STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0796

Melvin Manypenny, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed December 10, 2012
Affirmed
Kirk, Judge

Becker County District Court
File No. 03-CR-09-266

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michael Fritz, Becker County Attorney, Tammy L. Merkins, Assistant County Attorney, Detroit Lakes, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Ross, Judge; and Kirk, Judge.

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

KIRK, Judge

In this appeal from the postconviction court's denial of relief from appellant's conviction of a third-degree controlled substance crime, appellant argues that the district court erred when it allowed the prosecutor to remove the only African-American juror from the venire. We affirm.

D E C I S I O N

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a prosecutor from exercising a peremptory challenge to exclude a prospective juror based solely on race. *Batson v. Kentucky*, 476 U.S. 79, 89, 106 S. Ct. 1712, 1719 (1986). Under *Batson*, courts apply a three-part test to determine whether a prosecutor's peremptory challenge was based on the prospective juror's race. *State v. Pendleton*, 725 N.W.2d 717, 723 (Minn. 2007). First, the opponent of the peremptory challenge must establish a prima facie case that the challenge was based on the prospective juror's race. *Id.* at 723. Second, the proponent of the peremptory challenge must give a race-neutral explanation. *Id.* at 723-24. Third, the district court must determine whether the opponent of the challenge proved that the racial discrimination was purposeful. *Id.* at 724. Appellate courts give great deference to a district court's decision on a *Batson* challenge and will not reverse unless the district court's determination was clearly erroneous. *State v. Taylor*, 650 N.W.2d 190, 201 (Minn. 2002).

Here, the prosecutor exercised a peremptory challenge to exclude F.M., who identifies as African American, from the venire. Appellant's counsel challenged the state's peremptory challenge, arguing that F.M. was the only African American in the venire. In response, the prosecutor stated:

> I can inform the [c]ourt that my p[er]emptory challenge was used based on his answers to some of the [c]ourt's questions with regard to his father's arrest a number of years ago. He indicated that he had very poor feelings over that and feels that his father was treated poorly. I think he specifically referenced law enforcement. Given that the main witnesses in this matter are law enforcement, as well as an individual that worked with law enforcement very closely, I felt it appropriate to strike him under—for that basis. I don't believe that he would look at their testimony in the same light as the rest of the jurors.

The district court denied appellant's *Batson* challenge and gave the following explanation for its decision:

> In this case, the state has offered an explanation as to why it struck [F.M.] and the [c]ourt recalls his testimony relative to his father's arrest, that he had bad feelings about that, he felt his father was not treated well by the system. We don't know whether—what race his father was. He did not say that he felt anything about the treatment of his father was race related.
>
> He did also indicate that he had some bad feelings or negative feelings toward law enforcement as a result of the arrest of his father and the [c]ourt feels that the [s]tate has offered a race neutral explanation for its exercise of p[er]emptory strike of [F.M.].
>
> The burden of persuasion as I understand the *Batson* case, remains with the defense to show that—the party making the challenge that is, to show that the [explanation] offered by the state is simpl[y] pretextual and that the true reason for the strike was that it was to exclude a member of

> the protected class. And in this particular case, it's the [c]ourt's decision that the burden of persuasion has not been sustained by the defense and therefore, the challenge is denied.

While the district court should analyze each prong of the *Batson* test on the record, we will not reverse a district court's decision on a *Batson* challenge solely because it did not specifically address each step of the analysis. *State v. Rivers*, 787 N.W.2d 206, 211 (Minn. App. 2010). Here, in support of his *Batson* challenge, appellant argued that F.M. was the only African American in the venire. The district court did not discuss on the record whether appellant established a prima facie case under the first prong of the *Batson* test. We note that appellant's argument was insufficient to establish a prima facie case that the state's peremptory challenge was based on F.M.'s race. *See Angus v. State*, 695 N.W.2d 109, 117 (Minn. 2005) ("[T]he mere fact that the veniremember subject to the strike is a racial minority does not establish a prima facie case of discrimination."). But we will not reverse based on the district court's failure to address the first prong of the analysis because the state provided a race-neutral reason for the challenge and the district court determined that appellant failed to establish that the prosecutor engaged in purposeful discrimination. *See id.* (stating that "any failure in step one to identify a circumstance that would raise an inference of racial discrimination can be rectified in step three when race-neutral reasons given for a strike are examined").

Appellant contends that the district court erred by failing to engage in the third prong of the analysis. The district court sufficiently addressed the third step when it concluded that appellant had not sustained his burden of persuasion. *See State v. Bailey*,

732 N.W.2d 612, 618 (Minn. 2007) ("[T]he ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." (quoting *Purkett v. Elem*, 514 U.S. 765, 767, 115 S. Ct. 1769, 1771 (1995) (per curiam) (Stevens, J., dissenting)). Appellant's only argument in support of his *Batson* challenge was that F.M. stated that he could remain fair and impartial. But whether a juror can be fair is irrelevant in a *Batson* analysis 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). Instead, *Batson* "only forbids a prosecutor from striking a juror based on her race." *Bailey*, 732 N.W.2d at 620-21. Thus, we conclude that the record supports the district court's conclusion that appellant did not sustain his burden of persuasion and, therefore, the postconviction court did not err by determining that the district court properly denied appellant's *Batson* challenge to the prosecutor's peremptory challenge.

Affirmed.