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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2058**

State of Minnesota,
Respondent,

vs.

Edward Andre Washington,
Appellant.

**Filed January 6, 2014
Affirmed
Smith, Judge**

Hennepin County District Court
File No. 27-CR-12-5159

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

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Considered and decided by Kirk, Presiding Judge; Smith, Judge; and Harten,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, Judge

We affirm appellant's convictions for kidnapping and second-degree sex trafficking because appellant does not meet his burden to show that the prosecutor's reason for striking a juror was race-based and because we find no abuse of discretion in the district court's admission of expert testimony relating to the methods of operating a prostitution business.

FACTS

On February 9, 2012, L.B. was 18 years old and volunteering at a basketball program for grade-school children. One of her friends, another coach, asked her to spend the night at her apartment to "help her through a bad breakup." After partially consuming an alcoholic beverage, L.B. went to the bathroom and returned to discover appellant Edward Andre Washington and Ronald Lee in the apartment. She continued to drink the same drink and felt "fuzzy" before losing consciousness.

L.B. awoke briefly in the back seat of a car as Lee sexually assaulted her, Washington drove the car, and her friend rode in the passenger seat. She passed out again. When she awoke again, a woman named "Sonz" also was in the car. L.B. discovered that she was in Schaumburg, Illinois. Lee and Washington demanded that L.B. work as a prostitute and required her to give all the money she earned to Lee or Sonz. Lee and Washington told L.B. that they were gang members, and they threatened to kill her if she did not comply.

A few days later, L.B. was returned to Minnesota and taken to a downtown Minneapolis hotel. She was again forced to work as a prostitute, and to give the money she earned to Washington. When she tried to subtly discourage potential prostitution clients, Washington became angry and threatened her again. At one point, L.B. had temporary possession of a cell phone and she texted a friend, who called the police. Police responded to the hotel but failed to locate the room where L.B. was confined; while the police were in the building, Washington threw L.B. to the floor, covered her mouth, and threatened her. On another occasion, Washington sexually assaulted L.B., and when she tried to escape, he threw her to the floor, injuring her leg. He also physically forced her to consume cocaine and stole her identification, telling her that he would use it to find her and “have people go after [her]” if she “went to the cops.”

On February 16, L.B. ran away and met with police at a youth center. Police arrested Washington in the hotel room that L.B. identified. After his arrest, Washington contacted another person in an attempt to delete evidence of his internet postings advertising L.B.’s prostitution services. Police also discovered evidence of Washington’s prostitution operation on a laptop computer.

Washington was charged with two counts of second-degree sex trafficking (promotion and engagement) and one count of kidnapping. Before trial, the district court granted the state’s motion to admit expert testimony “on the mechanics of a typical promotion of prostitution,” noting that whether the testimony would be “helpful to the trier of fact [is] probably the closest call in this analysis.” Accordingly, it limited the testimony to “whether certain behaviors or things that occur are typical of a promotion of

prostitution enterprise and generally how such an enterprise would work.” The district court specifically enjoined the state from “elicit[ing] an opinion as to whether the defendant in this case, or the evidence in this case, indicates that this was a promotion of prostitution.” The district court later denied Washington’s motion for reconsideration of its ruling, adding an additional justification for admitting the expert testimony: “[D]efense counsel . . . vigorously cross-examined the alleged victim here about instances where she could have run away and escaped and I think an expert regarding the power and control dynamic is even more relevant now than I thought it would be at first.”

During voir dire, prospective jurors were instructed to complete lengthy questionnaires, including information about previous personal and secondhand involvements with the legal system and an expression of their opinions about “how . . . our court system handles a person accused of a crime.” After they completed the questionnaires, prospective jurors were questioned by both counsel. The inquiries frequently focused on the prospective jurors’ answers regarding the perceived fairness of the judicial system. The defense attorney questioned prospective juror number 12 (juror 12), a white male, extensively about his distrust of police and belief that the criminal justice system was unfair. On his questionnaire, juror 12 responded “not well” to the question, “[h]ow do you feel our court system handles a person accused of a crime?” He said, “I don’t trust them” in response to a question seeking his attitude toward police officers, and he opined that “[e]thnicity & socioeconomic status have too great an influence” on the criminal justice system. He reaffirmed his skepticism towards police under additional questioning by the prosecutor and the district court. And he reiterated

his pessimism about the fairness of the judicial system, citing a recent high-profile criminal trial.

Immediately following his questioning of juror 12, defense counsel questioned prospective juror number 14 (juror 14), a female whose race was identified as “Other.” On her questionnaire, she had opined, “I think that the [legal] system is fair and all persons are innocent until proven guilty.” In response to defense counsel’s questions, juror 14 recalled an incident where a friend had received an erroneous delivery of a package not intended for her and, after opening it and giving away the contents, she and the person she gave the contents to were each charged with a crime. She stated that it was “a little strange” that the recipient was given a greater fine than her friend, who opened the package. She further stated that she did not “necessarily agree” with the fact that the delivery person was not reprimanded at all. But she also said that “it doesn’t really affect my day-to-day life.” She said that “[i]t was just one incident,” that “it didn’t really affect me,” and that it would not make her biased against the government.

After the conclusion of prospective juror questioning, the state exercised peremptory strikes on jurors 12 and 14, and defense counsel challenged the strike on juror 14 as improper under *Batson v. Kentucky*, 106 S. Ct. 1712, 476 U.S. 79 (1986). The prosecutor riposted that juror 14 “doesn’t self-identify as an African-American,” noting that “[i]n her description she lists her race as other.” The district court replied, “She appears to be multi-racial to me.” The prosecutor iterated that juror 14, “doesn’t identify as African American” and argued that defense counsel failed to make a prima facie showing that the peremptory strike was racially based..

The district court found that “there is enough to go forward” and instructed the prosecutor to provide a “[r]ace neutral reason” for the strike. The prosecutor stated that juror 14 had spoken “extensively about her concerns about the system, in particular, an experience that she was aware of in which she had thought people who had [a] disproportionate amount of involvement in [a] crime got a disproportionate sentence.” The prosecutor attested, “I struck her based on her doubts that were expressed about the system being fair, similar to [juror 12].” She argued that “[t]here is no basis to suggest that this was in any way racially motivated.”

The district court admitted, “I forgot that part of her answers, so I do feel that is a race neutral reason, I was stuck on [juror 12] who went on at great length about the unfairness of the system.” It then found that “there is a race neutral reason for striking, so the *Batson* is denied.”

The jury found Washington guilty of all three counts. The district court convicted Washington for engaging in sex-trafficking and kidnapping and sentenced him to concurrent sentences of 240 months’ imprisonment and 60 months’ imprisonment, respectively.

DECISION

I.

Washington contends that he is entitled to a new trial because the district court improperly truncated its *Batson* analysis after he challenged the prosecutor’s peremptory strike of Juror 14. We generally give great deference to parties’ decisions to exercise peremptory strikes because “[p]eremptory challenges are designed to be used to excuse

prospective jurors who can be fair but are otherwise unsatisfactory to the challenging party.” *State v. Reiners*, 664 N.W.2d 826, 833 (Minn. 2003). But “[t]he use of peremptory challenges to exclude persons from the jury solely on the basis of . . . race . . . is prohibited by the Equal Protection Clause of the United States Constitution.” *State v. Greenleaf*, 591 N.W.2d 488, 500 (Minn. 1999).

“To determine whether a peremptory strike was discriminatory, we apply the three-step test articulated by the United States Supreme Court in *Batson*.” *State v. Carridine*, 812 N.W.2d 130, 136 (Minn. 2012). The *Batson* test requires first that the challenging party make a prima facie showing that the strike was racially based. *Id.* If such a showing is made, the burden shifts to the opposing party to articulate a facially race-neutral reason for the strike. *Id.* If such a facially race-neutral reason is proffered, the district court “must determine whether the reason given was a pretext for purposeful discrimination.” *Id.* If a defendant is convicted it is ultimately determined that the strike was discriminatory, “the defendant is automatically entitled to a new trial.” *Id.* at 136-37.

Normally, we “give great deference to the district court’s ruling on a *Batson* challenge.” *State v. Pendleton*, 725 N.W.2d 717, 724 (Minn. 2007). But we note that “[i]t is important for the [district] court to announce on the record its analysis of each of the three steps of the *Batson* analysis.” *Reiners*, 664 N.W.2d at 832. Where the district court fails to properly follow the *Batson* procedure, we do not automatically reverse, but instead conduct the *Batson* analysis ourselves, “examin[ing] the record without deferring to the district court’s analysis.” *State v. Seaver*, 820 N.W.2d 627, 633 (Minn. App. 2012) (quotation omitted).

Here, the parties disagree regarding the degree to which the district court followed the *Batson* process. Washington contends that the district court determined that step one of the *Batson* analysis was met, but that it failed to conduct a step-three pretext analysis after the prosecutor articulated a facially race-neutral explanation for the peremptory strike of juror 14. The state argues that the district court did not need to proceed to step three because it reversed itself on step one, finding that juror 14's testimony provided an *actual* race-neutral reason for the strike. We need not decide between these competing interpretations of the record, however, because, assuming without deciding that Washington correctly interprets the district court's analysis, our resulting independent review of the record leads us to conclude that Washington did not meet his initial burden to make a prima facie showing of a racial purpose for the strike.

In the first step of a *Batson* analysis, the challenging party bears the burden of showing that “(1) one or more members of a racial group have been peremptorily excluded from the jury, and (2) circumstances of the case raise an inference that the exclusion was based on race.” *Angus v. State*, 695 N.W.2d 109, 116 (Minn. 2005). Washington argues that juror 14's apparent race, combined with the prosecutor's exaggerations of her testimony, demonstrates a race-based motive. Although the parties disagree about the actual race of juror 14, we need not decide the matter because Washington fails to make any showing on the second element of a prima facie showing.

“[T]he mere fact that the veniremember subject to the strike is a racial minority does not establish a prima facie case of discrimination.” *Id.* at 117. Instead, the challenging party must offer an analysis of the “totality of relevant facts.” *Seaver*, 820

N.W.2d at 633-34 (quotation omitted). Relevant facts may include the prosecutor's pattern of strikes, an analysis of the racial overtones of the case as a whole, or an assessment of the racially disproportionate impact of peremptory strikes on the pool of available jurors. *See id.* at 634. Washington offered no such additional evidence of a discriminatory motive. Although we acknowledge that the prosecutor's exaggerations of juror 14's testimony are "very troubling," *see State v. McRae*, 494 N.W.2d 252, 257 (Minn. 1992), they do not in themselves indicate that the prosecutor had a racial motive. The possibility of such a motive is also undermined by the fact that the very next prospective juror questioned, prospective juror number 15, was African American and was not struck. *Cf. Seaver*, 820 N.W.2d at 634 (noting that a pattern of striking multiple male jurors raised the inference of a gender-based motive).

Although the record might contain morsels that could theoretically sustain an argument of racial motive, it is beyond our role to go fishing for them. *Cf. United States v. Laureys*, 653 F.3d 27, 32 (D.C. Cir. 2011) ("It is not our duty to sift the trial record for novel arguments a defendant could have made but did not."), *cert. denied* 132 S. Ct. 1053 (2012). Washington bears the burden to identify the relevant facts from the record to make a prima facie showing of a racial intent for the challenged strike of juror 14, and he has failed to do so. Accordingly, we affirm the district court's denial of the *Batson* challenge to the peremptory strike of juror 14.

II.

Washington argues that expert testimony regarding the methods of operating a prostitution scheme should not have been admitted because it was not relevant or helpful

to the jury and because it invaded the province of the jury. An expert may testify in a trial when her “scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” Minn. R. Evid. 702. “The basic consideration in admitting expert testimony under Rule 702 is the helpfulness test—that is, whether the testimony will assist the jury in resolving factual questions presented.” *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). We review the district court’s determination that expert testimony will be relevant and helpful to the jury only for an abuse of discretion. *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999) (relevance); *State v. Pirsig*, 670 N.W.2d 610, 616 (Minn. App. 2003) (helpfulness to the jury), *review denied* (Minn. Jan. 20, 2004).

Washington argues that the expert testimony was not relevant or helpful because it was not narrowly tailored to the facts of his case. He cites Ninth Circuit caselaw to support the claim that details of how prostitution schemes operate were not necessary to help the jury decide “whether [Washington] helped . . . remove or confine L.B. without her consent” because “this was not a particularly complex case” and “general evidence of how pimps target, recruit, and retain prostitutes and the dynamics between a pimp and his prostitute were not at issue.” See *United States v. Brooks*, 610 F.3d 1186 (9th Cir. 2010). But the testimony regarding methods of operating a prostitution scheme is relevant to defense arguments attacking L.B.’s credibility. During cross-examination, defense counsel questioned L.B. about various missed opportunities to escape. This put “the dynamics between a pimp and his prostitute” squarely into question. Therefore, it was

not an abuse of discretion for the district court to admit testimony about how operators of prostitution schemes exercise control over their victims to discourage escape.

The district court also took measures to ensure that the expert testimony would be confined to those areas that would not usurp the jury's exclusive fact-finding role. It ordered that the testimony "will be limited to whether certain behaviors or things that occur are typical of a promotion of prostitution enterprise and generally how such an enterprise would work." And it instructed the prosecutor to avoid eliciting any testimony "specific about [Washington], his co-defendant, or this specific case." Washington does not allege, and the record does not reveal, any instances where the prosecutor violated these instructions. Because the admission of the challenged expert testimony was not an abuse of the district court's discretion, Washington is not entitled to relief on this ground.

Affirmed.