’s judgment was not clearly erroneous.

B. The trial court did not commit reversible error by failing to find the same mitigating factors as the district court.

Defendant further argues “[t]he trial court committed reversible error by failing to find the mitigating factor that [Defendant] was operating [her] car in a safe and lawful manner except for [her] impairment.” We disagree.

Defendant “bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.” N.C. Gen. Stat. § 15A-1340.16(a) (2025). “As this Court has previously explained, a trial judge is given wide latitude in determining the existence of mitigating factors, and the trial court’s failure to find a mitigating

factor is error only when no other reasonable inferences can be drawn from the evidence.” *State v. Mabry*, 217 N.C. App. 465, 471, 720 S.E.2d 697, 702 (2011) (citation modified); *see also State v. Bacon*, 228 N.C. App. 432, 436, 745 S.E.2d 905, 908–09 (2013) (applying this framework to statutory mitigating factors). Our Supreme Court “has clearly established that the sentencing judge has a duty to find a statutory mitigating factor when the evidence in support of a factor is uncontradicted, substantial and manifestly credible.” *State v. Spears*, 314 N.C. 319, 321, 333 S.E.2d 242, 244 (1985) (citation modified). However, “[a]n appellate court may reverse a trial court for failing to find a mitigating factor only when the evidence offered in support of that factor ‘is both uncontradicted and manifestly credible.’” *Mabry*, 217 N.C. App. at 471, 720 S.E.2d at 702 (quoting *State v. Jones*, 309 N.C. 214, 220, 306 S.E.2d 451, 456 (1983)).

“Where testimony is not overwhelmingly persuasive on the question of” a mitigating factor, “it is not manifestly credible and there is no requirement to find a mitigating factor.” *See Bacon*, 228 N.C. App. at 437, 745 S.E.2d at 909 (quoting *State v. Wells*, 104 N.C. App. 274, 278, 410 S.E.2d 393, 396 (1991)). When a superior court is making a determination of factors in mitigation, “[t]he new factors can be made without any consideration of those found at a previous sentencing hearing.” *See Wells*, 104 N.C. App. at 278, 410 S.E.2d at 396.

Here, the testimony is not overwhelmingly persuasive. Consequently, it is not manifestly credible and there was no duty for the trial court to find a mitigating

factor. When officers arrived on scene, Defendant's car had three wheels off the side of the road. Additionally, Defendant had vomited in and around her vehicle. When talks between Officer Lai and Defendant broke down, Defendant started her vehicle despite being heavily intoxicated. Nowhere in the record does it suggest Defendant was operating her vehicle in a safe and lawful manner except for her impairment.

Further, the evidence allows other inferences about Defendant's driving to be drawn. The fact Defendant's vehicle was found with three wheels off the side of the road allows for the inference she unsafely drove off the road. The vomit inside the vehicle allows the inference Defendant was distracted while driving. In sum, the evidence does not foreclose the negative inferences about Defendant's driving and certainly does not manifestly support she was driving safely. Because Defendant did not prove by a preponderance of the evidence she was operating her vehicle in a safe and lawful manner, we hold the trial court did not make reversible error by failing to find the requested mitigating factor.

III. Conclusion

For the foregoing reasons, we hold the trial court neither erred in overruling Defendant's *Batson* change nor made reversible error by failing to find the same mitigating factors as the district court.

NO ERROR.

Panel consisting of Judges ARROWOOD, GRIFFIN, and STADING.

Report per Rule 30(e).