IN THE COURT OF APPEALS OF IOWA

No. 9-314 / 06-1838
Filed July 2, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTIAN GEOVANNI MUNOZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

Defendant appeals from his convictions for murder in the first degree and robbery in the first degree. **AFFIRMED.**

Robert A. Wright, Jr. of Wright & Wright, Des Moines, and Andrea Flanagan of Sporor & Ilic, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank Severino, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Defendant, Christian Munoz, appeals from his convictions of murder in the first degree, in violation of Iowa Code sections 707.1 and 707.2 (2005), and robbery in the first degree, in violation of Iowa Code sections 711.1 and 711.2. During the trial, the parties and court discovered one juror knew a key witness. The juror was questioned by the court, the prosecution, and the defense, and the State moved to have the juror removed. Munoz resisted the motion on several grounds. The court granted the State's motion and the juror was replaced with an alternate. After the jury returned its guilty verdicts, Munoz renewed his objection to the removal of the juror and moved for a new trial, both of which the court denied. He appeals contending the district court erred in (1) dismissing a juror without conducting a *Batson* hearing, and (2) overruling his motion for a new trial. We affirm.

I. BACKGROUND AND PROCEEDINGS. On Saturday, May 28, 2005, authorities were alerted to a car accident on the south side of Des Moines. A white Cadillac had jumped the curb and struck a tree. An unconscious man, later identified as Anthony Anania, was in the driver's seat. He was rushed to the hospital where medics discovered he had suffered two gunshot wounds to his lower chest and abdomen. Shortly thereafter, Anthony died from the internal injuries caused by the gunshot wounds. At the time of his death, Anthony was carrying a small amount of marijuana and had a sock containing $11,400 stuffed in his shorts between his legs.

An investigation into Anthony's death led to the arrest of defendant, Christian Munoz. On July 15, 2005, he was charged with murder in the first degree and robbery in the first degree. A jury trial commenced on June 5, 2006. The State called a number of witnesses to provide circumstantial evidence to show that Christian shot Anthony during a drug transaction. One witness was the defendant's girlfriend at the time of the killing, Martha Arambul.

Martha testified she informed her own attorney that she knew one of the jurors. The attorney informed the court and counsel for the prosecution and defense. The court and each attorney questioned the juror about her familiarity with Martha outside the presence of the other jurors. She admitted that she knew Martha because several years prior to the trial, they lived in the same mobile home park. They were not friends but had gone to the same school and would see each other in the neighborhood. They did interact socially at one point when both helped plan and participate in a common friend's birthday celebration. The juror had not seen Martha in a couple of years. Asked how she thought of Martha as a person, the juror stated that Martha was a "very liberal person" and "likes freedom." She stated that Martha was not the type of person she would hang out with. She advised the court that she was listening to the testimony with an open mind, putting aside whatever she previously knew about Martha.

After the questioning, outside the presence of all jurors, the State moved to have the juror excused from the panel and replaced with an alternate. It argued that the juror's answers to questions showed she had personal beliefs about Martha that were irrelevant to the determination of witness credibility and

that the juror might share that information with other jurors. It argued that the juror had preset judgments about the witness and needed to be replaced to ensure a fair trial.

The defense objected to the motion on several grounds. It argued the prosecution knew the defendant was Hispanic and Hispanic witnesses would testify. The State chose to not ask questions in voir dire as to whether jurors knew any of the potential witnesses.

The defendant contended that the situation implicated the principles of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986). Defendant argued that since the juror and defendant were both Hispanic, if the State had used a peremptory strike to eliminate the juror during voir dire, a *Batson* hearing would have been required.

The court dismissed the juror finding she expressed an opinion as to the character of a key witness, based upon prior personal contact with the witness. It further concluded there was not a *Batson* problem with the dismissal of the juror because the reason for the dismissal was unrelated to the national origin of the juror or the defendant. The juror was replaced by an alternate and the trial proceeded. The jury convicted the defendant on both counts.

The defendant filed a motion for a new trial, renewing his objection to the removal of the juror, and contending the verdict was contrary to the law and that the weight of the evidence was not sufficient to support a conviction. The court heard arguments and overruled the motion. The defendant appeals.

II. SCOPE & STANDARD OF REVIEW. Exclusion of a juror solely for race-based reasons implicates the equal protection clause of the United States Constitution. *Batson*, 476 U.S. at 89, 106 S. Ct. at 1719, 90 L. Ed. 2d at 83; *State v. Griffin*, 564 N.W.2d 370, 375 (Iowa 1997). Our review is, therefore, de novo. *State v. Keys*, 535 N.W.2d 783, 785 (Iowa Ct. App. 1995).

We review a district court's ruling on a motion for a new trial for an abuse of discretion. *State v. Reeves*, 670 N.W.2d 199, 202 (2003). A district court's discretion in making its ruling and determining whether the verdict effectuates justice is broad, but not unlimited. Iowa R. App. P. 6.14(6)(*c*). To establish an abuse, one must show that the court exercised its discretion "'on grounds or for reasons clearly untenable or to an extent clearly unreasonable.'" *State v. Atley*, 564 N.W.2d 817, 821 (Iowa 1997) (quoting *State v. Blackwell*, 238 N.W.2d 131, 138 (Iowa 1976)).

III. DISMISSAL OF JUROR. Defendant contends the district court erred in dismissing a juror. He argues the court should have conducted a *Batson* hearing to determine whether the State sought to remove the juror due to her race. The State counters that the juror was removed for cause when it discovered the juror knew a key witness. Defendant counters that, after a jury is sworn in, this is not a legitimate reason to remove a juror since the State could have inquired about whether jurors knew any of the witnesses during voir dire. Since there was no legitimate cause to remove the juror after she was sworn in, Munoz alleges the State sought to remove the juror because of her race.

Iowa Rule of Criminal Procedure 2.18 outlines the process for selecting a jury. The prosecution and defense ask questions to prospective jurors and exclude individuals until twelve jurors remain and are sworn in. *See* Iowa R. Crim. P. 2.18. The questioning process, voir dire, assists counsel in bringing challenges for cause and allows counsel to discover information that may be useful in selecting individuals to strike through peremptory challenges. *State v. Tubbs*, 690 N.W.2d 911, 915 (Iowa 2005). Any known objections or those that could have been ascertained through questioning are waived if no challenge is made before the jury is sworn in. *State v. Johnson*, 445 N.W.2d 337, 340 (Iowa 1989); *State v. Cuevas*, 288 N.W.2d 525, 534 (Iowa 1980); *State v. Moore*, 469 N.W.2d 269, 270 (Iowa Ct. App. 1991).

In *State v. Moore*, 469 N.W.2d 269, 270 (Iowa Ct. App. 1991), after the jury was sworn in, a juror informed the court that she was related to the defendant by marriage and acquainted with the defendant's mother. *Moore*, 469 N.W.2d at 270. The court replaced this juror with an alternate. *Id.* The defendant appealed claiming the removal of the juror violated *Batson*. *Id.* The court first evaluated whether the State waived any challenges to the juror's qualifications since the jury had already been sworn in. *Id.* It determined there had been no waiver of the challenge because during voir dire the prosecutor asked if any prospective jurors knew or were related to the defendant and no one replied. *Id.* Since the State did attempt to ascertain this information during voir dire and the juror failed to disclose it, there was no waiver.

In the present case, it seems the potential jurors were given the names of witnesses but this particular juror did not know Martha's last name. The juror only realized she knew Martha when Martha entered the courtroom to testify. It appears the State did attempt to discover this information prior to the jury being sworn in by asking jurors whether they knew witnesses by name. The State's objection to the juror's qualifications was therefore not waived and we turn to defendant's claim that removal of the juror was in violation of *Batson*. Munoz contends he was entitled to an evidentiary hearing to show the State sought to strike the juror due to her race.

"In *Batson* the United States Supreme Court held that the equal protection clause of the fourteenth amendment prevents a prosecutor from using peremptory strikes to challenge potential jurors 'solely on account of their race.'" *State v. Griffin*, 564 N.W.2d at 375 (quoting *Batson*, 476 U.S. at 89, 106 S. Ct. at 1719, 90 L. Ed. 2d at 83). There is a three-part analysis for determining whether a juror has been impermissibly excluded. *Batson*, 476 U.S. at 96-98, 106 S. Ct. at 1723-24, 90 L. Ed. 2d at 87-89. First, the defendant must establish a prima facie case of purposeful discrimination, showing that he is a member of the minority group and the prosecutor struck members of the jury pool based on their race. *Powers v. Ohio*, 499 U.S. 400, 416, 111 S. Ct. 1364, 1373, 113 L. Ed. 2d 411, 428-29 (1991); *Batson*, 476 U.S. at 96, 106 S. Ct. at 1723, 90 L. Ed. 2d at 87; *Griffin*, 564 N.W.2d at 375; *State v. Keys*, 535 N.W.2d 783, 785 (Iowa Ct. App. 1995). Next, the burden shifts to the State to articulate a race-neutral reason for challenging the juror. *Batson*, 476 U.S. at 97, 106 S. Ct. at 1723, 90

L. Ed. 2d at 88; *Griffin*, 564 N.W.2d at 375. Last, the trial court determines whether the defendant has established purposeful discrimination. *Batson*, 476 U.S. at 98, 106 S. Ct. at 1724, 90 L. Ed. 2d at 88-89.

In *Batson*, the Supreme Court declined "to formulate particular procedures to be followed upon a defendant's timely objection to a prosecutor's challenges." *Id.* at 99, 106 S. Ct. at 1724-25, 90 L. Ed. 2d at 89-90. The test set forth by the court was designed to require trial courts to be sensitive to the racially discriminatory use of peremptory challenges, enforce the mandate of equal protection, and further the ends of justice. *See id.* at 99, 106 S. Ct. at 1724, 90 L. Ed. 2d at 89. In *Batson*, the trial court flatly rejected the defendant's objection that the prosecution was using peremptory strikes to discriminate without requiring the prosecutor to give any explanation for the strikes. *Id.* at 100, 106 S. Ct. at 1725, 90 L. Ed. 2d at 90. The court therefore remanded the case for further proceedings allowing the trial court to apply the required analysis. *Id.* at 100, 106 S. Ct. at 1725, 90 L. Ed. 2d at 90.

In some instances, a trial court's *Batson* analysis may be sufficient, even when it fails to specifically make reference to the *Batson* test. "While it is preferable for trial courts to make express findings in connection with *Batson* challenges, failure to do so is not necessarily fatal to the court's ruling." *State v. Veal*, 564 N.W.2d 797, 807 (Iowa 1997) (*overruled in part on other grounds by State v. Hallum*, 585 N.W.2d 249, 253 (Iowa 1998)). In *Veal*, after the prosecutor gave race-neutral reasons for striking prospective minority jurors, the trial court overruled the defendant's objections on equal protection grounds. *Id.* On

appeal, the defendant argued the trial court did not properly apply the *Batson* test. *Id.* Our supreme court determined "the trial court impliedly found the prosecution's explanation credible when it overruled Veal's objections." *Id.*

In the case at hand, when the parties discovered the juror knew a key witness, the court held a hearing outside the presence of the jury to resolve the issue. The court and each attorney questioned the juror and the State moved to have the juror excused. It stated in part,

> The reason for [the motion], Your Honor, is that when we began the jury selection process, we all wanted to select a group of jurors that knew nothing about this case and knew nothing about the witnesses in this case. Unfortunately, this juror did not know the last name of Martha Arambul.
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> But she has provided us with information about her personal beliefs with regards to this particular witness. She described her as being more "liberal" than I am. She described her as being more of a partier than I am.

The defense objected to the motion contending, among other things, that removal of the juror would raise *Batson* concerns.

The court overruled the objection, stating,

> This juror has expressed an opinion as to the character of a witness. This is a key witness in this trial. She has based her opinion on this witness's character upon prior personal contact with the witness. She saw her frequently several years ago when they lived in the same mobile home park. She knew which lot the witness lived in and how that was situated compared to the lot where she lived in. They attended a party together, participated in a dance together, and practiced for that dance together.
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> . . . .
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> I can see that it does not have a relationship to the national origin of the juror, except as to the party celebration was a Hispanic cultural celebration that they attended together. But certainly I do not feel that there would be a *Batson* problem with the dismissal of this juror.

> And I think that dismissal is appropriate, given her opinions as to the character of the witness. Even though she believes that she can set this aside, I do not believe her statement that she can set it aside. And I'm going to grant the State's motion to excuse this [juror].

We find the court's ruling impliedly applied the *Batson* analysis and determined the State had a race-neutral reason to strike the juror. The court's ruling, while not mentioning the *Batson* steps, effectively determined that Munoz did not show that the State sought the juror's removal because of her race. The trial court's determination of whether purposeful discrimination occurred largely depends on its evaluation of credibility, and we therefore give those findings great deference. *Griffin*, 564 N.W.2d at 375-76.

IV MOTION FOR A NEW TRIAL. Defendant next contends the court erred by applying an incorrect legal standard when ruling on his motion for a new trial. Munoz moved for a new trial contending the verdict was contrary to law or evidence. *See* Iowa R. Crim. P. 2.24(2)(*b*)(6). He argues that the district court did not make an independent determination of whether the verdict was contrary to the evidence and instead merely determined whether the evidence was "legally sufficient."

In a motion for a new trial, "contrary to the evidence" means "contrary to the weight of the evidence." *Nguyen v. State*, 707 N.W.2d 317, 327 (Iowa 2005). In *State v. Ellis*, 578 N.W.2d 655, 658-59 (Iowa 1998), the court discussed in depth the difference between the weight of the evidence and the sufficiency of the evidence.

> "[A] conviction rests upon insufficient evidence when, even after viewing the evidence in the light most favorable to the

> prosecution, no rational factfinder could have found the defendant guilty beyond a reasonable doubt. A reversal based on the weight of the evidence, on the other hand, draws the appellate court into questions of credibility. The "weight of the evidence" refers to "a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other."

Ellis, 578 N.W.2d at 658 (quoting *Tibbs v. Florida*, 457 U.S. 31, 37-38, 102 S. Ct. 2211, 2216, 72 L. Ed. 2d 652, 658 (1982)).

We remanded this matter to the district court to consider the motion for a new trial using the weight of the evidence standard. In response the district court amended its original ruling and stated, "The Court finds the verdict rendered by the jury was not contrary to the weight of the evidence." We affirm on this issue. We find no error in the court's rulings in response to the defense's *Batson* challenge and motion for a new trial and therefore affirm Munoz's convictions.

AFFIRMED.