

peremptory challenges against two African-American venirepersons. We disagree and affirm.

¶ 4

I. BACKGROUND

¶ 5 In September 2009, a McLean County grand jury indicted defendant on three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)) and one count of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2008)).

¶ 6

A. *Voir Dire*

¶ 7 In December 2010, the trial court began jury selection. The court first questioned venirepersons in groups of 14. The State and defense counsel were then permitted to follow up with individual questions as necessary. The court then submitted a panel of four venirepersons to the parties. Once a panel was closed, the court repeated the process until 12 jurors and 2 alternate jurors were selected.

¶ 8

The first panel included venirepersons Courtney Jackson and Glenda Manson. Both Jackson and Manson were African-American and female. Individually, the State asked Jackson three questions about her employment status and her educational attainment. Jackson indicated that she was unemployed and went to high school through her senior year. Manson indicated that she was employed as a manager at an insurance company, had two master's degrees, and had achieved two years toward a doctorate. Defense counsel then asked the venirepersons, "Most of you in this room appear to be of a different race than the [d]efendant, not all of you. Does anyone feel that the [d]efendant's race may have or should have any place in your deliberations in this case?" All the venirepersons indicated they did not. Counsel then inquired as to whether an interracial dating relationship involving defendant would influence or affect their deliberations. Privately before the trial court and without other venirepersons in the

courtroom, Manson disclosed she would have a serious problem with an interracial relationship.

Manson further elaborated:

"My son is a graduate of U-High, and I was pressuring him about who he was taking to the prom, and he had one of his friends there, and he turned to his friend and said, 'You have to excuse my mom. She's a racist.' And I said, 'I'm not a racist, boy. I'm a bigot, and there's a difference.' So that is who I am as far as that is very paramount, just who I am.

Like I said, intellectually and how I interact with it in my professional life is much different than what I feel in my heart. Yes, I do understand what you're saying, but I want to make sure that the attorney, in answering his question, was aware that this is truly how I do feel. I have a problem with it."

Manson added that she would "work very hard at not letting [her 'bigotry'] interfere" with her responsibilities as a juror.

¶ 9 After questioning the potential jurors, the State used a peremptory challenge to excuse Jackson. Thereafter, defense counsel moved to remove Manson for cause based on her beliefs on interracial relationships. The State objected, stating as follows:

"I believe even though she raised some concerns that she may have, I think she's expressed how she's been able to work with those, within her employment, with those concerns. I think she indicated she would reach this decision on her duties as a juror in

the same manner."

The trial court then dismissed Manson, noting this was not something ordinarily identified as cause but "the topic of racism versus bigotry is too toxic to take a chance with."

¶ 10 The parties completed selecting the first and second panels. The third panel included venirepersons Frantara Turner and Herbert Steig. During questioning, Steig expressed concern about interracial relationships. Without defendant's objection, the State challenged Steig for cause. The State then exercised its second peremptory challenge on Turner. Defense counsel then stated, as follows:

"Judge, in the interest of the transparent record, I'm not the judge, just so that the record is clear, if necessary on appeal, without certainly impugning the integrity of the State's Attorney in any way, I think it's incumbent on me to request that they articulate a reason for the excusal of *** Turner, noting that she is an African-American, and I want the record to be clear in case there is a finding that there's a Batson violation filed."

The trial court noted one other peremptory excusal of an African-American, Jackson, and the defense noted that "all the others have been lost on cause."

¶ 11 Assistant State's Attorney William Workman responded, as follows:

"I handled Ms. Jackson. I can answer for that one. Quite honestly, I think both of our answers are going to be pretty similar. When you look at both of their questionnaires, there was basically nothing in the questionnaires. During our questioning, Ms.

Jackson was unresponsive, in fact, and I had noted—I noticed that during the whole time she appeared to be very angry about being here, had her arms crossed, and based on no responses, and not getting any information out of her, I elected to use a peremptory on her, on Ms. Jackson."

Assistant State's Attorney Adam Ghrist then responded, as follows:

"Ms. Turner, as Mr. Workman said, is similar. We each—each exercised different causes. The same attorney didn't do it, but Ms. Turner's questionnaire has a lack of information, frankly, as far as employment status and other things; and watching her demeanor throughout my questioning and the questioning of the Court, very rigid, arms crossed, or looking down, looked unhappy to be here, frankly, for the entire time. And those are the mannerisms and the things that I saw that caused an exercise of challenge on that witness."

Defense counsel then noted that Turner's questionnaire "although it may [have seemed] short on details" did indicate employment at McDonald's. The State responded that that was past employment.

¶ 12 Following this exchange, defense counsel filed a formal *Batson* motion. The trial court then found the State had offered a race-neutral reason for its decision to exercise peremptory challenges on Jackson and Turner. The court stated it would not "quarrel with the State's assessment of demeanor" and that Jackson and Turner's questionnaires "are relatively less

informative than the average juror's questionnaires." The court thereafter found that defendant had not established a pattern of discriminatory challenges and denied the *Batson* challenge. Juror selection then continued.

¶ 13 The record shows that (1) the State exercised five peremptory challenges regarding prospective jurors and two peremptory challenges regarding prospective alternate jurors and (2) defendant exercised seven peremptory challenges regarding prospective jurors and one peremptory challenge regarding prospective alternative jurors. We note the record does not reflect the race of the jurors selected after defense counsel's motion, namely, jurors McGrew and McDonald, and the alternate jurors Sturm and Powell. The record on appeal does not contain copies of the juror questionnaires.

¶ 14 B. Defendant's Trial

¶ 15 As neither party disputes the evidence or the underlying factual record, we briefly summarize the evidence. In July 2009, the McLean County Sheriff's department was informed that John Turnpaugh, a white male, was missing. Later that month, police discovered Turnpaugh's decomposed body in his mobile home. Turnpaugh's death was caused by multiple injuries involving incised wounds to his body, stab wounds, and a penetrating injury to the skull which traversed through his brain. Turnpaugh was last seen with defendant, an African-American male, and his vehicle was located near defendant's sister's residence. Police were able to determine that defendant used Turnpaugh's cellular phone to call several family members and friends on the morning of July 2, 2009. After murdering Turnpaugh, defendant returned to his sister's residence (1) wearing a bloody shirt and (2) with a bloody hammer. Defendant explained that he had gotten into a fight and killed someone.

¶ 16 On the fifth day of trial, defense counsel made an oral motion for mistrial. Counsel withdrew that motion and explained to the trial court that "[a]fter consultation with [defendant] over the lunch period, we have determined to withdraw that motion. We desire to keep the jury as it's currently impaneled[.]"

¶ 17 The jury found defendant guilty of first degree murder and possession of a stolen motor vehicle.

¶ 18 C. Posttrial Motion and Sentencing

¶ 19 In January 2011, defendant filed a motion for a new trial arguing that the trial court improperly denied his *Batson* challenge. At the February 28, 2011, hearing on the motion and sentencing, defense counsel clarified there were "four or five" African-American venirepersons and agreed it was not only the State that moved to excuse African-American venirepersons. The State reiterated that Jackson and Turner's juror questionnaires were "basically blank." The State described Turner's questionnaire as only stating past employment at McDonald's and that she did not answer any questions during the time that questions were asked of the entire panel. The State described Jackson as giving abrupt answers during questioning, and that both Jackson and Turner appeared angry. The court denied defendant's motion, finding that "four or five" African-American venirepersons were in the jury pool and the State offered a valid race-neutral reason for its peremptory challenges.

¶ 20 The trial court thereafter sentenced defendant as stated.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 Defendant argues that his constitutional right to equal protection was violated

when the State impermissibly used peremptory challenges to strike Jackson and Turner, both African-American venirepersons. Specifically, defendant contends that the State's articulated reasons for striking Jackson and Turner are pretextual because (1) the State did not use peremptory challenges on other jurors who expressed an unwillingness to serve; (2) the State did not ask additional questions of Jackson and Turner, although neither completed their juror questionnaires; and (3) the State's race-neutral basis is undermined because the State argued against removing Manson for cause, who was a third African-American venirewoman and a self-described "bigot." We address defendant's contentions in turn.

¶ 24 A. *Batson* and A *Prima Facie* Case of Discrimination

¶ 25 "In *Batson*, the [United States] Supreme Court established a three-step process for evaluating alleged discrimination in jury selection. The Court held that the party objecting to the exercise of a peremptory challenge is first required to establish a *prima facie* case of purposeful discrimination 'by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose.' If the objector demonstrates a *prima facie* case, the burden then shifts to the other party to explain his challenge by articulating a nondiscriminatory, 'neutral' explanation related to the particular case to be tried. Finally, the trial court considers the reasons provided for the peremptory strike. As part of that process, the objector may argue that the reasons given are pretextual. The trial court then makes a final determination as to whether the objector has established purposeful discrimination." (Internal citations omitted.) *People v. Rivera*, 221 Ill. 2d 481, 500, 852 N.E.2d 771, 783 (2006) (quoting *Batson*, 476 U.S. at 93-94).

¶ 26 In *Rivera*, the Illinois Supreme Court restated that when determining whether the defendant has demonstrated a *prima facie* case of discrimination against African-Americans, a

trial judge should consider the following relevant factors:

" '(1) racial identity between the [party exercising the peremptory challenge] and the excluded venirepersons; (2) a pattern of strikes against African-American venirepersons; (3) a disproportionate use of peremptory challenges against African-American venirepersons; (4) the level of African-American representation in the venire as compared to the jury; (5) the prosecutor's questions and statements [of the challenging party] during *voir dire* examination and while exercising peremptory challenges; (6) whether the excluded African-American venirepersons were a heterogeneous group sharing race as their only common characteristic; and (7) the race of the defendant, victim, and witnesses.' *People v. Williams*, 173 Ill. 2d 48, 71[, 670 N.E.2d 638] (1996)." *Rivera*, 221 Ill. 2d at 512-13, 852 N.E.2d at 790.

In *Rivera*, the supreme court added that a pattern of discrimination does not develop "anytime a party strikes more than one juror of any race or gender." *Rivera*, 221 Ill. 2d at 513-14, 852 N.E.2d at 790.

¶ 27 "The existence of a *prima facie* case is prerequisite for the court to demand an explanation." *Rivera*, 221 Ill. 2d at 510, 852 N.E.2d at 788. However, "[o]nce a prosecutor has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the

defendant had made a *prima facie* showing becomes moot." *Hernandez v. New York*, 500 U.S. 352, 359 (1991). Because a trial court's ruling on the State's race-neutral explanation limits review of a defendant's assertion of discrimination, our supreme court has reiterated that in implementing *Batson*, "the first and second steps in the process 'should not be collapsed into a single, unitary disposition that dilutes the distinctions between a *** *prima facie* showing of discrimination and the *** production of neutral explanations for its peremptory challenges.'" *Rivera*, 221 Ill. 2d at 500-01, 852 N.E.2d at 783 (quoting *People v. Wiley*, 156 Ill. 2d 464, 475, 622 N.E.2d 766, 771 (1993)).

¶ 28 The third step in the *Batson* inquiry requires an evaluation of the prosecutor's credibility. Where the race-neutral reason for a challenge invokes a juror's demeanor, such as inattention, the trial court's firsthand observations are "of crucial importance." *People v. Davis*, 231 Ill. 2d 349, 363-64, 899 N.E.2d 238, 247 (2008). "In such situations, the trial court must evaluate not only whether the prosecutor's demeanor belies discriminatory intent, but also whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the prosecutor." *Davis*, 231 Ill. 2d at 364, 899 N.E.2d at 247.

"Generally, a trial court's ultimate conclusion on a *Batson* claim will not be overturned unless it is clearly erroneous." *Davis*, 231 Ill. 2d at 364, 899 N.E.2d at 247.

¶ 29 B. *Batson* and This Case

¶ 30 In this case, defense counsel requested the State to disclose its reasoning for striking Turner. The trial court did not require counsel to articulate the existence of a *prima facie* case for discrimination; rather, it turned to the State and asked for a response. The State then articulated that both Jackson and Turner (1) failed to complete their juror questionnaires, and (2)

during questioning (a) appeared angry or unhappy, and (b) had their arms crossed. Additionally, Jackson was unresponsive during questioning and Turner was "rigid." Neither party raises the trial court's procedural compliance with the three-step *Batson* process, and we turn to the merits of defendant's argument.

¶ 31 1. *A Potential Juror's Demeanor and the State's Treatment of Similar Jurors*

¶ 32 "The demeanor of a prospective juror has traditionally been a factor of importance in jury selection." *People v. Young*, 128 Ill. 2d 1, 20, 538 N.E.2d 453, 457 (1989). A juror's demeanor is accepted as a legitimate basis for a peremptory challenge. *People v. Aguirre*, 242 Ill. App. 3d 469, 474, 610 N.E.2d 771, 775 (1993). An inference of purposeful racial discrimination is raised where the State accepts white jurors having the same characteristics as African-American venirepersons that were excused for having that characteristic. *People v. Andrews*, 155 Ill. 2d 286, 295, 614 N.E.2d 1184, 1189 (1993). A trial court's finding on the issue of discrimination rests largely on credibility determinations and will not be set aside unless clearly erroneous. *Rivera*, 221 Ill. 2d at 502, 852 N.E.2d at 784.

¶ 33 Defendant's argument of discrimination rests on two main propositions—namely, that the State did not (1) ask Jackson or Turner questions inquiring into their willingness to participate or (2) use peremptory challenges on other venirepersons expressing unwillingness to participate.

¶ 34 Defendant appears to engage in a comparative juror analysis by comparing the State's treatment of Jackson and Turner to other venirepersons expressing an unwillingness or difficulty to participate in jury service. The supreme court has cautioned that a comparative-juror analysis, standing alone, will not necessarily prove purposeful discrimination and "is simply an

additional form of evidence to be considered and is just one factor in the totality of the circumstances" in determining whether discrimination exists. (Emphasis in original.) *People v. Davis*, 233 Ill. 2d 244, 257, 909 N.E.2d 766, 773 (2009).

¶ 35 As the trial court was in the best position to observe Jackson and Turner and evaluate the State's explanation for exercising its peremptory challenge on the basis of their demeanor, its findings are given great weight. Defendant asserts that it is "difficult to believe" that Jackson and Turner "were the only two members of the venire who outwardly appeared unhappy to be there" and "[i]t is unreasonable to believe that none of the [other] members of the venire, *** who[] actually admitted that they did not want to serve, would have appeared (via their body language) to be willing participants." However, it was incumbent upon defendant to make a record that appropriately supports his contentions of discrimination, and defendant does not point to any statement in the record describing the outward appearance or body language of other venirepersons. These are precisely the type of arguments that we will reject while deferring to the trial court's assessment of a venireperson's demeanor.

¶ 36 Here, the State articulated specific body language indicating that Jackson and Turner appeared "angry," "unhappy," and "rigid." The trial court was able to see and hear Jackson and Turner during *voir dire* and was called upon to assess their demeanor on the same day. Their demeanor was fresh in the court's mind when it resolved defendant's challenge, and the court expressly stated that it would not "quarrel" with the State's assessment of Jackson and Turner's demeanor.

¶ 37 Further, the State's reasoning to dismiss Jackson and Turner for being inattentive is not impeached by its decision to not ask either of them additional questions. Their failure to

complete the questionnaire reveals an important characteristic about their ability to adequately serve as jurors. See *People v. Williams*, 209 Ill. 2d 227, 247, 807 N.E.2d 448, 461 (2004) (noting the challenged juror failed to fill out his juror questionnaire).

¶ 38 Defendant's argument that the State did not use peremptory challenges against other jurors who expressed unwillingness to serve or difficulty in serving is equally unpersuasive. Other jurors who expressed unwillingness to serve or difficulty in serving were excused for cause by both the State and defendant.

¶ 39 For instance, the State used a peremptory challenge on a male juror who expressed difficulty in serving because of "income issues." (The record does not expressly state whether this juror was white or African-American.) Also, the State points out, it moved for cause to remove (1) a potential juror who expressed inability to focus on deliberations considering that his father-in-law died the night before, (2) a potential juror who was uncomfortable with viewing photos as a friend had been murdered a year prior, and (3) a potential juror who presented a doctor's note stating her service would cause stress levels not consistent with a safe pregnancy. The State did not object to defendant's motion to remove for cause (1) a potential juror whose absence from her special-education class would be a hardship for her students and (2) a potential juror who stated jury service would "take money out of his pocket." While defendant is correct to assert that the State did not use a peremptory challenge on five of these other potential jurors who expressed an unwillingness to serve or difficulty in serving, his argument is left with little force when these potential jurors were removed for cause.

¶ 40 We also note that defense counsel expressly stated at trial that defendant withdrew his motion for a mistrial because he wanted to keep the jury as it was impaneled.

¶ 41 We conclude that the trial court's decision was not clearly erroneous that the State's use of a peremptory challenge regarding both Jackson and Turner was valid because they did not complete their juror questionnaires and they appeared "angry" and "unhappy". The State's treatment of these jurors does not raise an issue of racial discrimination or bias.

¶ 42 *2. The State's Treatment of Prospective Juror Manson*

¶ 43 Defendant's argument that the State's treatment of prospective juror Manson is relevant to the *Batson* analysis hinges on the fact she is an African-American female who was a self-described "bigot." Defendant contends the State's race-neutral explanation for its peremptory challenges to prospective jurors Jackson and Turner is undermined by its objection to defense counsel's motion to strike Manson for cause. We disagree.

¶ 44 "The standard for juror impartiality is whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant." *People v. Runge*, 234 Ill. 2d 68, 103, 917 N.E.2d 940, 959 (2009). "A prospective juror's statement under oath that she can lay aside matters that may indicate bias and render a verdict based on the evidence is given great weight." *Grady v. Marchini*, 375 Ill. App. 3d 174, 180, 874 N.E.2d 179, 184 (2007); see also *People v. Hopley*, 159 Ill. 2d 272, 297, 637 N.E.2d 992, 1003 (1994) ("An equivocal response by a prospective juror does not necessitate striking the prospective juror for cause where the prospective juror later states that he will try to disregard his bias."). "[P]rospective jurors excused by the court for cause are entirely irrelevant to a *Batson* analysis." *People v. Britt*, 265 Ill. App. 3d 129, 134, 638 N.E.2d 282, 286 (1994).

¶ 45 It is far from clear how the State's objection to defendant's motion to remove Manson impeaches the State's race-neutral explanation. First, it was defendant who made the

motion to exclude this particular African-American woman from service, and had the motion been denied, she may have been on the jury. Second, as the State's objection pointed out, Manson expressed her ability to set aside her bias during her professional life and that she could set it aside and render a verdict based on the evidence. Such a statement should not be easily dismissed.

¶ 46 In short, the State's use of a peremptory challenge on the basis Jackson and Turner did not complete their juror questionnaires and appeared unwilling to serve are valid, and the State's objection to defendant's motion to remove Manson for cause because of her statement she could put aside her bias provides no insight into the State's treatment of Jackson and Turner.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 49 Affirmed.