

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

No. 3-09-0237

Order filed January 5, 2011

---

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	No. 06-CF-381
DONALD MOTLEY,	)	Honorable
Defendant-Appellant.	)	Carla Alessio-Policandriotes, Judge Presiding.

---

JUSTICE WRIGHT delivered the judgment of the court.  
Justices O'Brien and Schmidt concurred in the judgment.

---

**ORDER**

*Held:* Defendant did not make a *prima facie* showing of discrimination under *Batson*, thus the trial court's ruling was not clearly erroneous. The trial court's exclusion of defendant's direct examination testimony created no prejudice because defendant was able to present the same evidence during redirect examination.

The Will County grand jury issued a two-count indictment against codefendants Donald R. Motley (defendant) and Jerod Milian (Milian) charging each man with two counts of first degree murder. At the close of the codefendants' joint jury trial, the jury found both Milian and

defendant guilty of first degree murder. Defendant filed a timely appeal alleging that the trial judge erred in finding that he had not made a *prima facie* showing that a *Batson* violation occurred during jury selection. Additionally, defendant challenges the trial court's ruling barring defendant's direct examination testimony that he believed the victim had a gun to support a self-defense argument. We affirm.

## BACKGROUND

The Will County grand jury issued a two-count indictment against co-defendants Donald R. Motley (defendant) and Jerod Milian (Milian), jointly charging them with two counts of first degree murder. Count I alleged that defendant and Milian committed first degree murder on or about February 11, 2006, in that they, "without lawful justification and with the intent to kill Steven Jenkins, shot Steven Jenkins with a handgun, thereby causing the death of Stevens Jenkins," in violation of 720 ILCS 5/9-1(a)(1) (West 2008). Count II alleged that defendant and Milian, "without lawful justification, shot Steven Jenkins with a handgun, knowing such act created a strong probability of death or great bodily harm to Steven Jenkins, thereby causing the death of Steven Jenkins" in violation of 720 ILCS 5/9-1(a)(2) (West 2008).

Defendant retained private counsel, Oliver and Brandon Spurlock. Both defendants' attorneys filed a motion to sever defendants' jury trials. The court denied the severance and ruled that the codefendants' defenses were not antagonistic, but barred all potentially prejudicial testimony regarding a jailhouse conversation by defendant.

Prior to the jury trial, on August 4, 2008, the State filed a motion *in limine* asking the court to prohibit defendant from arguing self-defense. Based upon pretrial discovery, the State contended that, as a matter of law, defendant failed to tender sufficient evidence during discovery

to go forward with the affirmative defense of self-defense. Additionally, the State's motion asked the court to bar defendant from admitting character evidence of Jenkin's violent tendencies, known to defendant, which affected defendant's perceptions of and reactions to the victim's behavior at the time of the shooting. The court, on August 25, 2008, reserved ruling on this matter until evidence was presented during the trial.

The jury trial began on August 25, 2008. During jury selection, the State struck the juror referred to in the transcripts as the juror in "seat number 20." Defendant's attorneys raised a *Batson* objection (*Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986)), because this juror was the only African-American male on the jury venire. The record is unclear regarding the questioning of this specific juror because the transcripts only show the name of the jurors being questioned during *voir dire* rather than the seat number. The common law record shows the names and juror numbers of the panel, but not the seat numbers. Therefore, this court cannot determine the questions and responses from the juror in "seat number 20."

The following discussion occurred between the court and defendant's counsel prior to the court's decision overruling defendant's objection:

"MR. O. SPURLOCK [Defendant's counsel]: We make a *Batson* objection. That is the only African American male in the whole venire and the State is striking him.

THE COURT: That is not for *Batson*.

MR. O. SPURLOCK: We ask in the spirit of pure fairness with two African American males on trial there is only one on the venire that the State not be allowed to strike the one person.

THE COURT: That's not Batson. That's not enough to raise it, gentlemen.

MR. O. SPURLOCK: We're making the objection. We hope the record will reflect it.

THE COURT: She's typing.

MR. GUZMAN [prosecutor]: Put on the record and we will go ahead and establish our reasoning.

THE COURT: If you want to. You don't have to.

MR. GUZMAN: I will reserve it at this point. I agree with the Court. \*\*\*

THE COURT: What race is your victim?

MR. GUZMAN: He is a mixed race, your Honor.

THE COURT: Of what?

MR. GUZMAN: Black and white.

THE COURT: \*\*\* Mr. Spurlock, you know you have to have more than the fact that the State strikes one African American person to even raise the issue of Batson. Do you have anything else, sir.?

MR. O. SPURLOCK: No, Judge, but Batson was a new law and maybe we'll make another one."

Following opening statements, the State called detective Stephen Diehl to testify. He stated that he worked as a Joliet police patrol officer on February 11, 2006. On that date, he traveled to 206 North Broadway in Joliet, Illinois, at 1:50 a.m., to investigate a disturbance. Officer Diehl said, when he arrived, there was a crowd of at least 50 people in the front yard area and "there was a lot of anger, a lot of yelling." Several other officers also responded, and the

police cleared the crowd out without further incident and left that location.

Diehl said he was dispatched back to that same location a second time. Upon arrival the second time, he saw four or five men yelling and standing over a body. Diehl said he saw a male, lying face down partially on the street and curb, with several blood stains on his body. At the scene, Diehl spoke to Marcus Edwards, who appeared very distraught as he told Diehl what happened that evening. Another police sergeant then took Edwards to the police station for further questioning.

John Ciarlette testified that he was a paramedic called to 206 North Broadway in Joliet on February 11, 2006, around 2:30 a.m. At that location, Ciarlette saw a person lying face down in the road with several people standing around him. The people at the scene identified the victim as Steven Jenkins (Jenkins). Ciarlette observed two bullet wounds on Jenkins' back when they rolled him over to place him on a backboard. Jenkins' respirations were low at that time, so the paramedics transported him to St. Joseph's hospital.

Melissa Jenkins, the mother of Steven Jenkins, testified that she last spoke to her son by telephone during the evening hours of Friday, February 10, 2006. At around 3:30 a.m., on February 11, 2006, Melissa Jenkins' oldest sister and niece arrived at Melissa's residence to tell her that her son was injured and in the hospital. Melissa Jenkins went to the hospital and saw her son briefly before the hospital personnel took him to surgery. Later, a doctor spoke with Melissa Jenkins to tell her that her son died during surgery.

Sergeant Brad Dubs stated he was an evidence technician with the Joliet Police Department on February 11, 2006. He said he recovered six, nine-millimeter Luger shell casings from the scene at 206 North Broadway. Dubs also documented and photographed other items

recovered from the crime scene including a batting glove, a baseball cap, a knit glove, two white t-shirts, and a Motorola cell phone.

Kevin Mitzelfelt testified he resided at 206 Broadway in Joliet on February 11, 2006, and, at that time, he was a student at the University of St. Francis. He lived with four or five roommates at the time, including defendant and Milian. Mitzelfelt said they decided to have a party on February 10, 2006, and his duty that evening was to monitor the door, pat down the guests, and collect money from people. Mitzelfelt recalled patting Jenkins down that evening and he did not find a weapon on Jenkins.

Mitzelfelt said, when the party was ending, he heard some gunshots outside of the house and he went upstairs to his room. He testified that Jenkins came into his room waving a gun and Mitzelfelt asked Jenkins to leave. Jenkins then went upstairs, returned to Mitzelfelt's room, and told Mitzelfelt that he left the gun upstairs, hidden in a rolled-up carpet. Mitzelfelt testified he asked Jenkins to get his gun and leave, but Jenkins left without going upstairs to retrieve his gun.

Mitzelfelt stated that he told defendant where Jenkins said he hid the gun because the police were at the residence. According to Mitzelfelt, defendant went upstairs and, when he returned, defendant was holding Jenkins' gun in his hand. Mitzelfelt said defendant told him he did not want to return the gun to Jenkins due to concerns about what Jenkins might do with the gun. When Jenkins returned to the house, Mitzelfelt overheard a conversation where defendant told Jenkins he did not know anything about the gun. Ten to fifteen minutes later, Mitzelfelt said he heard five gunshots outside of the residence. Mitzelfelt said he went outside, after the ambulance arrived, and he saw Jenkins lying on the ground. Mitzelfelt stated Jenkins was drunk when he arrived, and continued drinking and harassing people while at the party. Mitzelfelt

testified that, at some point while he remained in his room, he heard the argument between defendant and Jenkins regarding the gun.

Dr. Bryan Mitchell testified that he was the forensic pathologist who conducted the autopsy on Jenkins. Dr. Mitchell observed that Jenkins had five gunshot wounds on his body. Dr. Mitchell said the fatal wound occurred when a bullet entered the middle of Jenkins' back, fractured a bone in his spine, passed through the right lung, penetrated the heart, and exited the middle of Jenkins' chest. Dr. Mitchell also stated that the toxicology report showed Jenkins' blood alcohol level at 0.117 percent.

Marcus Edwards testified Jenkins was his best friend. They arrived at the party at 206 Broadway together around 10:30 p.m. Around 1:30 a.m., Edwards said the residents told them the party was over and an altercation occurred outside of the residence. Edwards observed Jenkins come out of the house and fire a gun into the air approximately seven times, ending the disturbance. According to Edwards, Jenkins "ran in the house and put the gun up." When the police arrived, Edwards watched Jenkins talk to the police officers for about five minutes. Jenkins then got into Edwards' car and they drove away.

Later, Jenkins told Edwards he wanted to go back to get his gun at defendant's house. Around 2:00 a.m., they arrived at the Broadway house and Jenkins went inside the residence for around 10 minutes. Edwards testified that four black men, including Milian and defendant, came out of the residence and "huddled" in front of the house near his car. Edwards said he saw "a gun come out" and it was passed to defendant. Edwards stated he observed defendant load the gun, cock the gun to put a bullet in the chamber, and then put the gun in his jacket pocket.

Next, Edwards saw Jenkins walk out of the residence with his phone in his hand and he

heard Jenkins ask defendant if he wanted the phone numbers of the other people involved in the earlier altercation. Defendant said he did not want phone numbers. According to Edwards, defendant then took the gun out of his pocket, and Jenkins said, "Do what you've got to do." Defendant pointed the gun at Jenkins, Jenkins turned and ran, and defendant shot Jenkins "about five times."

Next, Edwards said he saw defendant walk up to Jenkins, as he was lying in the street, and shoot him at "pointblank" range. Defendant then ran and entered a white Intrepid vehicle, along with the other men who were in the "huddle," and the vehicle left the area. Edwards left his car and approached Jenkins. Edwards said he identified defendant as the shooter from a lineup.

Charles Bolden testified for the State. Bolden said he arrived at the party after 10:00 p.m. on February 10, 2006. Around 1:30 a.m., Milian and defendant told everyone to leave, someone made a smart remark, and Milian and another individual began to argue. Bolden went outside and observed Milian and another individual arguing along with at least ten other people, including defendant and Jenkins. During this argument, Bolden heard someone question Jenkins about whether he was "with us or whether he was with the other men that were at the party." Jenkins began shooting his gun into the air and ground. Someone threw a punch that struck Milian, who stumbled backward, and Bolden "caught the end of it" causing his left ear to bleed and his face to bruise.

After police left the scene, Bolden said he went back into the house to Milian's room to clean up his bloodied ear. At that time, Bolden overheard defendant tell Milian that Jenkins left his gun at the house and defendant sounded "very angry and upset." Bolden heard defendant and

Milian say, “[T]his shit ain’t right,” and that they had to “do something about this.” They also made comments that they had to find somebody to “get him [Jenkins] back.” Bolden clarified, “It was comments more along the line they wanted to [*sic.*] revenge.”

Next, Bolden overheard a telephone conversation between defendant and James Marshall. Bolden heard defendant say something about meeting up at Marshall’s house so they could “do harm to Jenkins.” Bolden said he was still upstairs with Milian and defendant when Jenkins returned to the residence.

Bolden testified, when he walked back to the residence, Milian, defendant, and Jenkins were outside arguing about whether Jenkins had anything to do with the fight. Bolden said, when Jenkins went back in the house to look for his gun, he observed Milian outside with a gun. Bolden saw Milian hand the gun to defendant, at defendant’s request, who cocked the gun and put it to his side. Bolden said he heard defendant say he was going to shoot Jenkins.

When Jenkins came out of the house, Bolden testified an argument continued between Milian and Jenkins. Then, Bolden saw Jenkins start walking away from defendant toward his car, with nothing in his hands, and defendant pulled up the gun and fired at least four shots at Jenkins. Bolden saw Jenkins get hit, gasp for air, and then fall to the ground. After Jenkins fell, Bolden said he heard Milian tell defendant to shoot Jenkins again. Bolden then observed defendant go over to Jenkins and shoot him again at “pointblank” range with the gun.

Bolden testified that defendant threw the gun to Bolden and told Bolden to get out of the area. Bolden said he wrapped the gun in the towel he was still holding and ran toward the St. Francis University dorms. When a squad car passed him, Bolden testified that he panicked and threw the gun into a nearby foundation at a construction site. Bolden then ran back to his dorm

room and called his father. Bolden said he called the police on February 14, 2006, to tell them about the shooting and show them the location of the gun. Bolden testified that he was granted immunity to testify in the instant case.

James Marshall testified that he works as a crisis counselor for adolescents. Marshall told the court that, while he attended the University of St. Francis in 2006, he resided with several individuals including defendant, Milian, Jenkins, and Mitzelfelt. On February 10, 2006, Marshall said he went to the party at 206 Broadway where defendant and Milian resided.

He testified that, as people were leaving the party, Marshall heard Milian talk about taking “this” outside. Marshall testified that he went inside to grab his coat and, when he went back outside, he observed some unknown guy strike Milian in the face. Marshall said Jenkins came out of the house shooting a gun into the air. At that point, people started running and leaving the area. The police arrived and “broke everything up” and everybody went home. Marshall stated that he left at that time, too, with Dominique Allen (Allen).

Sometime after Marshall returned home, defendant called Marshall and said Jenkins had returned to the house at 206 Broadway. Marshall went back to the Broadway residence with Allen where he observed defendant, Milian, and Bolden standing in front of the house and Marcus, a friend of Jenkins, sitting in his car in front of the house. Marshall said he got out of his car and stood outside with them.

Marshall testified he heard defendant tell Milian that he wanted the gun because he was going to shoot Jenkins in the back of his head when he came back out of the house. According to Marshall, Milian hesitated for a moment and then handed the gun to defendant. Defendant cocked the gun and put it in his pocket. Jenkins then walked out of the house and up to Marshall

and the other individuals. Milian said something to Jenkins to the effect of, “[W]e don’t mess with you no more, stuff like that.” Jenkins then threw his hands up in the air, turned, and walked away toward Marcus Edwards’ car when defendant took out the gun and shot Jenkins five times.

Marshall observed Jenkins fall to the ground. Marshall said Milian went up to Jenkins’ body, kicked Jenkins in his side, and said, “[S]hoot this mother fucker and make sure this nigger is dead. Shoot him again.” Defendant then fired another shot and Marshall said he and Allen ran to his car. As Marshall was driving away, defendant got into Marshall’s vehicle and did not have a gun at that time.

Marshall said that, while driving away, defendant said he had to shoot Jenkins before he did something to someone else and that he was praying God will forgive him for what he did. Marshall stated that defendant had a smaller gun with him in the car and defendant threw that weapon out of the vehicle while they were driving. Marshall testified that the State agreed to give him immunity for his testimony in this trial.

After the State rested, defendant testified in his own defense. He stated he met Jenkins in the fall of 2005. Defendant said he, Mitzelfelt, and Milian had recently moved to 206 Broadway. Prior to the party on February 10, 2006, defendant said he and his roommates agreed they did not want Jenkins at the party and that they only wanted the party open to college students. Defendant stated he did not arrive home until 11:30 p.m., after the party started, and Jenkins was already at the party.

At about 1:20 a.m., Milian told everyone to leave and several people complained about the party ending. According to defendant, once the party moved outside, some of the people started yelling and milling around the street and the crowd divided into two groups: St. Francis

students and those who did not attend St. Francis. One of the men from the second group started pacing and pointing his finger at defendant and Jenkins pulled out his gun and fired it into the air several times.

Defendant said Jenkins ran away after he fired the shots into the air. When people cleared, Milian had a separate .22 caliber gun in his hand. Defendant said, when he heard sirens, he handed that gun to Mitzelfelt. When police arrived, defendant told them that the people who shot the gun and struck Milian were no longer present, and the police left the area.

Defendant said he went upstairs in his house where Mitzelfelt handed him the .22 caliber gun and told him that Jenkins hid another gun upstairs. Defendant said he retrieved Jenkins' gun and gave it to Milian, who placed the gun in his pocket. Defendant said James Marshall called him and he denied telling Marshall that he was going to kill Jenkins. Defendant said he asked Marshall to return to their house because Jenkins hid the gun in their house and they were upset about that. Defendant said he did not know that Marshall would be bringing Jenkins with him to the house.

Fifteen to twenty minutes later, defendant said he saw Jenkins getting out of a car. Defendant said he was afraid to give the gun back to Jenkins because he was afraid of what Jenkins would do with it. Defendant said Jenkins entered the house and stopped him on the stairs to ask for his gun. Defendant stated he told Jenkins he did not have his gun, and Jenkins replied, "I'm telling you, if I don't get my gun everybody in this house ain't going to be living in this house." Defendant again told Jenkins that he did not have Jenkins' gun and walked upstairs to Milian's room.

In Milian's room, defendant saw Milian give car keys to Bolden and tell him to "pull his

car around.” According to defendant, Bolden then left and Jenkins walked into the bedroom. Jenkins asked Milian what happened to his eye and defendant heard Milian say, “My eye [is] messed up. You know what you did.” Defendant said Jenkins responded saying, “Let me know who hit you in the eye and everything and they won’t be living.” Defendant testified that he told Jenkins, “It’s over, Steve, ” and defendant and Milian then went outside.

Defendant testified that he told Milian to give him the gun and defendant grabbed it with his left hand and put it in his left pocket. Defendant denied cocking the gun at that time. When Jenkins approached them, defendant said Milian and Marshall both told Jenkins that they were not dealing with him anymore. Marshall then yelled at Jenkins saying that this all happened because of him. Defendant testified that Jenkins got mad and started pointing and yelling at everyone in a threatening manner. Defendant said Jenkins pointed at him and Allen and said, “I’m going to F you up.”

Jenkins stepped over to Milian and they exchanged words, but defendant could not hear what they said. Defendant said Jenkins looked like he was “being aggressive” with Milian. Defendant stated he pushed Milian away from Jenkins and, when Jenkins turned and took a step toward them, defendant pulled out the gun. Defendant explained that Jenkins dipped in a way “as if he was making a move.” Defendant clarified on cross examination that, when Jenkins dipped, he turned away from defendant. At that point, defendant stated he raised the gun toward Jenkins and pulled the trigger a couple of times. Defendant said everything happened very quickly. Defendant testified he saw Jenkins fall to the ground, but he did not stand above Jenkins and fire another bullet into him.

Defendant testified that he felt afraid when Jenkins said he was going to “F” them up.

The record contains the following exchange:

“Q. When you saw [Jenkins] turn and make that dip how did you feel?

A. At the time I didn’t know what he was going to do. I mean, he could have pulled a gun or --

MR. GUZMAN: Objection, your Honor.

THE COURT: Sustained.

Q. The question was how did you feel?

A. I was scared.

Q. Why did you shoot him?

A. Because I didn’t know what he was going to do. I thought he was either going to pull a gun or run to the car to get a gun.

MR. GUZMAN: Objection.

THE COURT: The portion of his testimony after “I was scared” is stricken and will not be considered by the jury.”

During redirect examination of defendant, the following testimony occurred:

“Q. [Motley], at the time [Jenkins] pointed the finger at you and said I’m going to “F” you up, what were you thinking at the time?

A. At the time when he said that, I had the mindset of what Steve Jenkins was capable of. I didn’t know what he was going to do at the time, but I was afraid.

\* \* \*

Q. What did you think he was going to do?

A. I though he possibly had another firearm which - -“

The State objected at this point and the court overruled the objection. Defendant testified he then threw the gun to Bolden who grabbed it and took off running.

Defendant did not call any other witnesses to testify. After admonishments, Milian elected not to testify or present evidence in his own defense. During closing arguments, defendant's counsel argued:

“[Jenkins'] behavior precipitated the events that happened one after the other. Yes, [defendant] was afraid. He had a right to feel afraid. No, he didn't see a .25 caliber on the man. But we know [Jenkins] either had it in the pocket or maybe it was in Marcus Edwards' car. \*\*\*

\*\*\* But when [Jenkins] looks at you and points his finger and says, 'I'm going to F you up,' I think anybody would be scared. Because you know what he had and he's acting like he's got another one.

\* \* \*

Where is [Jenkins] going? What's he got in his hand? They found this on the ground. They said he had this in his hand. In that split second is it reasonable for [defendant] to mistake that for a gun, in that split second, in that moment in time? Yes, it was. In that moment in time [defendant] thought he had another gun. In that moment in time he reacted with justification.”

On September 4, 2008, at the close of the case, the jury found both Milian and defendant guilty of murder. Defendant filed a “Motion for a Judgment for Acquittal Notwithstanding the Verdict or in the Alternative for a New Trial,” on September 22, 2008. In this posttrial motion, defendant raised several errors that occurred during the trial, including the *Batson* issue and some

of the court's rulings limiting the defense's direct and cross-examination.

During the hearing on the posttrial motion, the State argued that there were other African-Americans on the venire that did not want to serve on the jury due to scheduling difficulties and that the defense agreed to excuse several African-Americans from the jury due to these difficulties. The court noted:

“Part of your recollection, I think, is accurate that there were multiple African-American individuals on the jury venire, that at least two were not selected by either the State and defense on joint requests as it relates to not having an objection for them not to serve based on their scheduling issues.”

By agreement, the court excused two African-American venirepersons for cause. The record does not contain any other evidence of the race or gender of the other members of the jury venire.

The court denied all posttrial motions on March 18, 2009. On the same day, the court then sentenced defendant to 45 years in the Illinois Department of Corrections for first degree murder. Defendant filed a timely appeal.

#### ANALYSIS

On appeal, defendant first contends that he should receive a new trial because the trial court erred in finding that defense counsel failed to make a *prima facie* case of discrimination on their *Batson* objection during jury selection. Additionally, defendant claims the trial court erred in refusing to allow defendant to testify that he thought Jenkins had a gun when he was shot, which went to state of mind at the time of the shooting, to support his defense of self-defense. The State maintains that defendant did not raise a *prima facie* case of discrimination during jury selection. Additionally, the State argues that reversible error did not occur as a result of the

court's rulings during defendant's testimony. We address each issue separately.

### I. Jury Selection

First, defendant contends that the trial judge erroneously denied his *Batson* objection (*Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986)) during jury selection. The *Batson* court outlined a three-step process for evaluating claims of discrimination, with the first step requiring defendant to make a *prima facie* showing that the prosecutor exercised peremptory challenges on the basis of race. *People v. Harris*, 206 Ill. 2d 1, 17 (2002). Once a *prima facie* case is made, the burden shifts to the prosecutor to articulate a race-neutral explanation for excusing the venirepersons in question. *Harris*, 206 Ill. 2d at 17. Because a trial court's decision regarding whether defendant established a *prima facie* case showing the State's discriminatory intent represents a finding of fact, the trial court's ruling is entitled to great deference and will be disturbed on appeal only if it is clearly erroneous. *Harris*, 206 Ill. 2d at 17. Additionally, a party asserting a *Batson* claim not only has the burden of proving a *prima facie* case, but must also preserve the record and, consequently, any ambiguities in the record will be construed against that party. *People v. Davis*, 233 Ill. 2d 244, 262 (2009).

Here, the State contends defendant presented an insufficient record for review. The record does not establish the races or genders of all of the individual jurors questioned, nor is it clear which questions and responses relate to the juror in "seat number 20." When the State exercised a preemptory challenge to excuse the juror in seat number 20, the defense objected because that juror was the only African American *male* venireperson. Objecting to the State's preemptory challenge, defendant's attorney asserted that, since both codefendants were African American males, the State should be barred from excusing this juror. The defense did not present a record

describing the racial makeup of the jury panel at that time, nor did it claim that the State had shown a pattern of striking jurors based upon race. The court observed that, based on existing case law, the State's request to strike a single, African American *male* juror does not meet the threshold for *Batson* concerns. Accordingly, the court found that the defense did not make a *prima facie* showing under *Batson* that required the State to further explain the basis for which it struck the juror in seat number 20.

During the posttrial motion hearing, the State, defense, and the court discussed that other African American females, who were part of the jury venire, were stricken either by the defense or with their concurrence for cause. The record is not clear whether other female African American jurors remained on the panel at the close of jury selection when the panel was sworn.

When raising a *Batson* claim, our supreme court has held:

“ Although it is true that a *prima facie* case can be established where the State excludes the only venireperson of a certain race [citation], it is not unconstitutional, without more, to strike one or more individuals of a certain race or ethnic origin from the jury. [Citations.]

Except for citing the ethnic origin of the peremptorily challenged venireperson, defense counsel pointed to no circumstances that could support a *prima facie* case of racially motivated discrimination. Defendant alleges no pattern to the State's use of peremptory challenges against Hispanic jurors which would show purposeful discrimination. \*\*\*

Moreover, due to the lack of an adequate record, we cannot conclude that the State used a disproportionate number of peremptory challenges by excluding this one

Hispanic venireperson from the jury. Furthermore, the level of Hispanic representation in the venire (one) as compared to the jury (none) does not indicate purposeful discrimination by the State. Since there was apparently only one Hispanic venireperson excluded (even that being unsubstantiated), we cannot analyze whether the excluded ‘group’ was a heterogeneous group sharing race as its only common characteristic. Finally, of significance is the fact that there is no allegation that this case involves an interracial crime in which any specific racial groups would be prone to show prejudice. *People v. Pasch*, 152 Ill. 2d 133, 163-64 (1992).

We agree that *Batson* requires more than a single juror challenge by the State, based on gender, to raise arguably racial considerations. In fact, defendant’s attorney candidly admitted to the court that he was hoping to make new case law, recognizing the current *Batson* holdings would not apply, asking the court to look at the gender in addition to the race of a jury venireperson. Based on the record available to this court, we conclude that the trial court’s finding that defendant did not make a *prima facie* showing under *Batson* was not clearly erroneous.

## II. Court’s Rulings During Defendant’s Testimony

In the instant case, defendant directs this court to review defendant’s direct examination testimony during which the court sustained the State’s objection and barred defendant from testifying that, at the time of the shooting, defendant thought Jenkins may have had a gun in his possession. Since defendant raised an affirmative defense of self defense, defendant argues that his mental state was material to his defense and the trial court committed reversible error when it barred him from testifying, during direct examination, to his state of mind at the time of the

shooting. See *People v. O'Keefe*, 209 Ill. App. 3d 744, 751-752 (1991); *People v. Christen*, 82 Ill. App. 3d 192, 194 (1980). Illinois courts have held that evidentiary rulings are within the sound discretion of the trial court and its decision will not be overturned absent a clear abuse of discretion. *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007).

The State points out that, although the court sustained its objection to that line of questioning during defendant's direct examination, the court allowed defendant to testify that he thought Jenkins might have had another firearm during his redirect examination. Based upon that evidence being allowed by the court, during closing arguments, the defense argued that defendant acted with justification in shooting Jenkins because he thought that Jenkins had another gun.

Even if the court's exclusion of defendant's testimony during direct examination was in error, defendant must show that this exclusion of evidence prejudiced defendant. *People v. Hawkins*, 296 Ill. App. 3d 830, 835 (1998). In *Hawkins*, the court held that the exclusion of evidence was not prejudicial to that defendant because he was able to present the same or substantially the same evidence during the trial, therefore, the error was harmless beyond a reasonable doubt. *Hawkins*, 296 Ill. App. 3d at 835. In the case at bar, during redirect examination and closing arguments, defendant was allowed to testify and argue that he believed Jenkins had another gun at the time of the shooting to support his position that he was acting in self defense. Therefore, no prejudice arose from the trial court's exclusion of defendant's direct examination testimony that he thought defendant had a second gun at the time of the shooting.

#### CONCLUSION

Accordingly, the judgment of the Will County circuit court is affirmed.

Affirmed.