UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2751

September Term, 2015

WILLIE EDWARD McKIE

V.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E. Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 1, 2016

Willie Edward McKie, appellant, was convicted by a jury, in the Circuit Court for Harford County, of possession of cocaine and possession with intent to distribute cocaine. His sole contention, on appeal, is that the trial court erred in denying his *Batson* challenge during jury selection because the State, he claims, failed to provide a specific race-neutral explanation for its peremptory strike of Juror No. 54 – the first African-American person the State struck, but the sole remaining African-American person in the pool of potential jurors.

Striking a potential juror solely on account of his or her race, gender, or ethnicity violates the Equal Protection Clause of the Fourteenth Amendment to the United States' Constitution. *Batson v. Kentucky*, 476 U.S. 79, 89 (1986). Recently, the Court of Appeals, in *Ray-Simmons v. State*, 446 Md. 429, 435 (2016), discussed the "three-step process" a court undertakes when a party raises a *Batson* challenge. First, the opponent of the strike "must make a prima facie showing – produce some evidence – that the opposing party's peremptory challenge to a prospective juror was exercised on one or more of the constitutionally prohibited bases." *Id.* at 436. The prima facie showing is not an "onerous burden" and may be satisfied where "'the totality of the relevant facts gives rise to an inference of discriminatory purpose.'" *Id.* (quoting *Johnson v. California,* 545 U.S. 162, 168 (2005)).

"If the objecting party satisfies that preliminary burden, the court proceeds to step two, at which 'the burden of production shifts to the proponent of the strike to come forward with' an explanation that is neutral as to race, gender, and ethnicity." *Id.* (quoting *Purkett v. Elem,* 514 U.S. 765, 767 (1995)). Although the proponent's explanation must

be neutral, "'it does not have to be persuasive or plausible.'" *Id.* (quoting *Edmonds v. State*, 372 Md. 314, 330 (2002)). Thus, "'[a]ny reason offered will be deemed race-neutral unless a discriminatory intent is inherent in the explanation.'" *Id.* But the "proponent of the strike cannot succeed at step two 'by merely denying that he had a discriminatory motive or by merely affirming his good faith.'" *Id.* (quoting *Purkett, supra,* 514 U.S. at 769)). Rather, "the striking party 'must give a clear and reasonably specific explanation of his legitimate reasons for exercising the challenge.'" *Id.* at 436-437 (quoting *Miller-El v. Dretke,* 545 U.S. 231, 239 (2005)).

If the striking party offers a neutral explanation, the court proceeds to step three, at which point "the court must decide 'whether the opponent of the strike has proved purposeful racial discrimination.'" *Id.* at 437 (quoting *Purkett,* 514 U.S. at 767). In making this determination, the trial court evaluates, among other things, whether the striking party's "'demeanor belies a discriminatory intent[.]'" *Id.* (quoting *Snyder v. Louisiana,* 552 U.S. 472, 477 (2008)). Because the trial court's evaluation of a *Batson* challenge is essentially a factual inquiry, its decision is afforded great deference and will not be reversed unless clearly erroneous. *Id. See also Elliot v. State*, 185 Md. App. 692, 714 (2009) (citations omitted).

In this case, the defense exercised a *Batson* challenge to the State's striking of Juror No. 54, noting that "we have lost every African-American." The prosecutor initially responded that this was the State's first strike of an African-American and thus not a "pattern," whereas the defense, as the court observed, had, in fact, previously struck an

African-American female. The prosecutor then offered an explanation for the strike, stating:

> Certainly this isn't a pattern. I know very little about him. He says he is a cook. That's all I know. Like I said, that was the main reason. Plus I wanted to get to some of the jurors that were beneath him. With that, I would be out of strikes anyway. Like I said, it has to be a race neutral reason. Race didn't come into play. Again, there has been no establishment of a pattern.[1]

The trial court concluded that the State had provided "a non-racial based" explanation and allowed the strike. By doing so, the court presumably considered whether the prosecutor's "demeanor belie[d] a discriminatory intent" and found none.

Appellant, however, relies on *Ray-Simmons* for the proposition that "a desire to replace a juror with another unspecified member of the panel does not explain in any way, race-neutral or otherwise, the prosecutor's reasons for striking that particular juror." 446 Md. at 444. But, in *Ray-Simmons*, the prosecutor explained his striking of an African-American male by stating that he intended to replace that African-American male juror with another African-American male juror, a justification the Court of Appeals considered to be both race and gender-based and thus, a violation of *Batson*. *Id*. at 445. Here, however, the prosecutor denied that race was a motivating factor, explaining that "[r]ace didn't come into play," but that he struck the juror in question because he "wanted to get to some of the

[1] The prosecutor, mistakenly, asserted that *Batson v. Kentucky* requires that there be a "pattern" of race-based strikes. A "pattern" is but one example of a circumstance that "might give rise to an inference of discrimination." *Batson,* 476 U.S. at 96-97.

jurors that were beneath him," which, in *Harley v. State*, 341 Md. 395 (1996), the Court of Appeals determined to be a permissible race-neutral consideration.

Furthermore, the instant case is distinguishable from *Ray-Simmons*, as the prosecutor provided additional race-neutral reasons for striking Juror No. 54, beyond the desire to seat a prospective juror further down the venire. Here, the prosecutor stated that the "main reason" for the strike was that the potential juror is "a cook" and that he "knew very little about him." And, as we have previously noted, one's occupation can serve as a racially-neutral reason for a peremptory strike. *See Stanley v. State*, 85 Md. App. 92, 103-104 (1990). Moreover, as long as the "legitimate reason" for the strike is not based on race, gender or ethnicity, it is acceptable. *See Purkett*, 514 U.S. at 769 (holding that a prosecutor's explanation that he struck a potential juror because "he had long, unkempt hair, a mustache, and a beard" was race neutral, as beards and long hair were not unique to any particular race). In assessing "whether the reason offered for a peremptory strike is valid or satisfactory," the Court of Appeals has suggested that, "the questions before the trial judge are whether the reason is a 'pretext[ ] for purposeful discrimination' and whether the reason itself is one 'that does not deny equal protection.'" *Harley, supra,* 341 Md. at 402 (quoting *Purkett*, 514 U.S. at 768). As noted, "[a]ny reason offered will be deemed race-neutral unless a discriminatory intent is inherent in the explanation." *Edmonds, supra,* 372 Md. at 330.

In sum, the trial court accepted the prosecutor's explanation for the strike, having found it to be both race and gender-neutral. Accordingly, we affirm.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.