2016 IL App (4th) 140260-U

NO. 4-14-0260

FILED
February 16, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ANTWAN C. BROWN,	)	No. 13CF1927
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the trial court did not abuse its discretion by denying defendant's *Batson* claim; and (2) the circuit clerk of Champaign County improperly imposed fines.

¶ 2 In November 2013, the State charged defendant, Antwan C. Brown, by information with two counts of aggravated battery to a peace officer after a traffic-related incident on November 19, 2013, in Urbana, Illinois. 720 ILCS 5/12-3.05(d)(4)(i) (West 2012). In February 2014, the prosecutor, during *voir dire*, questioned the venire and dismissed four jurors using peremptory strikes. Defendant's counsel moved for a mistrial pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986). Defendant argued the State dismissed the only minority jurors on the venire and established a pattern of discriminatory use of peremptory strikes in violation of the equal protection clause of the United States Constitution. The trial court, pursuant to *Batson*, allowed the State to offer a race-neutral reason for his use of peremptories. After hearing the

prosecutor's rationale, as well as witnessing the jurors' demeanor, the court ruled against defendant's motion. After trial, the jury found defendant guilty of one count of aggravated battery and could not reach a verdict on the second count. The State dismissed the remaining counts. In March 2014, the trial court sentenced defendant to 12 years in prison. The court imposed "fines, fees, and costs[,]" which were assessed later by the clerk and not by the judge. Defendant appeals, arguing (1) the trial court erred by accepting the State's justification as race-neutral when striking the minority jurors from the venire, and (2) the circuit clerk improperly imposed fines. We affirm in part, vacate in part, and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 On November 19, 2013, defendant was a passenger in a disabled car parked on the 800 block of West Florida Avenue in Urbana, Illinois. Urbana police department officer Elizabeth Ranck arrived to check the vehicle and its occupants. Defendant provided his name, and when Ranck went back to the car to look up his information, she discovered defendant had a warrant out on an alias. Officer Ranck called for backup and Officer Cory Koker arrived later. Both officers approached defendant and questioned him about being on parole. Defendant confirmed he had been on parole in the past. After the warrant was confirmed, Officers Ranck and Koker approached defendant in an attempt to arrest him. Defendant instead "pushed his body forward to get between them and knocked both of them to the ground." Neither of the officers suffered injuries. Defendant proceeded to run, ignoring commands to stop. Defendant rolled to the ground and was later arrested. During a canine search, drugs were discovered, including crack cocaine and heroin. The State dismissed the drug charges.

¶ 5 A. *Voir Dire*

¶ 6 1. *First Panel*

¶ 7 The trial court first called jurors 3, 67, 55, and 1. The court questioned each juror's involvement with law enforcement, familiarity with defendant or any of the witnesses, and criminal history. In response to the last of those questions, jurors 67 and 3 answered they had both been accused of driving under the influence (DUI). Neither of those jurors believed anything related to those incidents would influence them as jurors. Jurors 1 and 55 also had been victims of a crime, but nothing related to those incidents would influence them as jurors.

¶ 8 The State supplemented the trial court's questions and first asked each juror to introduce and describe themselves. The State asked whether any of the jurors had a negative experience with police officers or the court system in general. Each juror answered no. The State made no inquiry as to juror 67's and juror 3's DUI incidents, compared to the State's later thorough examination of juror 99. The State accepted the panel. The court then invited defendant to supplement the court's questions.

¶ 9 Defendant asked the individual jurors about their current employment. Defendant asked jurors 67 and 3 about their DUI history, confirming nothing about those experiences would influence them as jurors in this case. Defendant followed by asking each juror if he or she would weigh a police officer's testimony equally with any other witness. After some general questions, defendant accepted and tendered the panel of jurors 3, 67, 55, and 1.

¶ 10 2. *Second Panel*

¶ 11 The trial court, after excusing the first panel, called jurors 68, 85, 7, and 69. The court, as with the first panel, asked general questions, including whether any of the jurors were familiar with anyone in the courthouse—*i.e.*, State's Attorney, Attorney General, Public Defender—and if the venire members knew anyone in law enforcement. Juror 85 responded he had a close friend who was a member of the Champaign police department. Juror 7 responded

he had a cousin in the Urbana police department. Neither juror responded in the affirmative when asked whether their familial involvement with law enforcement would influence their ability to be jurors. The court asked whether the panel knew any of the witnesses, had any familiarity with the case, had any biases, and whether any juror had family or close friends who had been accused or victims of a crime. None of the jurors answered yes to these questions. The court then invited the State to supplement the court's questions.

¶ 12 The State, as with the first panel, asked the venire members to briefly describe themselves. The State inquired whether the panel members had any negative experiences with law enforcement, to which no juror answered affirmatively. After two brief questions, the State accepted the panel. The trial court then allowed defendant to supplement the court's questions. Defendant excused jurors 85 and 7 immediately. The court excused jurors 85 and 7 and called jurors 63 and 48.

¶ 13 The trial court initiated its examination of jurors 63 and 48 with questions similar to those above. When asked whether either of the jurors knew a family member or close friend involved in law enforcement, juror 63 answered in the affirmative. Juror 63 did not believe he could fairly weigh the testimony of a police officer "because of life experiences." The court dismissed juror 63 and called juror 81. Juror 81, upon examination, admitted working in the Champaign County courthouse and knew many individuals, including the State's Attorney. In addition, juror 81 had a husband who was a retired police officer and two sons who were currently Champaign County police officers. The court asked if either juror knew defendant or any of the witnesses, to which the answer was no. Juror 48 revealed that he had a cousin accused of committing a crime and was "a little bit more" involved than merely a concerned family member. After the court's questions, defendant supplemented. Defendant immediately excused

jurors 81 and 48. The court then called jurors 84 and 54. After questioning, defendant struck juror 84. The court called juror 79, who had "a bunch of relation" to law enforcement "in the county *** [and] possibly Urbana." The court inquired what "relation" meant—*i.e.*, "[k]issing cousins or never see them until the will is read"—to which the potential juror responded they were third cousins, but he had friends who worked for the Urbana police department. Defendant excused juror 79.

¶ 14 The trial court next called juror 107. The court began by inquiring whether juror 107 had any family member or close friend in law enforcement, to which the potential juror answered, "Yes, but not locally." Juror 107 was friends with members of the Los Angeles police department and members of the Phoenix police department, along with his mother's cousins who work as law enforcement in his home community. After a series of questions, the court asked whether juror 107 had any family member or close friend accused of committing a crime. Juror 107 answered many of his family members have been accused of "trespassing, burglary, you name it," but he was not involved in these incidents. Nothing about these incidents would influence him as a juror. The court asked whether any family or friends have been victims of a crime. Juror 107 answered members of his family and friends have been victims of "murder, armed burglary, [and] resisting arrest." Asked if anything about these incidents would influence his ability to be a juror, he responded "nothing would influence [him]." Asked how Thanksgiving dinner is with members of juror 107's family on both sides of the law, he responded, "Well, if you must know, I am a dual citizen of the United States. I am American-Indian and we don’t really celebrate Thanksgiving." He said nothing about his experiences with his family (on both sides of the law) would influence his ability to be a juror. After questioning

potential jurors 68, 54, and 69, defendant tendered the panel. The court then invited the State to supplement the court's questions.

¶ 15 The State asked the jurors to briefly introduce themselves. Juror 107 stated he was from the Hill of River Indian Community, had worked at the University of Illinois for 13 years, and was the head of the American Studies program. The State asked whether juror 107 had any negative experiences with law enforcement, to which juror 107 responded in the affirmative. Juror 107 had negative experiences with the University of Illinois police department. The State asked juror 107 if he would "at least" have trouble weighing those officers' testimony, to which potential juror 107 answered, "right." The State excused juror 107.

¶ 16 The trial court then called juror 148, later acknowledged to be African-American. Juror 148 did not know anyone who worked in the courthouse, defendant, any witnesses, or any members of law enforcement. Juror 148 did not have any family member or close friend who had been accused or the victim of a crime. The court then invited the State to supplement its questions. The State asked juror 148 introductory questions and juror 148's place of employment. Juror 148 was a chef at a bar frequented by lawyers in the community, although juror 148 stated his hours of employment were normally at night. The State inquired whether juror 148 had any negative experience with law enforcement. Juror 148 answered no, but the State inquired further, believing he hesitated. Juror 148 then volunteered he "wouldn't consider [the experience] negative," he merely did not agree with it. The incident involved the Urbana police department, occurred six to seven years ago, and did not involve either of the officers involved in this case. The State excused juror 148.

¶ 17 The trial court then called juror 113, although the juror was promptly excused for cause by the court. The juror answered affirmatively when asked whether a prior life experience would influence his ability to be a fair and unbiased juror.

¶ 18 The trial court called juror 123. Following some questioning by the trial court, the State, and defendant, the second panel was accepted and tendered. This panel consisted of jurors 68, 123, 54, and 69.

¶ 19 3. *Third Panel*

¶ 20 The trial court called jurors 8, 76, 99, and 44 as the third panel. When questioned about whether any of the jurors knew anyone in law enforcement, juror 76 had a cousin in Maryland who was a member of law enforcement but nothing about this relationship would influence his ability to be a juror. Defendant later excused juror 76. The court questioned whether any of the jurors had either been accused or victims of a crime. Juror 99 volunteered there was a record for a "misdemeanor in 2000." He responded nothing related to the incident would influence his ability to be a juror. Juror 44 was also the victim of a residential burglary four years ago. After additional questions, the court invited the State to supplement its questions.

¶ 21 The State began by asking each juror to briefly describe themselves. The State inquired as to whether any of the jurors had any negative experiences with law enforcement. None of the jurors answered affirmatively. The State turned its attention to juror 99's previous misdemeanor conviction "[10] years ago." Juror 99 corrected the State, specifying it was 14 years ago, not 10. The incident did not take place in Champaign County. The State asked whether juror 99 was involved in any "traffic stops or anything like that" in the county, to which juror 99 answered, "Yes." The State asked whether the incident led to a conviction. Juror 99 answered he had to come to court and pay a fine two years prior to the trial, but not in the present

courtroom. Juror 8 also answered yes when asked whether he/she had to come to court to resolve a matter. Juror 8 had been cited for speeding through a school zone in 2003. The State did not ask whether juror 8's incident led to a conviction but continued to question the panel as a whole. Soon after, the State dismissed juror 99. It was later acknowledged that juror 99 was also African-American.

¶ 22 Following a recess, the trial court called juror 57. The court began by asking whether juror 57 knew anyone in the courthouse or any similar office. Juror 57 answered he had a family friend and a friend who worked for the "county attorney's office." Juror 57 said nothing about how the relationship would influence his ability to be a juror. Juror 57's wife had been the victim of identity theft. Juror 57 was very pleased with the police department because the officers were "extremely helpful and professional," which left a "very good impression." This incident would have no bearing on his ability to be a juror. After its final questions, the court invited the State to supplement the court's questioning.

¶ 23 The State asked juror 57 to describe himself. Juror 57 was a longtime member of the community and very involved in community-outreach activities. Juror 57 had a former sister-in-law who was an attorney in the Champaign County courthouse and who maintained a relationship with his wife. The State asked if this relationship would bear on his ability to be a juror, to which juror 57 answered no. The juror stated he also had a brother who was a public defender in an adjacent county. The State turned its attention to juror 57's wife's identity theft. Neither of the officers involved in defendant's case had handled any part of the theft the prior summer. The juror stated the incident left a very positive impression on him and the matter was resolved to his satisfaction. The State excused juror 57 despite having family members on both

sides of the adversarial system and a very positive experience with the Urbana police department because "there [were] just too many things."

¶ 24 The trial court called juror 88. Juror 88 had a close friend who was a retired county deputy in the community, but he stated this relationship would have no impact on his ability to be a juror. Juror 88 had a son who had been convicted of DUI in Champaign County. Juror 88's involvement in the process was merely as a concerned parent and it would not influence his ability to be an unbiased juror. The court invited the State to supplement the court's questions.

¶ 25 The State asked juror 88 to describe himself. After his introduction, the State inquired into juror 88's son's DUI. Juror 88 explained the incident took place 10 years ago and nothing about the incident would influence him as a juror. The State also asked if juror 88 had any negative experience with law enforcement, to which juror 88 answered no. The State accepted this panel. The trial court invited defendant to supplement the court's questions. Defendant promptly excused juror 76. The court called juror 83. After the court's questions and defendant's questions, defendant accepted the panel. The State briefly inquired whether juror 83 had any negative experience of law enforcement, to which the juror answered no. After two more questions, the State accepted the panel. The final panel consisted of jurors 8, 83, 88, and 44. The court called juror 139 for the alternate position.

¶ 26 The trial court inquired whether juror 139 knew anyone who worked in the courthouse, anyone involved in law enforcement, or any of the parties, to which juror 139 replied in the negative. The court invited the State to supplement the court's questions. The State asked the juror to describe herself. The State also asked if the juror had any negative experiences with law enforcement. Juror 139 answered in the negative. After additional questions, the State

accepted juror 139. The court invited defendant to inquire further. Defendant asked only whether juror 139 could maintain her attention even though she may not be asked to serve as an actual juror. Juror 139 answered she could keep her attention. Defendant accepted the alternate juror. After excusing the jurors, defendant made a motion for mistrial pursuant to *Batson*.

¶ 27 B. *Batson* Challenge

¶ 28 After the acceptance of the last panel of jurors and the alternate, defendant made a motion for mistrial pursuant to *Batson*, 476 U.S. 79 (1986). Defendant argued "[d]uring the jury selection the State dismissed several people, however, three of them stand out because they are self-described people in minorities, *** jurors [148 and 99] *** described themselves as black and [juror 107] describing himself as Native-American." These were determined to be the only minority jurors questioned during the *voir dire* process. All three were dismissed by the State. Defendant opined the State's use of peremptory strikes to dismiss the only three minority jurors established a pattern of discrimination. The trial court inquired whether the State could offer any race-neutral explanation for the strikes.

¶ 29 The State justified the use of a peremptory with juror 107, who described himself as a Native American, because the juror had friends in law enforcement but some who had also been "[victims] of various crimes and he listed murder as one of them." The State also noted juror 107's negative experience with the University of Illinois police department. The State explained, "[juror 107] described *** a negative experience[], and it seemed plural that he had negative experiences with the university, and he admitted that if it was one of them on the stand he would not be able to weigh their testimony—he would hold it against them." Thus, according to the State, because the case involved two officers as "victims and witnesses", it had a nonracial justification for striking juror 107.

¶ 30 Defendant advised the trial judge of the proper *Batson* procedure. Defendant believed the first issue to deal with was whether he had established a pattern of discrimination. The trial court ruled there had been an appearance of discrimination in the State's use of peremptory strikes, thus allowing the State to proffer its race-neutral justifications. The State proceeded to offer those reasons.

¶ 31 The State justified striking juror 148 (later determined to actually be juror 99). The reason for excusing juror 148 (99) was he withheld information related to a misdemeanor conviction and traffic incident he was involved in. The State explained juror 148 (99) "had a misdemeanor conviction from ten years ago. When [the State] examined [juror 148] he said it was 14 years ago." The State remarked juror 148 (99), upon examination, had downplayed a traffic incident. The State discovered juror 148 (99) did not merely pay a fine but actually spent 10 days in jail for a misdemeanor conviction for driving while his license was suspended and failed to admit this on questioning. The last justification the State offered was juror 148 (actually juror 148 in this instance) admitted having a negative experience with Urbana police officers "not too long ago[,]"*i.e.*, six to seven years ago. The State excused juror 148 because he had a negative experience with police officers (actually juror 148) and was reluctant to disclose the full measure of his misdemeanor conviction (juror 99) which led the State to believe "there may be other things he was not telling us and that he would not be a fair and impartial juror."

¶ 32 The State next addressed juror 99 (actually juror 148). The prosecutor then learned of his mistake of mixing up jurors 148 and 99; after the correction, the State proceeded to proffer its nonracial justifications for using a peremptory strike against juror 148. The State recounted juror 148 had a criminal background he did not disclose, *i.e.*, a battery, a drug charge, and driving while his license was suspended conviction. Juror 148 did not admit this on the

court's questioning. The State claimed juror 148 did have a negative experience with the Urbana police department and "he could hold that against them."

¶ 33 In sum, according to the State, two of the admitted minority jurors had negative experiences with law enforcement and two had undisclosed or partially withheld criminal backgrounds. The last juror the State struck (nonminority), juror 57, had family ties to the State's Attorney's office as well as the public defender's office. Juror 57 also had a positive impression of the Urbana police department following an incident involving his wife. Juror 57 was excused because "there were too many conflicting incidents there where it may provide some reason for bias." All four of the State's peremptory strikes occurred in a row—three minorities and one nonminority.

¶ 34 After reviewing the "representations made by [the State]" as well as "the court's own observations of the *voir dire* examination process[,]" the trial court found the race-neutral justifications offered by the State were nondiscriminatory and a valid use of peremptory challenges. The court denied defendant's *Batson* motion.

¶ 35 C. Trial

¶ 36 The State offered trial evidence to show defendant was guilty of aggravated battery against a peace officer. The State put Urbana police officer Elizabeth Ranck and Sergeant Koker on the stand to testify regarding the November 19, 2013, events. The officers testified Officer Ranck was called to assist a motorist (defendant) who was a passenger in a car blocking a lane on Florida Avenue. After running a search for warrants and discovering one outstanding for defendant, Officer Ranck called Sergeant Koker for backup. Together, the officers approached defendant and asked him to confirm the information on the warrant. Defendant tried to "move past" the officers or "pushed his body forward" to get past the officers

and "made contact" with the officers, "knock[ing] both of them to the ground." Defendant then fled on foot but was apprehended soon after. After a canine search, crack cocaine and heroin were discovered, although those charges were later dismissed. The defense did not call any witnesses at trial and defendant did not testify. After deliberation, the jury returned a verdict of guilty of the charge of aggravated battery to Sergeant Koker, but it could not reach a verdict as to Officer Ranck. The jury could not reach a verdict on the latter count.

¶ 37 In March 2014, the trial court sentenced defendant to 12 years' imprisonment and credited him with 133 days he was in custody prior to the sentence. The court ordered defendant to pay "all statutorily imposed fines, fees[,] and costs" and credited him for up to $665 toward these fines based upon the 133 days defendant was in custody. The circuit clerk later imposed various fines and did not credit defendant for his time served before sentencing.

¶ 38 D. Posttrial

¶ 39 In a motion for a new trial, defendant argued the State improperly used its peremptory challenges to strike all minorities from the jury in violation of *Batson*. Defendant specifically argued the trial court erred by relying on the State's justifications in denying defendant's motion. The court denied this motion. The court sentenced defendant as stated.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 On appeal, defendant argues (1) the trial court improperly found the State's proffered justifications for striking all three minority jury members on the venire as race-neutral, thereby denying the *Batson* claim; and (2) the fines were improperly imposed by the circuit clerk, who has no authority to do so. The State responds, (1) arguing the justifications offered at trial for excusing those minority jurors were merely incidental to the jurors' race and were

properly race-neutral, and (2) conceding the fines were improperly imposed. We agree with the State.

¶ 43 A. *Batson* Claim

¶ 44 1. *Forfeiture*

¶ 45 The State argues defendant waived his argument the "record does not contain any support for the [race-neutral] finding *** when defendant [failed to] raise[] the issue during *voir dire* or in his post-trial motion." The State cites *People v. Enoch*, 122 Ill. 2d 176, 522 N.E.2d 1124 (1988), in support of this argument. An issue must be raised in a posttrial motion to preserve the issue for review. *Id.* at 186-88, 522 N.E.2d at 1124.

¶ 46 The State maintains "the law in Illinois is that both a trial objection and a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial." Defendant made such objections and included the issue in a written posttrial motion. Defense counsel raised the objection during *voir dire*, again in his posttrial motion for a new trial, and before sentence was imposed. Each time, the court overruled the objection and denied the motion. Even if defendant had not raised the issue in a posttrial motion, the court may still consider *Batson* claims properly raised at trial and which could be raised in a Post-Conviction Hearing Act proceeding. *People v. Mitchell*, 152 Ill. 2d 274, 285, 604 N.E.2d 877, 884 (1992) (citing *Enoch*, 122 Ill. 2d at 190, 522 N.E.2d at 1124 ("[W]hen a defendant fails to comply with the statutory requirement to file a post-trial motion, [the court's] review will be limited to constitutional issues which have properly been raised at trial and which can be raised later in a post-conviction hearing petition [citation], sufficiency of the evidence, and plain error". We conclude defendant properly preserved the objection at trial and in a posttrial motion.

¶ 47 2. *Standard of Review*

¶ 48 Defendant argues the standard of review is *de novo* "because the ultimate decision on whether to grant or deny the [*Batson*] motion is an issue of law." Defendant cites *People v. Hasselbring*, 2014 IL App (4th) 131128, ¶ 46, 21 N.E.3d 762, and *People v. Wiley*, 156 Ill. 2d 464, 622 N.E.2d 766 (1993). In *Hasselbring*, this court found the trial court's response to a jury question was a question of law, requiring *de novo* review. *Hasselbring*, 2014 IL App (4th) 131128, ¶ 46, 21 N.E.3d 762. *Hasselbring* is distinguishable. The ultimate issue in *Hasselbring* was whether the trial court's answer was a misstatement of the law or constituted an answer to a question within the province of the jury. *Id.* ¶ 47. An ultimate *Batson* decision is one that falls squarely in the province of the trial judge. In *Wiley*, the Supreme Court of Illinois did not afford the trial court any deference but did not go so far as to conclude the insufficient facts of the record justified a *de novo* review. *Wiley*, 156 Ill 2d at 476, 622 N.E.2d at 771. The court did not mention a new standard of review for a trial court's ultimate *Batson* conclusion.

¶ 49 A trial court's finding on the ultimate issue of discrimination rests largely on credibility determinations. *People v. Davis*, 233 Ill. 2d 244, 261, 909 N.E.2d 766, 775 (2009). The trial court's findings are entitled to deference and will not be set aside unless clearly erroneous. *People v. Rivera*, 221 Ill. 2d 481, 502, 852 N.E.2d 771, 784 (2006).

¶ 50 The trial court's determination "on the ultimate question of discriminatory intent represents a finding of fact of the sort accorded great deference on appeal ***." *Hernandez v. New York*, 500 U.S. 352, 364 (1991). The reviewing court may not "overturn the state trial court's finding on the issue of discriminatory intent unless convinced that [the trial court's] determination was clearly erroneous." *Id.* at 369.

¶ 51 3. *Batson's Procedural Requirements*

¶ 52 Establishing a *prima facie* case of discriminatory use of peremptories is the first prong in a *Batson* analysis. *Batson*, 476 U.S. at 95.

¶ 53 A trial court "must make an adequate record consisting of all relevant facts, factual findings, and articulated bases for its finding of a *prima facie* case." (Internal quotation marks omitted.) *Davis*, 233 Ill. 2d at 255, 909 N.E.2d at 772 (2009). Illinois courts use seven factors to consider whether a defendant has made a *prima facie* showing of discriminatory use of peremptory challenges:

> "(1) the racial identity between the party exercising the peremptory challenge and the excluded venirepersons; (2) a pattern of strikes against African-Americans on the venire; (3) a disproportionate use of peremptory challenges against African-Americans; (4) the level of African-American representation in the venire 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." (Internal quotation marks omitted.) *Id.* at 256, 909 N.E.2d at 772.

¶ 54 A comparative juror analysis is a factor in assessing the viability of a defendant's *prima facie* claim of discrimination, which examines a prosecutor's questions to jurors and their responses, respectively, to examine disparate treatment of "otherwise similar jurors differently because of their membership in a particular group." (Internal quotation marks omitted.) *Davis*,

223 Ill. 2d at 256, 909 N.E.2d at 772. Comparative juror analysis alone is not necessarily sufficient to prove purposeful discrimination. *Id.* at 257, 909 N.E.2d at 773.

¶ 55 After a defendant's *prima facie* showing, the burden shifts to the State to provide race-neutral explanations for challenging minority jurors. *Batson*, 476 U.S. at 98. The prosecutor's explanation need not rise to the level justifying exercise for cause. *Id.* at 97. The State's reasons must, however, be "clear and reasonably specific [and] contain legitimate reasons for exercising the challenges, and be related to the particular case to be tried." (Internal quotation marks omitted.) *Mitchell*, 152 Ill. 2d at 291, 604 N.E.2d at 887 (citing *Batson*, 476 U.S. at 98). Courts have largely done away with the "relation to the case" requirement. *Puckett v. Elem*, 514 U.S. 765, 770-71 n.2 (Stevens, J., dissenting) (criticizing the majority for retreating from this *Batson* requirement). A neutral explanation is one based upon something other than the juror's race, gender, or ethnic origin. *People v. Crockett*, 314 Ill. App. 3d 389, 731 N.E.2d 823 (2000) (First District) (race); *Hernandez*, 500 U.S. at 352 (ethnic origin). "If any facially neutral reason sufficed to answer a *Batson* challenge, then *Batson* would not amount to much more than *Swain*. [cite Reporter]" *Miller-El v. Dretke*, 545 U.S. 231, 240 (2005). Once the State has established race-neutral justifications for its use of peremptories, the defendant may rebut the proffered reason as pretextual. *People v. Shaw*, 2014 IL App (4th) 121157, ¶ 19, 21 N.E.3d 802.

¶ 56 During the third step of *Batson*, the trial court must determine whether the State's race-neutral justifications are legitimate. *Id.* ¶ 20. The trial court weighs the evidence in light of the *prima facie* case, the party's reason for challenging the juror, and any rebuttal by the charging party. *People v. Easley*, 192 Ill. 2d 307, 324, 736 N.E.2d 975, 988 (2000); *People v. Martinez*, 317 Ill. App. 3d 1040, 1044, 740 N.E.2d 1185, 1188 (2000) (First District). "[S]ometimes a court may not be sure [the State's justifications are legitimate] unless it looks beyond the case at

hand." *Miller-El*, 545 U.S. at 240; *Harris v. Haeberlin*, 752 F.3d 1054, 1059 (6th Cir. 2014) (at the third stage, a trial court's final determination need not rest on direct evidence of pretextual motivation, but can also rely on indirect available circumstantial evidence of intent).

¶ 57 Clear error will still be found when the trial court "overruled petitioner's *Batson* objection with respect to [one venire member]" without having to consider the claim regarding an additional venire member. *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008); *Davis*, 231 Ill. 2d at 360, 899 N.E.2d 238 (2008) (quoting *Snyder*, 552 U.S. at 478) ("[t]he 'Constitution forbids striking even a single prospective juror for a discriminatory purpose' ").

¶ 58 4. *Batson Applied*

¶ 59 Defendant argues the trial court erred when it accepted the State's justifications as race-neutral and not pretextual when analyzing *Batson*'s third step.

¶ 60 a. *Prima Facie* Showing

¶ 61 Defendant specifically contends the State used 75% of its peremptory strikes to exclude three minority jurors—one Native-American (juror 107), and two African-Americans (jurors 148 and 99). The trial court agreed this was enough to show a *prima facie* case of discrimination. We proceed to step two. *Mitchell*, 152 Ill. 2d at 288-89, 604 N.E.2d at 886.

¶ 62 b. Race-Neutral Justifications

¶ 63 At *Batson*'s second step, the State must offer race-neutral reasons for using its peremptories on minority jurors.

¶ 64 Blackstone recognized the peremptory challenge as an "arbitrary and capricious species of a challenge." 4 W. Blackstone, Commentaries on the Laws of England 346 (1769). The State's proffered race-neutral justifications cannot merely be arbitrary or capricious, but the reasons need not rise to the level of showing justification for cause. *Batson*, 476 U.S. at 97.

¶ 65 The State here offered race-neutral reasons for excluding these particular jurors. Juror 107 admitted having friends in law enforcement "but also had relatives who had been [victims] of various crimes and he listed murder as one of them." Juror 107 also admitted having a negative experience with University law enforcement and he would hold the experience against those police officers "and it seemed plural." Given the fact two police officers were involved in the current case, the State believed juror 107 would hold this negative experience against them.

¶ 66 Juror 99, initially described by the State as juror 148, was excused because he did not fully disclose a prior incident wherein the juror had to spend 10 days in jail. Since he was reluctant to disclose the full nature of the incident, "[the State] felt there may be other things he was not telling us and that [juror 99] would not be a fair and impartial juror."

¶ 67 The State used its third peremptory strike against juror 148. The prosecutor believed juror 148 withheld information, specifically convictions for battery, drugs, and driving while his license was suspended. Juror 148 further described a negative experience with Urbana police six to seven years prior to the trial. The prosecutor determined this combination was enough to strike the final minority juror.

¶ 68 These are the race-neutral justifications the State offered in response to the defendant's *prima facie* showing of a *Batson* violation. The trial court then determines whether the State's race-neutral justifications are legitimate, taking into account the defendant's *prima facie* showing of discrimination and the totality of the circumstances. *Shaw*, ¶ 20, 21 N.E.3d 802.

¶ 69 c. Trial Court's Determination

¶ 70 i. *Juror 107*

¶ 71 The State struck juror 107, offering his negative experience with police

officers and his extensive familial history of being both victims and perpetrators of major felonies as justification for excusing him. In a case involving victims and witnesses who are exclusively police officers, suspected bias against them based on past negative experiences is a legitimate, racially neutral reason for exercising a peremptory challenge. See *People v. Sipp*, 378 Ill. App. 3d 157, 167-70, 883 N.E.2d 1133, 1141-43 (2007) (First District). Juror 107 stated he had childhood friends in the Los Angeles and Phoenix police departments. When juror 107 indicated he had a negative experience with the University of Illinois police department, the State followed up, asking whether juror 107 would "at least" have trouble weighing the testimony of those university police officers. The State then offered the affirmative response as reason to believe juror 107's bias "seemed plural."

¶ 72 Defendant argues the prosecutor should have engaged in further, "meaningful *voir dire*" with juror 107, citing *Miller-El*. The current case is distinguishable from the prosecutor's actions in *Miller-El*. The prosecutor in *Miller-El* merely heard the juror respond he had a brother who had a criminal history, but "[the juror didn't] really know too much about it" and the prosecutor asked nothing further. *Miller-El*, 545 U.S. at 246. The prosecutor struck the juror, offering that statement as added justification when called out on a misstatement of the juror's views on the death penalty. *Id.* at 245-56. The Court chided the prosecutor, who did not engage in any meaningful *voir dire* examination to determine whether a singular incident would have any influence on the venire member's ability to be a juror, and instead used this extra reasoning as "makeweight" justification. *Id.*

¶ 73 Here, juror 107 stated he had a negative experience with university police officers. The prosecutor went further, asking whether juror 107 thought he would have trouble weighing those officers' testimony. When juror 107 answered affirmatively, the prosecutor

struck him. The race-neutral justification of suspected bias against police is legitimate and the trial court did not err by accepting this reason as legitimate. *Sipp*, 378 Ill. App. 3d at 167-70, 883 N.E.2d at 1141-43; see *Felkner v. Jackson*, 562 U.S. 594, 594-95 (2011) (granting petition for certiorari) (finding trial counsel's justification the juror may still harbor animosity against law enforcement as legitimately race-neutral).

¶ 74 ii. *Juror 99*

¶ 75 The State's justifications for jurors 148 and 99 were mixed. The State initially offered its race-neutral justifications for juror 148 (determined to be juror 99), then proceeded to juror 99. For juror 99, the State believed, upon the court's examination, the juror admitted having a misdemeanor conviction from 10 years ago. When the prosecutor examined the juror, he suggested the juror admitted the conviction was 14 years ago. The State mischaracterized the juror's testimony: in fact, the juror initially admitted the conviction was 14 years ago on the court's examination. The juror corrected the prosecutor. The State continued its examination, inquiring if the juror had any traffic incidents within the community. The juror responded he had an incident two years ago. The State inquired further, asking the juror whether this incident led to a conviction. The juror responded it did, and he paid a fine. The State clarified, asking whether the juror had to come to court to resolve the matter. The State asked no further questions. At the *Batson* motion, the State justified juror 99's strike because he failed to admit the extent of the traffic incident upon questioning. During the State's question, the prosecutor knew the extent of the charge via a background check.

¶ 76 Defendant argues the State's excusal of juror 99 was pretextual. Defendant specifically argues the State failed to ask about the misdemeanor conviction in detail and mischaracterized the juror's testimony. See *Miller-El*, 545 U.S. at 245-46 (the Court took issue

when the prosecutor misrepresented a juror's particular testimony, was corrected, then offered an additional reason as justification for the strike). This case is distinguishable from *Miller-El*. The prosecutor in *Miller-El* merely asked the juror about the juror's brother's criminal past, without asking any follow-up questions. The prosecutor mischaracterized the juror's views on the death penalty, and upon being corrected, offered this additional information. The Court in *Miller-El* characterized the prosecutor's additional justifications as "makeweight" when he mischaracterized the juror's responses on the death penalty. *Id.*

¶ 77 We have no such afterthought justifications to overcome a *Batson* challenge. The prosecutor was briefly confused in a full room of people referred to only by their numbers. Defendant contends this brief "snafu" illustrates pretextual discrimination. Defendant also argues the prosecutor failed to engage in meaningful *voir dire* in an attempt to tease out the extent of juror 99's incident. The State gave the juror an opportunity to come forward with the full extent of the conviction, asking whether he had any incidents within the community, whether the incident led to a conviction, when it occurred, and whether the juror had to come to court to resolve the matter. The juror answered he paid a fine for a "traffic stop." The juror did not reveal anything further. Failing to admit prior criminal charges is a legitimate race-neutral justification for excluding a venireperson. *People v. Coulter*, 345 Ill. App. 3d 81, 90, 799 N.E.2d 708, 715 (2003) (First District). The State also offered as justification for the strike juror 99's negative experience with Urbana police officers "not too long ago." *Sipp*, 378 Ill. App. 3d at 167-70, 883 N.E.2d at 1141-43; see *Felkner*, 562 U.S. at 594-95 (finding trial counsel's justification the juror may still harbor animosity against law enforcement as legitimately race-neutral). These justifications are both legitimately race-neutral.

¶ 78 iii. *Juror 148*

¶ 79 The trial court found the State's justification for striking juror 148 legitimately race-neutral. The State struck juror 148 because (1) he had a domestic battery and drug chages, and a driving while license suspended conviction he did not disclose on questioning; and (2) he had a recent, negative experience with Urbana law enforcement. The offered justifications, withholding prior criminal histories and negative experiences with law enforcement, were both valid race-neutral justifications for exercising peremptory strikes. See *Sipp*, 378 Ill. App. 3d at 167-70, 883 N.E.2d at 1141-43 (bias against law enforcement); *Felkner*, 562 U.S. at 594-95 (bias against law enforcement); *Coulter*, 345 Ill. App. 3d at 90, 799 N.E.2d at 715 (withholding past criminal charges).

¶ 80 Defendant argues, however, the State did not strike jurors 3 and 67, who both had prior DUI convictions. The State did not strike jurors 148 and 99 solely because they had past criminal convictions. Jurors 148 and 99 either withheld or failed to divulge the full extent of any past incidents and additionally had negative experiences with police officers. Both reasons are legitimately race-neutral.

¶ 81 We also find defendant's argument of disparate impact unpersuasive in light of the case law of *Batson* and its progeny. Defendant argues "criminal convictions and negative experiences with law enforcement disproportionately occur in minority communities." Defendant cites an Illinois Disproportionate Justice Impact Study Commission finding and the Supreme Court's holdings in *Hernandez*, 500 U.S. 352, and *Washington v. Davis*, 426 U.S. 229 (1976). These cases merely state disproportionate impact is to be given appropriate weight, but is not ultimately decisive. See *Hernandez*, 500 U.S. at 362; *Washington*, 426 U.S. at 242 ("Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution.")

¶ 82 In sum, the justifications offered were legitimately race-neutral as provided by the equal protection clause. The trial court did not err when it relied upon these justifications when deciding to deny defendant's *Batson* motion. The court properly assessed the demeanor of the prosecutor as well as the jurors' demeanor and came to a decision. We affirm the trial court's denial of defendant's *Batson* claim.

¶ 83 B. Fines, Fees, and Sentence Credit

¶ 84 Defendant contends the trial court did not impose any specific fines and fees at the sentencing hearing or in its sentencing order. Instead, the court ordered defendant to pay "all statutorily imposed fines, fees[,] and costs. As to the assessment considered to be a fine he will receive credit of $665 based upon the 133 days that he was in custody." The fine schedule issued by the circuit clerk included a $50 court finance fee; $10 arrestee's medical charge; $10 probational operations assistance fee; $10 traffic/criminal surcharge; $10 of the $40 State's Attorney fee (included in the $30 juvenile expungement assessment); $100 violent crime victims assistance fine; $10 clerk operations and administration fund (part of the $30 juvenile expungement assessment); $10 State Police operations assistance fee; and $10 State Police services assessment (part of the $30 juvenile expungement assessment). In addition, the sentencing order did not award $5-per-day credit defendant earned for the 133 days in jail (up to $665) to be applied to his creditable fines pursuant to statute. 725 ILCS 5/110-14 (a) (West 2012). See also *People v. Woodard*, 175 Ill. 2d 435, 444-45, 677 N.E.2d 935, 940 (1997).

¶ 85 Defendant argues these fines were improperly imposed by the circuit clerk without authority. The State agrees.

¶ 86 The arrestee's medical charge (730 ILCS 125/17 (West 2012)); the traffic/criminal surcharge (730 ILCS 5/5-9-1(c) (West 2012)); the violent crime victims assistance fine (725

ILCS 240/10(b) (West 2012)); the juvenile expungement fee (730 ILCS 5/5-9-1.17) (West 2012)), which includes the State Police services assessment, the clerk operations and administration fund, and one-quarter of the State's Attorney fine; and the State Police operations assistance fee (705 ILCS 105/27.3a (1.5) (West Supp. 2013)) were all held to be fines. *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 111-12, 121-22, 126-27, 134-35, 138-41, 16 N.E.3d 13.

¶ 87 In addition, defendant argues, and the State concedes, the probational operations assistance fee (705 ILCS 105/27.3a (1.1) (West Supp. 2013)) and the court finance fee (55 ILCS 5/5-1101(c) (West Supp. 2013)) are also fines. *People v. Rogers*, 2014 IL App (4th) 121088, ¶ 38, 13 N.E.3d 1280 (the probational operations assistance fee transforms into a fine when the probation office is not involved in a defendant's prosecution); *People v. Smith*, 2014 IL App (4th) 121118, ¶ 54, 18 N.E.3d 912 ("court-finance fee is actually a fine").

¶ 88 The Illinois Supreme Court recently abolished the "void sentence rule" established in *People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 495, 448 (1995), which held any judgment failing to conform to a statutory requirement was void. *People v. Castleberry*, 2015 IL 116916, ¶ 1. A sentence is only void if it is entered without personal jurisdiction or subject-matter jurisdiction. *Id.* ¶ 12.

¶ 89 *Castleberry* does not change the outcome here. Fines imposed by the court clerk are void. The Illinois Constitution grants original jurisdiction to the circuit courts. Ill. Const. 1970, art. VI, § 9. The clerk of court, under the same article, is explicitly referred to as a nonjudicial officer. Ill. Const. 1970, art. VI, § 18; *Walker v. McGuire*, 2015 IL 117138, ¶ 15, 39 N.E.3d 982 (citing *County of Kane v. Carlson*, 116 Ill. 2d 186, 200, 507 N.E.2d 482, 486 (1987)). The distinction between judicial and nonjudicial officers was described in *Hall v. Marks*, 34 Ill. 358, 363 (1864) as follows:

> "It would be a perversion of language to call a clerk of a court a judicial officer. He is attached to the judicial department, but is only a ministerial officer of a court. *** Every order or judgment he can lawfully enter[] is the judicial sentence of the court. He possesses *no power or jurisdiction* to render a judgment, but only to enter it under the express or implied order of the judge, in the exercise of judicial power. *** The judgment *** rendered by him *** is, therefore, unauthorized and *void*." (Emphases added).

While the circuit court has original jurisdiction, jurisdiction for sentencing is limited to the judge. The court clerk is prohibited from entering judgment. Since *Marks*, courts have followed its prohibition on nonjudicial officers and other branches of government entering judgments. See, *e.g.*, *Bottom v. City of Edwardsville*, 308 Ill. 68, 72-73, 139 N.E. 5, 7 (1923) (applying *Marks* to a void injunction issued by a master in chancery); *People ex rel. Isaacs v. Johnson*, 26 Ill. 2d 268, 270, 272, 274, 186 N.E.2d 346, 347-49 (1962) (holding several tax laws unconstitutional that directed the court clerk to enter judgments); *Cirro Wrecking Co. v. Roppolo*, 153 Ill. 2d 6, 16, 605 N.E.2d 544, 550 (1992) (holding the rendering of judgment independent from the ministerial function of the court clerk's entry); *Palumbo Brothers, Inc. v. Wagner*, 293 Ill. App. 3d 756, 765, 688 N.E.2d 837, 843 (1997) (acknowledging unconstitutionality in permitting court clerks to enter judgments); *cf. Walker v. McGuire*, 2015 IL 117138, ¶ 30, 39 N.E.3d 982 (identifying clerks of court as nonjudicial officers and performing no adjudicative or even quasi-adjudicative functions).

¶ 90 Prior cases on fines and fees refer to the clerk's lack of jurisdiction, rather than the abolished void sentence rule in *Castleberry*. This court has held the clerk of court was a

nonjudicial officer and had "no power to impose sentences or levy fines." *People v. Swank*, 344 Ill. App. 3d 738, 748, 800 N.E.2d 864, 871 (2003) (quoting *People v. Scott*, 152 Ill. App. 3d 868, 873, 505 N.E.2d 42, 46 (1987)); see also *People v. Alghadi*, 2011 IL App (4th) 100012, ¶ 20, 960 N.E.2d 612. *People v. Williams*, 2013 IL App (4th) 120313, ¶ 16, 991 N.E.2d 914; *People v. Larue*, 2014 IL (4th) 120595, ¶ 56, 10 N.E.3d 959. The fines imposed by the clerk of court are void. Each referenced fine entered by the clerk and not by the trial court is void. On remand, the court should impose the appropriate fines.

¶ 91 Defendant is also entitled to a $5 *per diem* credit available to be applied to his creditable fines for his 133 days in presentence custody. 725 ILCS 5/110-14(a) (West 2012); *Woodard*, 175 Ill. 2d at 457, 677 N.E.2d at 946. The trial court ordered such credit but the record before us does not show it was credited to defendant. The State concedes defendant is entitled to credit. On remand, the trial judge is directed to apply the $5-per-day credit available against those creditable fines.

¶ 92 III. CONCLUSION

¶ 93 In sum, we find the trial court did not abuse its discretion when it relied on the State's race-neutral justifications for exercising its peremptory strikes against minority jurors and denied defendant's *Batson* motion. We vacate defendant's fines imposed by the circuit clerk without authority. We remand with directions for the trial court to impose the mandatory fines and award up to $665 in available credit against creditable fines. Counsel on appeal are directed to supply trial counsel and the trial court with copies of the briefs on appeal. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 94 Affirmed in part and vacated in part; cause remanded with directions.