

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs at Nashville July 18, 2023

STATE OF TENNESSEE v. JESSIE LEE SHORT

**Appeal from the Circuit Court for Hardin County
No. 20-CR-59 J. Brent Bradberry, Judge**

No. W2022-01608-CCA-R3-CD

The Defendant, Jessie Lee Short, was convicted by a Hardin County Circuit Court jury of two counts of false imprisonment, a Class A misdemeanor, and three counts of assault, a Class A misdemeanor. *See* T.C.A. §§ 39-13-302(a) (2018) (subsequently amended) (false imprisonment); 39-13-101(a)(2) (2018) (assault). The trial court imposed concurrent sentences of eleven months, twenty-nine days in confinement at 75% service. On appeal, the Defendant contends that he was deprived of his right to equal protection under the law when the State exercised a peremptory challenge against a black prospective juror without articulating a valid race-neutral reason. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

ROBERT H. MONTGOMERY, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and TIMOTHY L. EASTER, JJ., joined.

Lloyd R. Tatum (on appeal), Henderson, Tennessee; and Joe Brown (at trial), Savannah, Tennessee, for the Appellant, Jessie Lee Short.

Jonathan Skrmetti, Attorney General and Reporter; Caroline Weldon, Assistant Attorney General; Neil Thompson, District Attorney General; and Vance Dennis and Morgan Reynolds, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The Defendant's convictions result from an October 7, 2019 physical altercation involving his former girlfriend, Tamara Morris. The evidence offered at the trial showed that the Defendant and Ms. Morris had been involved in an intermittent romantic relationship since 2017. On October 6, 2019, Ms. Morris stayed overnight at the Defendant's home. The next morning, she and the Defendant became involved in a verbal argument. The Defendant accused her of stealing his belongings and of infidelity. Ms. Morris denied the allegations, and, at some point, the verbal argument became physical.

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Ms. Morris recalled that the argument began around 7:00 or 8:00 a.m., that they argued for a couple of hours, and that “it just got worse and worse as time went by.” The Defendant slapped her, and she attempted to calm the Defendant. However, the Defendant struck her multiple times with his fist and, later, seven or eight times on the leg with a pool cue stick. The Defendant placed a sock inside her mouth because she screamed during the incident. Ms. Morris attempted to get away from the Defendant, who she said would not allow her to leave the home and who she said had taken her car key during the argument. Ms. Morris felt as though the circumstances would have worsened if she had attempted to leave the home. The physical altercation ended around lunchtime when the Defendant needed to drive to the store to purchase cigarettes. Ms. Morris did not want to go with the Defendant but was too afraid to tell the Defendant that she wanted to leave because she thought the Defendant would continue to assault her.

The Defendant drove his truck to the convenience store. As he and Ms. Morris reached the store parking lot, the Defendant struck Ms. Morris’s arm with a hammer and told her that he would kill her if she left the truck. Ms. Morris, however, left the truck as soon as the Defendant entered the store and ran toward an “oil change” business located beside the store. She yelled for someone to help her. The Defendant came out of the store and chased Ms. Morris. The Defendant “caught” her and attempted to “make [her] get back in his truck.” Ms. Morris recalled that the Defendant had one hand around her arm and another around her neck and that he dragged her to his truck. Ms. Morris grabbed the tailgate of the truck and held it with all her strength, and, at this time, employees and patrons from the oil change business came outside. The Defendant released her and left in his truck. She said that it was not until she ran from the store that she felt she could leave because the Defendant would have caught her. Ms. Morris was hospitalized for four days for her injuries from the incident and for an unrelated anemia condition. Photographs of her injuries taken at the scene by the responding police officer were received as exhibits and reflect injuries to her arms, legs, hands, head, and mouth.

Becky Bullock, a patron of the oil change business, heard Ms. Morris scream for help and saw the Defendant drag Ms. Morris by her hair to the truck. Ms. Bullock heard the Defendant state, “I told you, b----, not to get out,” and Ms. Bullock yelled for the Defendant to release Ms. Morris. The Defendant complied and left, and Ms. Bullock helped Ms. Morris to the oil change business. The owner of the business, likewise, saw the physical altercation and said it appeared that Ms. Morris was attempting to get away from the Defendant. A video recording from the security system at the oil change business was received as an exhibit and played for the jury. The recording was generally consistent with the witness testimony regarding the events at the store.

The Defendant denied the allegations and testified that on October 6, 2019, Ms. Morris came to his home with the injuries she reported sustaining on October 7. Although the Defendant was charged with two counts of especially aggravated kidnapping, the jury

found the Defendant guilty of two counts of the lesser included offense of false imprisonment. The jury, likewise, rejected the charged offense of three counts of aggravated assault and found the Defendant guilty of three counts of assault. This appeal followed.

The Defendant contends that the trial court failed to follow the proper procedure when he raised a *Batson v. Kentucky*, 476 U.S. 79 (1985), objection to the State's peremptory challenge of the only black prospective juror. The Defendant asserts that the trial court failed to request a race-neutral reason for the State's challenge and determined *sua sponte* that the prospective juror had previously been a criminal defendant. The State responds that the trial court did not err in determining that the State provided a race-neutral explanation for striking the prospective juror from the panel. We agree with the State.

In *Batson*, the United States Supreme Court held that the Equal Protection Clause prohibits the prosecution from excluding potential jurors based solely upon race. *Batson*, 476 U.S. at 89; *see Georgia v. McCollum*, 505 U.S. 42, 59 (1992) (extending the prohibition against race-based peremptory challenges to those challenges made by a defendant). When a party raises a *Batson* claim, the party must first establish a prima facie case of purposeful discrimination. *Batson*, 476 U.S. at 96. A defendant establishes a prima facie case of purposeful discrimination by showing that the State "excluded members of a cognizable racial group from the jury pool." *State v. Echols*, 382 S.W.3d 266, 281-82 (Tenn. 2012); *State v. Ellison*, 841 S.W.2d 824, 826 (Tenn. 1992); *see Powers v. Ohio*, 499 U.S. 400, 416 (1991). Second, the party who exercises the peremptory challenge is allowed the opportunity to rebut the prima facie showing by offering a race-neutral reason for its peremptory challenge. *Batson*, 476 U.S. at 97. Third, a trial court must determine whether the objecting party has established purposeful discrimination. *Id.*

A party's race-neutral explanation that merely consists of a denial of discriminatory motive or an assurance of good faith is insufficient. *See id.* Rather, the race-neutral reason must be "related to the particular case to be tried." *Id.* at 98. However, the explanation itself need not be "persuasive, or even plausible." *Purkett v. Elem*, 514 U.S. 765, 767-68 (1995) (internal quotation marks and citation omitted). "Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Id.* at 768. In response to the race-neutral explanation, the trial court must examine and assess the plausibility of the explanation in light of all the evidence. *Miller-El v. Dretke*, 545 U.S. 231, 251-52 (2005); *see Woodson v. Porter Brown Limestone Co.*, 916 S.W.2d 896, 906 (Tenn. 1996). In this regard, the opponent of the peremptory challenge bears the burden of proving purposeful discrimination. *Purkett*, 514 U.S. at 768. A party may raise a *Batson* claim on behalf of a juror without the party's being part of the improperly excluded group. *See Powers*, 499 U.S. at 400; *see also Ellison*, 841 S.W.2d at 824. In making its determination,

The trial [court] must carefully articulate specific reasons for each finding on the record, i.e., whether a prima facie case has been established; whether a neutral explanation has been given; and whether the totality of the circumstances support a finding of purposeful discrimination. The trial court's factual findings are imperative in this context. On appeal, the trial court's findings are to be accorded great deference and not set aside unless clearly erroneous.

Woodson, 916 S.W.2d at 906; see *State v. Hugueley*, 185 S.W.3d 356, 374 (Tenn. 2006).

In *Miller-El*, the prosecutor challenged two black jurors because the prosecutor was concerned about the jurors' beliefs regarding the death penalty. 545 U.S. at 243. However, white panelists who had expressed similar views were not challenged. *Id.* at 244. The United States Supreme Court concluded, "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." *Id.* at 241. The Court noted relative to the first juror,

[N]onblack jurors whose remarks on rehabilitation could well have signaled a limit on their willingness to impose a death sentence were not questioned further and drew no objection, but the prosecution expressed apprehension about a black juror's belief in the possibility of reformation even though he repeatedly stated his approval of the death penalty and testified that he could impose it . . . even when the alternative sentence of life imprisonment would give a defendant (like everyone else in the world) the opportunity to reform.

Id. at 245; see *Zakour v. UT Medical Group, Inc.*, 215 S.W.3d 763, 770-71 (Tenn. 2007) (holding that a *Batson* violation occurred in a civil case when the defendants' reason for challenging a black juror was inconsistent with how they questioned other potential jurors and based upon incorrect information).

The record in this case reflects that the following occurred during jury selection: The prospective jurors were provided preliminary admonitions about permissible and impermissible juror conduct. They were asked if they knew any of the attorneys involved, and a juror stated that defense counsel had assisted the juror with a contract-related issue but that the juror was capable of being impartial. Many of the jurors knew the Defendant, with varying degrees of familiarity. Only one prospective juror stated that her family's connection with the Defendant would impact her ability to serve on the jury, and she was later excused for cause by the trial court. The prospective juror about whom the *Batson* issue was raised stated, "It's a small community. I [grew] up with him." The prosecutor replied, "Fair enough. Anything about that – you've known him a long time. Anything about that that would cause you to have --." The prospective juror interjected, "I don't

know nothing about the case.” The prosecutor stated, “Okay[.]” Another prospective juror stated that the Defendant was her former husband’s cousin, that she had known the Defendant for thirty years, and that she did not know anything about the case. Another prospective juror stated that he had known the Defendant all his life, that he considered the Defendant a friend, and that he did not know anything about this case.

The prospective jurors were told about the nature of the alleged offenses. When asked if the jurors had been previously involved in any domestic assaults, a juror stated that she had been an assault victim and that she might “overidentify with the victim.” The juror was later excused for cause by the trial court. The remaining jurors indicated that neither they nor their family members had been involved in a domestic assault.

When defense counsel addressed the prospective jurors, they indicated they could be impartial and had not decided on the Defendant’s guilt or innocence before hearing the evidence. The jurors indicated that they did not believe that law enforcement and the prosecutors were “always right” about their theory of a case. When asked if the jurors had ever been accused of something they did not do, two prospective jurors indicated being falsely accused. All of the jurors indicated they could be fair and impartial and would not hold the Defendant’s decision not to testify against him.

The trial court requested the prosecutor’s peremptory challenges, which are not included in the record. However, the record reflects that the challenges were submitted in writing. After the challenges were submitted, the court stated at a bench conference, “Right off the bat, potential bias of juror.” The prosecutor responded that he “put in the description I’ve had prior dealings in general sessions court. . . . Directly, as a witness or a defendant.” After the bench conference concluded, the court excused two prospective jurors, one of whom was the prospective juror about whom the *Batson* issue was raised.

Defense counsel immediately requested a bench conference and raised a *Batson* challenge for the prospective juror. Counsel stated that the Defendant was concerned because the prospective juror at issue was the only black person in the venire. The court stated that counsel had raised a prima facie objection that the prospective juror was a black male and was the only black person in the venire. Without requesting a response from the prosecutor, the court found that the State had a legitimate reason to challenge the juror because the State’s attorney had prosecuted the juror “on multiple occasions.” The prosecutor clarified for the court that although he could not recall the “specifics,” the juror had either been an uncooperative witness or a defendant in multiple cases. The prosecutor recalled “at least two occasions when I’ve had [the juror] in court.” The court found that the juror had been either a defendant or an uncooperative witness in at least two cases involving the prosecutor, and it accepted the State’s explanation as a race-neutral reason for the juror to be excused by peremptory challenge.

After jury selection, the trial court returned to its ruling on the Defendant's *Batson* challenge. The court took judicial notice of the prospective juror's criminal history as reflected "on Hardin County's computer system," which the court stated involved misdemeanor offenses and two shoplifting convictions in 2019. The court stated that it "stands by its ruling that it was justified to excuse [the juror] from jury service today."

The Defendant established a prima facie case of purposeful discrimination by showing the exclusion from the venire of the only member of a cognizable race group. *See Batson*, 476 U.S. at 96; *Echols*, 382 S.W.3d at 281-82. However, the State offered a race-neutral explanation for the challenge, and the trial court determined that the defense had not established purposeful discrimination. *See Batson*, 476 U.S. at 97. Upon review, we conclude that the trial court was not clearly erroneous in its finding that the Defendant failed to show purposeful discrimination. *See Woodson*, 916 S.W.2d at 906; *Hugueley*, 185 S.W.3d at 374; *see United States v. Forrest*, 402 F.2d 678, 687 (6th Cir. 2005) (holding that a prospective juror's history of criminal charges and demeanor provided a sufficient explanation to rebut prima facie claim of racial discrimination). The prosecutor exercised a peremptory challenge to the prospective juror because the juror had been an uncooperative witness or a defendant in at least two cases involving the prosecutor and because the juror might hold bias against the State. The court confirmed that the juror had two recent convictions in Hardin County. The Defendant is not entitled to relief on this basis.

In reaching this conclusion, we have not overlooked the Defendant's argument that the trial court, at least initially, determined the State had a race-neutral reason for its peremptory challenge without providing the prosecutor with the opportunity to provide a race-neutral reason. However, this argument is of no meaningful consequence. We infer from the trial court's comments that the written peremptory challenge form appears to have included the State's race-neutral reason for challenging the prospective juror, and as a result, the court was informed of the State's race-neutral reason for challenging the juror before the defense lodged an objection. Upon discussion, the prosecutor clarified for the court that the juror had been involved in at least two of the prosecutor's cases, and the court found that the juror had been either a defendant or an uncooperative witness in at least two cases involving the prosecutor, and the court accepted the State's explanation as a race-neutral reason for the juror in question to be excused by peremptory challenge. The Defendant is not entitled to relief on this basis.

In consideration of the foregoing and the record as a whole, the judgments of the trial court are affirmed.

ROBERT H. MONTGOMERY, JR., JUDGE