STATE OF MINNESOTA
IN COURT OF APPEALS
A10-124

State of Minnesota,
Respondent,

vs.

Fate James Martin,
Appellant.

Filed November 23, 2010
Reversed and remanded
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-09-59900

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

Susan L. Segal, Minneapolis City Attorney, Zenaida Chico, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

William M. Ward, Chief Hennepin County Public Defender, Kellie M. Charles, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

In this appeal from his convictions of domestic assault, fifth-degree assault, disorderly conduct, and criminal damage to property, appellant argues that (1) the district

court clearly erred by rejecting his peremptory challenges based on a finding of gender discrimination and (2) the district court abused its discretion in its evidentiary rulings. Because the district court clearly erred in denying appellant's peremptory challenges, we reverse and remand.

FACTS

On November 21, 2009, appellant Fate Martin and his former girlfriend, D.K., were at his mother's house. They began arguing over sex and money. Martin jumped on D.K., ripped her shirt off, and began to choke her while she was lying on a bed near their eight-day-old child. D.K. was able to kick Martin off of her and briefly break free, but he grabbed her and pinned her against the wall, choking her again. Shortly thereafter, Martin's mother returned home and found Martin picking up clothes in the bedroom. She questioned him about the altercation with D.K., but Martin closed the door on her. When she reopened it, they began arguing, and Martin closed the door again and hit it, causing damage.

Martin was charged with two counts of domestic assault, two counts of fifth-degree assault, criminal damage to property, and disorderly conduct. During jury selection, defense counsel exercised five peremptory strikes: (1) K.A. (female), (2) P.A. (female), (3) R.G.-S. (female), (4) M.M. (female), and (5) L.F. (male). The prosecutor challenged defense counsel's first four strikes, asserting that the strikes appeared to be based on gender discrimination. The district court agreed and sat R.G.-S. and M.M., who had the lowest juror numbers, in the remaining two jury positions.

The jury acquitted Martin on one count of domestic assault and one count of fifth-degree assault but found him guilty on the other charges. This appeal follows.

D E C I S I O N

The use of peremptory challenges to exclude prospective jurors is subject to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Batson v. Kentucky*, 476 U.S. 79, 89, 106 S. Ct. 1712, 1719 (1986). A peremptory challenge based on a prospective juror's race or gender denies equal protection both to the prospective juror, who is denied the right to participate in jury service, and to the defendant, whose right to be tried by a jury made up of members selected by nondiscriminatory criteria is violated. *State v. Reiners*, 664 N.W.2d 826, 831 (Minn. 2003); *see also J.E.B. v. Alabama*, 511 U.S. 127, 114 S. Ct. 1419 (1994) (extending *Batson* to prohibit gender discrimination in jury selection). Whether discrimination motivated a peremptory challenge is a factual determination that we will not reverse unless it is clearly erroneous. *Reiners*, 664 N.W.2d at 830-31. We afford great deference because "the record may not reflect all of the relevant circumstances that the [district] court may consider." *State v. Pendleton*, 725 N.W.2d 717, 724 (Minn. 2007).

A three-step analysis determines whether a peremptory challenge discriminates based on gender. *State v. Greenleaf*, 591 N.W.2d 488, 500 (Minn. 1999); *see also* Minn. R. Crim. P. 26.02, subd. 7(3) (providing three-step process for evaluating whether peremptory challenge was based on purposeful discrimination). The party objecting to a peremptory challenge must first make a prima facie case of gender discrimination. *Greenleaf*, 591 N.W.2d at 500. If a prima facie case is made, the burden shifts to the

party exercising the challenge to offer a gender-neutral explanation. *Id.* The district court must then decide whether the objecting party proved that the explanation is a mere pretext for discrimination. *Id.*

Martin argues that the district court erred in applying this three-step analysis. We agree. Caselaw plainly requires the district court to follow the three steps in order and "clearly demarcate[] the steps of its *Batson* analysis." *Reiners*, 664 N.W.2d at 832. The district court failed to do so here. The district court asked defense counsel to explain his first four strikes before deciding whether the state made out a prima facie case of discrimination. In the middle of defense counsel's explanation, the district court declared that a prima facie showing had been made. Without making any findings as to whether defendant met his burden of showing a gender-neutral explanation, the district court requested the state's response. The district court ultimately determined that defendant's first four peremptory challenges were discriminatory but failed to articulate clear factual findings in support of that determination, particularly with respect to R.G.-S. and M.M. Moreover, the district court did not articulate whether that determination was based on a facial rejection of defense counsel's explanations or a finding of pretext. The district court failed to require the state to make a prima facie case of discrimination and either improperly collapsed the second and third steps of the *Batson* analysis or skipped the third step.

Our conclusion that the district court erred in applying the *Batson* analysis does not end our inquiry. A district court's erroneous application of *Batson* may be harmless error if the record supports the district court's determination that gender or race

discrimination motivated an attorney's strikes. *See State v. Rivers*, 787 N.W.2d 206, 208 (Minn. App. 2010), *review denied* (Minn. Oct. 19, 2010); *see also Pendleton*, 725 N.W.2d at 726 ("[W]e have not reversed a district court's *Batson* ruling solely because of its failure to follow the prescribed procedure."). We therefore independently examine the record to determine whether it supports the district court's finding that appellant's peremptory challenges were motivated by gender discrimination. *Pendleton*, 725 N.W.2d at 726.

Prima facie case

A prima facie case of gender discrimination is established by a showing that (1) one or more members of a gender classification have been peremptorily excluded from the jury and (2) circumstances of the case raise an inference that the exclusion was based on gender. *Greenleaf*, 591 N.W.2d at 500. The district court found that "the prima facie case simply is that four of the first five challenges were all women." Martin contends that this fact does not itself raise an inference of discrimination, citing *Reiners*, in which the supreme court emphasized that the mere "use of a peremptory challenge to remove a member of a racial minority does not necessarily establish a prima facie case of discrimination." 664 N.W.2d at 831. But this case is not analogous to *Reiners*. That case involved the defendant's peremptory strike of one African-American woman, which the state argued was based on her race. *Id.* at 829-30. In contrast, defense counsel here exercised each of his first four strikes on women. *See Reiners*, 664 N.W.2d at 833 (looking for a "pattern" in use of peremptory strikes). And this case involves charges of assault against a female victim. *See Angus v. State*, 695 N.W.2d 109, 117 (Minn. 2005)

(considering the races of victim and defendant in evaluating whether the circumstances of the case raised an inference of racial discrimination). Therefore, the record supports the finding of a prima facie case of gender discrimination.

Gender-neutral explanation

Step two of the *Batson* analysis requires the proponent of the peremptory challenge to articulate a gender-neutral reason for each strike. But the proponent of a challenged peremptory strike need not provide a "persuasive or even plausible" explanation for the strike. *State v. Martin*, 773 N.W.2d 89, 101 (Minn. 2009). Unless discriminatory intent is inherent in the explanation, the reason offered is deemed neutral. *Id.* (citing *Purkett v. Elem*, 514 U.S. 765, 768, 115 S. Ct. 1769, 1771 (1995)).

Defense counsel explained that he exercised a peremptory strike against M.M. because she was pregnant and "the issue has been raised that this incident occurred while a newborn child was directly in the bed next to the alleged victim." Defense counsel stated that he struck P.A. and K.A. (and male juror L.F.) because they had expressed "concern" about Martin not testifying. P.A. also had indicated that previous jury service had made her feel "nervous." And defense counsel explained that he struck R.G.-S. because she had not disclosed enough information during his questioning of the panel.

The district court expressed doubt, without explanation, about the neutrality of striking R.G.-S. and M.M. But gender discrimination is not inherent in the decision to strike R.G.-S. in favor of jurors about whom defense counsel had obtained more information. Nor is gender discrimination inherent in the strike of M.M. Although defense counsel knew that M.M. was expecting a baby only because she was visibly

pregnant—a circumstance affecting only women—his concern that a person with an infant might not view the case as fairly as others is valid and gender neutral. We conclude that discriminatory intent is not inherent in any of defense counsel's explanations and that the burden shifted back to the state to prove discrimination.

Proof of purposeful discrimination

The party asserting a *Batson* violation always bears the burden of demonstrating the existence of purposeful discrimination. *Id.* When the explanation of a peremptory challenge is gender neutral "and 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.

The state did not argue that defense counsel's reasons for striking R.G.-S. and M.M. were pretextual but argued that discrimination was apparent in all four strikes because defense counsel had "systematically stricken" the women from the jury panel, leaving only one woman. *See id.* at 833-34 (considering the effect of a party's strikes on the ultimate makeup of the jury). The district court found that the strikes would reduce the number of women on the jury. But the record reflects that there would have been two women on the jury panel regardless of whether defense counsel's strikes were permitted. The only gender distinction between the impaneled jury and the jury that would have been seated if Martin's peremptory challenges were honored is the alternate juror. The alternate seated, who did not deliberate, was female whereas the alternate would have been male had the defense strikes been honored. Defense counsel's strikes, therefore, would not have materially affected the gender composition of the panel.

The state also argued, and the district court apparently found, that defense counsel's explanations for striking P.A. and K.A. were pretextual. The record does not support such a finding. The district court agreed with defense counsel that many of the prospective jurors, including women, expressed concern about Martin not testifying. However, the district court rejected defense counsel's assertion that he struck P.A. and K.A. because of this concern, finding that defense counsel's voir dire on this issue had focused on male juror T.C. This finding is clearly erroneous. The record reflects that T.C. gave responses favorable to Martin and that the line of questioning regarding Martin not testifying focused primarily on two other male jurors, one of whom was L.F. Because the district court's only finding as to pretext is clearly erroneous, and the record reflects no clear evidence of purposeful discrimination, the state's *Batson* challenge should have been denied. Accordingly, we conclude that the district court's denial of Martin's peremptory challenges was clearly erroneous.

The erroneous denial of a peremptory challenge "does not lend itself to harmless error analysis," because it is "difficult, if not impossible, to compare an error made during voir dire to all of the evidence presented at trial and gauge its particular impact on the verdict." *Id.* at 835. We, therefore, reverse and remand for a new trial.

Because we reverse based on the erroneous *Batson* ruling, we decline to address Martin's arguments concerning the district court's evidentiary rulings.

Reversed and remanded.