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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1158**

State of Minnesota,  
Respondent,

vs.

Walter Alexander Williams,  
Appellant.

**Filed May 29, 2012  
Affirmed  
Rodenberg, Judge**

Ramsey County District Court  
File No. 62CR109760

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora Gaitas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Cleary, Judge; and Rodenberg, Judge.

**UNPUBLISHED OPINION**

**RODENBERG, Judge**

On appeal from convictions of felony domestic assault and domestic assault by strangulation, appellant argues that he is entitled to a new trial because the district court

(1) abused its discretion by denying his *Batson* challenge to the state's peremptory strike of an African-American prospective juror; (2) abused its discretion by determining that the probative value of appellant's prior assault on an ex-girlfriend and violation of an order for protection was not substantially outweighed by the danger of unfair prejudice; and (3) reversibly erred by reading to the jury a statement prepared by the prosecution concerning appellant's prior violation of an order for protection. We affirm.

### FACTS

Appellant lived with his girlfriend, O.W., and her two young children in the lower-level unit of a duplex in St. Paul. Appellant's sister lived in the upper-level unit. On October 22, 2010, appellant and O.W. had a house-warming party in their unit. Appellant became drunk and got into a verbal altercation with one of the male guests, who had made a lewd gesture at O.W. Appellant also became angry when O.W. asked to "go out" with the male guest and some other friends.

O.W. testified that after the guests left, appellant lunged at her and hit her repeatedly. He squeezed her around the neck with both hands several times and choked her so that she could not breathe. He dragged her around by the neck and through some broken glass. At one point, O.W. grabbed some small steak knives to ward him off, but appellant knocked them away and struck her in the face. Appellant also kicked and stomped on her. The assault lasted about three hours, until appellant finally left the house. When O.W. made a police report some twelve hours later, a police officer observed bruising, cuts, some dried blood, and gouge marks on O.W.'s neck.

Appellant testified that O.W. was the aggressor in the incident. He claimed that she threatened him with two large butcher knives and that he grabbed the knives and pushed her down in self-defense. He denied otherwise assaulting O.W., but he could not explain the gouges on her neck.

Appellant's sister testified that she was awake in the upstairs duplex unit during the course of the alleged assault. She did not hear any noises, voices, or other sounds from appellant and O.W.'s unit below. Normally, she would hear muffled voices and sounds if there was activity below.

Appellant was charged with felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2010), and domestic assault by strangulation in violation of Minn. Stat. § 609.2247, subd. 2 (2010). During jury selection, after the parties had passed the panel for cause, the state used its first peremptory challenge to strike an African-American veniremember. Appellant's counsel raised a *Batson* challenge, arguing the strike was motivated by race. A discussion between the court and counsel occurred at the bench and off the record. The trial judge indicated that he would be denying the *Batson* challenge. It was nearly the end of the day, and the district court dismissed the jurors for the day and then discussed the *Batson* challenge on the record. The state initially indicated that it struck the juror based on a "gut feeling," but then argued that it struck the prospective juror because (1) he initially failed to disclose a disorderly conduct conviction which involved a negative interaction with police and (2) he was currently going through a divorce. The district court determined those were "valid race-neutral reasons" for excluding the veniremember and denied the *Batson* challenge.

During trial, the state introduced an audio recording of a police interview with appellant, during which appellant volunteered that he had previously strangled and punched an ex-girlfriend. Appellant objected that this evidence was more prejudicial than probative. The court overruled his objection, relying on a statute which allows the admission of relationship evidence concerning prior similar conduct in domestic-assault cases. *See* Minn. Stat. § 634.20 (2010).

The state also sought to admit relationship evidence in the form of a stipulation or statement regarding appellant's prior violation of an order for protection. Appellant objected to the form of the evidence, arguing that the state had the burden of presenting witnesses for cross-examination. Over appellant's objection, the district court read the state's proposed stipulation to the jury as evidence of the violation.

The jury found appellant guilty on both counts.

## **D E C I S I O N**

### **I.**

Appellant argues that the district court erred by rejecting his *Batson* challenge to the state's peremptory strike of an African-American veniremember without making a contemporaneous record or applying step three of the required analysis. Whether the opponent of a peremptory strike has proven racial discrimination is ultimately a question of fact. *State v. Reiners*, 664 N.W.2d 826, 830 (Minn. 2003). We accord "great deference" to the district court's factual determination unless it is clearly erroneous. *Id.* at 830–31.

Exercising a peremptory challenge to strike a prospective juror on the basis of race violates the Equal Protection Clause of the United States Constitution. *Batson v. Kentucky*, 476 U.S. 79, 89, 106 S. Ct. 1712, 1719 (1986). The United States Supreme Court has set forth three steps for determining whether a peremptory challenge is based on race. *Id.* at 96–98, 106 S. Ct. at 1723–24. First, the opponent of the challenge must make a prima facie case of racial discrimination. *Purkett v. Elem*, 514 U.S. 765, 767, 115 S. Ct. 1769, 1770 (1995). Second, the party exercising the challenge must offer a race-neutral explanation. *Id.* Third, the district court must determine whether the race-neutral reason is pretextual—in other words, “whether the opponent of the strike has proved purposeful racial discrimination.” *Id.* at 767, 115 S. Ct. at 1770–71; *see also* Minn. R. Crim. P. 26.02, subd. 7(3) (mandating the three-step analysis).

**A. Contemporaneous record**

Appellant first argues that the district court abused its discretion by failing to make a contemporaneous record of the *Batson* challenge. Appellant’s counsel raised the challenge after both parties had exercised their peremptory strikes. The district court held a sidebar discussion, which was not on the record. Shortly thereafter, the district court dismissed the jurors at the end of the day and placed the *Batson* analysis on the record. Appellant argues that this delay undermined the accuracy of the *Batson* analysis, created ambiguity in the record, and gave the state an opportunity to refine its argument that the peremptory strike was race-neutral.

District courts are required to conduct all proceedings concerning *Batson* challenges on the record and outside the presence of the jury. Minn. R. Crim. P. 26.02,

subd. 7(2). Here, the district court substantially complied with that requirement by recreating the sidebar discussion on the record immediately after dismissing the jurors for the day. The parties had the opportunity to correct or add to the record to ensure that it accurately reflected the sidebar discussion. None of the parties pointed out any inaccuracies or otherwise objected on the record, and district court noted that the state's reasons accurately reflected the sidebar discussion. This procedure, although perhaps not ideal, avoided the cumbersomeness of repeatedly dismissing and recalling the jury, particularly since the challenge took place at the end of the day when the court was almost ready to dismiss the jury. *Cf. State v. Lindsey*, 632 N.W.2d 652, 658–59 (Minn. 2001) (noting that district court has considerable discretion in matters of courtroom procedure and judicial economy). The record adequately preserved the *Batson* challenge.

Appellant argues that the delay between the sidebar and the on-the-record analysis gave the state an opportunity to refine its argument responsive to the *Batson* challenge. District courts are required to resolve *Batson* objections “as promptly as possible,” and in any event before swearing in the jury. Minn. R. Crim. P. 26.02, subd. 7(2). Here, the delay between the sidebar discussion and the on-the-record analysis was relatively short. Following the sidebar, the district court empaneled the jurors, gave them abbreviated instructions, dismissed the jury, and immediately conducted the *Batson* analysis. The analysis took place before the jury was sworn.

Our caselaw establishes that a short delay in the *Batson* context may be permissible. For example, we reversed the district court's grant of a *Batson* challenge on grounds of pretext even though the parties had an opportunity to formulate their positions

during an overnight recess. *State v. Campbell*, 772 N.W.2d 858, 860, 866 (Minn. App. 2009), *review denied* (Minn. Dec. 23, 2009). Similarly, the supreme court affirmed the denial of a defendant's *Batson* challenge even though the state had requested an opportunity to research the law on the issue, and the district court agreed to postpone final resolution of the challenge until the parties made further arguments the next morning. *State v. Gaitan*, 536 N.W.2d 11, 16 (Minn. 1995). The supreme court declined to adopt a bright-line rule requiring the state to offer its reasons immediately. *Id.* Thus even if the state here did have an opportunity to refine its arguments while the trial judge attended to the comfort of the jurors at the end of the day, the delay did not alter the district court's analysis nor did it result in any deficiency in the court's prompt and accurate determination on the *Batson* challenge.

Moreover, because appellant has not established any prejudice resulting from the district court's procedure, any error would be harmless. *See State v. Rivers*, 787 N.W.2d 206, 211–12 (Minn. App. 2010) (holding that although *Batson* violations themselves are not subject to harmless-error review, the district court's failure to correctly follow the three-step *Batson* procedure was harmless because no prejudice resulted), *review denied* (Minn. Oct. 19, 2010). We conclude that the district court did not abuse its discretion in placing the *Batson* analysis on the record shortly after appellant raised it in a sidebar discussion.

#### **B. Step three of *Batson* analysis**

Appellant argues that the district court reversibly erred in failing to discuss step three of the *Batson* analysis on the record. He maintains that step three would have

revealed the state's reasons for striking the veniremember as pretexts for purposeful racial discrimination.

Step three of the *Batson* analysis concerns whether the opponent of the strike has met his burden of proving that the state's reasons are pretexts for purposeful discrimination. *State v. Bailey*, 732 N.W.2d 612, 618 (Minn. 2007). This is a factual determination that generally turns on credibility. *State v. Taylor*, 650 N.W.2d 190, 202 (Minn. 2002); *State v. McRae*, 494 N.W.2d 252, 254 (Minn. 1992). Each step of the *Batson* analysis should be addressed on the record, and when the court reaches step three, it should "state fully its factual findings, including any credibility determinations," on the record. *Reiners*, 664 N.W.2d at 832.

The district court addressed step three, albeit in a somewhat truncated fashion, by stating it believed the state's proffered reasons were "*valid* race-neutral reasons." (Emphasis added.) Implicit in this determination are (1) a credibility determination in favor of the state; (2) a factual finding that the state's reasons were ultimately valid, i.e., *not* pretextual; and (3) the conclusion that appellant did not prove purposeful discrimination. *See Rivers*, 787 N.W.2d at 211–12 (noting that even though district court did not separately address step three, it implicitly found that reasons for strike were valid and not pretextual, and any error in failure to articulate step three was harmless); *see also McRae*, 494 N.W.2d at 254 (noting that step three concerns whether facially-valid, race-neutral reasons for strike were ultimately valid and believable).

Although the district court did not detail the reasons for its credibility determination, the supreme court has recognized that "the record may not accurately

reflect all relevant circumstances” that the district court may properly consider in ruling on *Batson* challenges. *State v. White*, 684 N.W.2d 500, 506 (Minn. 2004). The district court heard the state’s reasons for the strike twice and expressly stated it believed they were valid. In the context of the record before us, this finding directly refuted appellant’s argument of pretext and reasonably reflected step three of the *Batson* analysis.

### **C. Purposeful discrimination**

Appellant also argues that the record suggests the state’s peremptory strike was motivated by purposeful race-based discrimination. As noted above, whether a strike was motivated by purposeful discrimination is a factual question that turns largely on credibility. *Taylor*, 650 N.W.2d at 202. We will not reverse the district court’s determination absent clear error. *Reiners*, 664 N.W.2d at 830–31.

In deciding whether there was purposeful discrimination, the district court may take into account the persuasiveness of the proffered reasons for the strike, whether they have any basis in trial strategy, the prosecutor’s demeanor, and the demeanor of the challenged veniremember. *Miller-El v. Cockrell*, 537 U.S. 322, 339, 123 S. Ct. 1029, 1040 (2003); *McRae*, 494 N.W.2d at 257. It may also consider whether the state asked pertinent questions before striking the veniremember, whether its reasons apply equally to non-minority veniremembers who were not removed, and whether the state asked all veniremembers the same questions. *Bailey*, 732 N.W.2d at 618; *Taylor*, 650 N.W.2d at 202; *Campbell*, 772 N.W.2d at 865. When there is “no evidence from which to infer an intent to discriminate, the *Batson* objection must be overruled.” *Reiners*, 664 N.W.2d at 834.

Here, the state offered two reasons for striking the prospective juror: (1) he initially failed to disclose a disorderly conduct conviction which involved a negative interaction with police and (2) he was currently going through a divorce.<sup>1</sup> These reasons were plausible and persuasive. As to the first, the district court asked all of the veniremembers if they had ever been party to a civil or criminal proceeding, including being “charged with a crime of any kind, *disorderly conduct*, DWI, theft, whatever.” (Emphasis added.) Even though the first veniremember to respond had been convicted of disorderly conduct several times, the challenged veniremember did not disclose his conviction. Later, when the court questioned each juror individually, the challenged veniremember stated he forgot to mention that he had been cited for disorderly conduct. The prospective juror’s dishonesty or inability to initially recall the conviction may have reflected poorly on his ability to recall evidence and pay full attention at trial. Moreover, his citation stemmed from a negative interaction with a police officer. At trial, the state called two police officers as witnesses. The veniremember’s negative history with an individual police officer may have tainted his view of those witnesses, despite his assertion of neutrality. The state’s first rationale thus had a plausible basis in trial strategy.

The state’s second rationale—that the veniremember was going through a divorce at the time of trial—is also persuasive. As the prosecutor noted, the allegations in this case involved a couple splitting up and appellant moving out of their shared home.

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<sup>1</sup> Although the state initially claimed it exercised the strike based on a “gut feeling,” it went on to articulate two other reasons. The district court implicitly found these reasons credible despite the state’s failure to immediately articulate them.

Appellant argues that the state's rationale was much too broad because the allegations concerned an episode of violence early in the relationship, not a divorce. But the state's reasons did not have to be so compelling as to justify removal for cause. *See Reiners*, 664 N.W.2d at 833 (noting that the purpose of a peremptory challenge is to "excuse prospective jurors who can be fair but are otherwise unsatisfactory to the challenging party"). The veniremember could have been more sympathetic to appellant as a result of going through a divorce himself. This rationale also had a plausible basis in trial strategy.

The record does not support any discriminatory intent underlying the state's peremptory challenge. The state asked all veniremembers the same questions and did not single out the challenged veniremember for special questioning. No other veniremembers belatedly disclosed criminal convictions; nor were any others involved in divorce proceedings at the time. Accordingly, the district court did not clearly err in finding that the state articulated valid, race-neutral reasons for the peremptory strike.

## **II.**

Appellant next argues that the district court abused its discretion by admitting relationship evidence that was more prejudicial than probative under Minn. Stat. § 634.20. The challenged evidence consisted of (1) appellant's voluntary admission, during a recorded custodial interrogation, that he previously "got a domestic by strangulation" when he choked and punched his ex-girlfriend and (2) appellant's prior violation of an order for protection involving the ex-girlfriend.

In domestic-assault cases, evidence of “similar conduct by the accused” against other household members is relevant and admissible “unless the probative value is substantially outweighed by the danger of unfair prejudice.” Minn. Stat. § 634.20; *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (adopting statute as rule of evidence in domestic assault cases). “Similar conduct” includes domestic abuse and violations of orders for protection. Minn. Stat. § 634.20. The district court has broad discretion in weighing the probative value of evidence against its prejudicial effect. *State v. Gassler*, 505 N.W.2d 62, 70 (Minn. 1993) (applying Minn. R. Evid. 403); *McCoy*, 682 N.W.2d at 159 (recognizing that balancing test for relationship evidence mirrors that provided in Minn. R. Evid. 403).

Appellant does not dispute that the evidence in question concerned quite similar conduct—his strangulation and physical assault on an ex-girlfriend. But he argues that the similarity of the conduct rendered it unfairly prejudicial because it suggested he had a propensity to strangle women. “Unfair prejudice” requires something more than just a showing that the evidence is severely damaging. *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). Instead, it refers to evidence that “persuades by illegitimate means, giving one party an unfair advantage.” *Id.* (quotation omitted). The similarity of the conduct here did not give the state an unfair advantage. The conduct is precisely the sort that the legislature has deemed relevant by providing for its admission unless the probative value is “*substantially* outweighed” by the risk of unfair prejudice. Minn. Stat. § 634.20 (emphasis added).

Appellant also argues that the evidence was unfairly prejudicial because it did not concern his relationship with O.W., which had been nonviolent until this incident. The purpose of relationship evidence under Minn. Stat. § 634.20 is to “put the crime charged in the context of the relationship between [the accused and the victim].” *McCoy*, 682 N.W.2d at 159. But evidence showing how the defendant acted toward *former* girlfriends and household members “sheds light on how [he] interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). As a result, relationship evidence is not limited to that concerning the defendant’s relationship with the victim. *Id.* Because the evidence here showed how appellant treated a former girlfriend, it was also probative of his relationship with O.W., particularly since he challenged her credibility. At trial, appellant claimed that O.W. had been the aggressor who initiated the assault. The relationship evidence put this claim in the context of his interactions with an ex-girlfriend. *See State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (holding that such evidence was probative where credibility of the victim was at issue), *review denied* (Minn. Oct. 29, 2008). As a result, the relationship evidence was admissible under *Valentine* even though it did not directly relate to appellant’s relationship with O.W.

Finally, in weighing the probative value of the evidence, the district court noted that its prejudicial effect was diminished because the admission did not refer to a conviction. The court gave the jury limiting instructions immediately before they heard the evidence and again before closing arguments. Such instructions mitigate the risk that

the jury will lend undue weight to the evidence. *Id.* The district court therefore did not abuse its discretion in admitting the relationship evidence.

### III.

Appellant contends that even if his violation of an order for protection was admissible, its form was inadmissible because the statement was not actually evidence. He also argues that the district court reversibly erred when it assumed the role of an advocate by presenting the prosecutor's statement to the jury, thereby jeopardizing the judge's impartiality.

At trial, the district court read the following statement to the jury:

THE COURT: Members of the Jury, I'm going to read for you a stipulation—

[DEFENSE COUNSEL]: Objection, your Honor.

THE COURT: Excuse me, this is not a stipulation but I will tell you that in this case, for your information, the defendant committed the act of Violation of a Domestic Abuse Order for Protection in January of 2008 against a person whose initials are C.A.R.

Appellant objected to the statement and sought to require the state to carry its burden of proof by adducing evidence of the violation, such as live witnesses. He did not stipulate to the statement at any time.

#### A. Evidentiary error

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). An abuse of discretion occurs if the court improperly applied the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). To merit reversal, the appellant

must establish (1) an abuse of discretion (2) that resulted in prejudice. *Amos*, 658 N.W.2d at 203.

As noted above, Minn. Stat. § 634.20 provides for the admission of *evidence* of similar relationship conduct in domestic abuse cases. The statute does not define “evidence.” However, we construe “technical words in a statute according to their technical meaning” and in light of their context. *State v. Taylor*, 594 N.W.2d 533, 535 (Minn. App. 1999).

The context of the statute suggests that the legislature was referring to such evidence as the courts may allow under the rules of evidence. *See McCoy*, 682 N.W.2d at 160–61 (noting that rules of evidence are delegated exclusively to judicial branch of government, but adopting Minn. Stat. § 634.20 as a “rule of evidence for the admission of evidence of similar conduct”). Evidence generally consists of testimony, exhibits, and stipulations. *See* Minn. R. Evid. 601–1006 (addressing the admissibility of testimony and exhibits); *State v. Wright*, 719 N.W.2d 910, 916 n.1 (Minn. 2006) (recognizing that parties may stipulate to form of evidence); 10 *Minnesota Practice*, CRIMJIG 1.02A, 1.02B (2006) (defining evidence as testimony and exhibits).

The manner of presentation of the fact of appellant’s prior conviction was erroneous, as there was no stipulation for its admission and there was no witness presenting the information to the jury in a manner contemplated by the rules of evidence. The district court erred in allowing the presentation of the fact of appellant’s prior conviction to the jury in this fashion.

## **B. Harmless error**

When a district court errs in admitting evidence, we apply the harmless-error standard to determine whether there is a reasonable possibility that the erroneously admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). If there is a reasonable possibility that the verdict might have been more favorable to the defendant without the evidence, the error is prejudicial. *Id.* An error of constitutional magnitude is harmless beyond a reasonable doubt if “the verdict rendered is surely unattributable to the error” in light of the record as a whole. *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997) (quotation omitted).

Here, viewing the record as a whole, there is no reasonable possibility that the statement read by the trial judge affected the verdict. O.W. testified to each element at issue for both offenses. Her testimony was corroborated by photographs of her injuries, medical records, and the testimony of two police officers and an emergency room physician. The jurors could see for themselves O.W.’s four-foot-eleven frame in contrast to appellant’s nearly six-foot stature. Given the wealth of other evidence in the record, there is no reasonable possibility that the verdict would have been more favorable to appellant without the brief statement regarding his violation of an order for protection. We are satisfied that the verdict is unattributable to the challenged statement. As a result, any error in admitting the statement as evidence was harmless beyond a reasonable doubt.

## **C. Impartiality**

Appellant further argues that the trial judge’s impartiality was compromised when the judge read the statement concerning appellant’s prior conviction, thereby assuming

the role of the prosecutor. A criminal defendant has a constitutional right to an impartial judge, and a district court judge's conduct must be "fair to both sides." *State v. Dorsey*, 701 N.W.2d 238, 250 (Minn. 2005) (quotation omitted). The judge must not adopt a partisan position. *Id.* at 252. In determining whether a judge's conduct amounts to a denial of an impartial judge and a fair trial, the supreme court has examined whether the conduct prejudiced the jury. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

Appellant argues that the statement prejudiced the jury by suggesting the court had an opinion regarding appellant's guilt. But the statement itself did not convey any impression of bias. And though the trial judge initially misspoke and referred to the statement as a stipulation, he immediately corrected the error. The court's mere act of reading of the statement did not express or imply that the judge had an opinion regarding appellant's guilt or that he was advocating for the state.

Moreover, the district court gave limiting instructions advising the jury not to lend undue weight to the statement. It delivered these instructions both immediately after reading the statement and again before closing arguments. It also instructed the jury to disregard anything the court may have said or done that suggested it had an opinion about the case. The jury is presumed to have followed those instructions. *See State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998) ("Courts presume that juries follow the instructions they are given.").

The district court's brief and neutrally phrased statement is distinguishable from cases where the judge expressly advocated for one side or the other. In *Block v. Target Stores, Inc.*, for example, the district court committed prejudicial error by engaging in

extensive, one-sided cross-examination of an expert witness that demeaned the witness's qualifications and destroyed his credibility. 458 N.W.2d 705, 713 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990). Similarly, in *Hansen v. St. Paul City Ry.*, the district court judge engaged in a number of "caustic clashes" with the defendant's attorney, all of which occurred in the presence of the jury. 231 Minn. 354, 360, 43 N.W.2d 260, 264 (1950). Here, by contrast, the statement was not expressly identified as the state's evidence, and its content did not imply that the district court favored the prosecution. There is no reasonable possibility that the statement swayed the jury. The statement did not amount to a denial of an impartial judge or a fair trial.

**Affirmed.**