

No. 1-12-3561

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	09 CR 22009
	)	
SPENCER MARTIN,	)	Honorable
	)	Steven J. Goebel,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Presiding Justice Fitzgerald Smith and Justice Taylor concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where defendant made a motion requesting a *Batson* hearing before the jury was sworn in and the trial court denied defendant the opportunity to establish a *prima facie* case pursuant to *Batson*, we must remand this matter to the trial court so that a proper *Batson* hearing may be held.

¶ 2 Following a jury trial, defendant Spencer Martin was charged with the first-degree murder of Earl Willis. Defendant now appeals his conviction claiming that the trial court erred

when it denied him the opportunity to hold a *Batson* hearing after the State used four peremptory challenges to exclude African American jurors like him from the jury. Defendant also alleges that the trial court erred when it admitted into evidence a bullet from a prior crime that defendant was implicated in because the State failed to establish a sufficient chain of custody for the bullet. For the reasons below, we remand this matter to the trial court for a *Batson* hearing.

¶ 3

### BACKGROUND

¶ 4 Following a jury trial, defendant Spencer Martin was convicted of first-degree murder in the shooting death of Earl Willis. The jury also found that defendant personally discharged the firearm that proximately caused Willis' death. Accordingly, following post-trial motions, the trial court sentenced defendant to a 60-year imprisonment for the first-degree murder charge and natural life in prison for the firearm enhancement.

¶ 5

### Pre-trial Proceedings

¶ 6 Prior to trial, the State filed a motion seeking to admit evidence of other crimes for the purpose of showing defendant's identity in the murder of Willis. In particular, the State sought to admit evidence of two prior shootings in which defendant was identified by the victims as the shooter: the first shooting was at a restaurant at approximately 10:00 p.m. on January 14, 2006 (restaurant shooting) and the second shooting was at a gas station at approximately 2:00 a.m. on February 4, 2006 (gas station shooting). The State argued that cartridge casings found at each of those previous shootings matched a cartridge case that was found inside the van where Willis' body was found. The State also pointed out that the victim in the gas station shooting, Earlin Pinnix, knew defendant and identified him as the shooter after the gas station shooting. After the bullet was removed from Pinnix' body some time after the shooting, there was forensic evidence which showed that the bullet removed from Pinnix' body matched the bullets removed from

Willis' body. The trial court judge granted the State's motion to admit evidence of other crimes and subsequently denied defense counsel's motion to reconsider that ruling.

¶ 7 Prior to trial, defense counsel filed a motion *in limine* requesting that the State be barred from introducing evidence regarding the bullet that had allegedly been removed from Pinnix' body because the chain of custody for that bullet had been compromised since the bullet had been turned over to the police by Pinnix himself, rather than a professional, more than two years after Pinnix had been shot. In making this argument, defense counsel noted that there were no medical records to verify that the bullet had actually been removed from Pinnix' body. The trial court denied defendant's motion *in limine*, indicating that "if the State can show a sufficient chain and the fact that it had not been tampered with, it will be allowed." At trial, defense counsel did not object to the chain of custody when the bullet was admitted into evidence.

¶ 8 Jury Selection

¶ 9 After the trial court judge questioned 24 potential jurors, the State used four peremptory challenges to strike Tonia Kizer, Leon Brown, Evon Grant-Nixon, and Sharon Hunter.

According to the record, these four jurors were African American, like defendant. Following these strikes, defense counsel asked the prosecutor if he needed to make a motion based on the strikes, but then indicated that he would not make a motion yet.

¶ 10 After the jury was selected, but before the jury was sworn in, defense counsel informed the court that he wanted to make a *Batson* motion. The following exchange between defense counsel, the judge, and the prosecutor took place:

"DEFENSE: Judge, I am going to the have to make a  
*Batson* motion.

COURT: Why didn't you make one at the time they

were excusing people?

STATE: The people are already out. I don't know how you do that now.

DEFENSE: Well, I haven't done one in a long time.

COURT: You have to make one at the time the juror is excluded. I mean, it's late on a *Batson* motion. What can I do now? We've picked a jury.

DEFENSE: I mentioned it before, but I didn't make a formal motion.

COURT: You didn't make a *Batson* motion."

After denying defendant's request for a *Batson* hearing, the court released the remaining venire, swore in the jury and proceeded with the trial.

¶ 11 Trial Evidence

¶ 12 Willis' severely decomposed body was discovered on May 12, 2006, inside of his white conversion van, which was found parked on the south side of Chicago on the 7200 block of South Indiana Avenue. The State's theory at trial was that Willis was killed by defendant on February 4, 2006, just hours after the gas station shooting that defendant had been implicated in.

¶ 13 Dave Roberts, an Alcohol Tobacco and Firearm (ATF) agent, testified that at the time of Willis' death, Willis was working as a confidential informant for the ATF. In that capacity, Willis would provide the ATF with names of people "on the street" who were involved in illegal activity. Roberts testified that Willis had given him defendant's name, but that he never documented this information in any way.

¶ 14 Roberts testified that he would talk with Willis on a daily basis. However, on February 4,

2006, Roberts fell out of contact with Willis, which was unusual, and Roberts was unable to locate him. Willis' mother and girlfriend also testified that the last time they saw Willis was on February 3, 2006. On February 6, 2006, Willis' mother and girlfriend went to the police station and filed a missing persons report.

¶ 15 Joseph Raschke, an expert in historical cell site analysis, testified that he analyzed Willis' cell phone records for the dates between February 4, 2006 and February 6, 2006. In Raschke's opinion, from 1:05 a.m. to 2:00 a.m. on February 4, 2006, Willis' phone was located in an area consistent with Willis being at the scene of the gas station shooting, which was 755 West Lawrence Avenue. From 2:00 a.m. to 2:50 a.m., the cell phone traveled to the south side of Chicago and remained there from 2:50 a.m. until 4:45 a.m. From 4:45 a.m. until the following day, Willis' phone communicated consistently with two different tower sectors, which indicated that Willis' phone remained in a stationary location on the south side of Chicago during that time.

¶ 16 On May 12, 2006, Officer Peter Ujda and his partner responded to a call of a "man slumped over a wheel" in a van at 7200 South Indiana Avenue. When Officer Ujda opened the side door of the white conversion van that was the subject of the call, he saw a body inside. Detective Tim Murphy then arrived at the scene, spoke with Officer Ujda, and observed a body laying between the two captain chairs of the van. Detective Murphy testified that he observed flies and maggots in the interior of the van; Detective Murphy's death investigation only mentioned that he observed maggots and not flies.

¶ 17 After running the registration on the van and learning that it was registered to Willis, Detective Murphy spoke with Dwayne Green, the only person in the area that was able to provide any information about the van. Green told Detective Murphy that he lived at 7200 South Indiana and that he had been calling 311 to report the van because it had been sitting in front of

his house for an extended period of time. Green could not recall exactly when he first observed the van, but testified that it was sometime shortly after the beginning of the year in 2006.

¶ 18 Detective Murphy later learned that Willis had been missing since February 3, 2006, and that police were looking for him in connection with the gas station shooting. Detective Murphy also learned that defendant had been taken into custody in connection with the gas station shooting on or about February 22, 2006.

¶ 19 Dr. Wendy Lavezzi, a medical examiner, testified that she examined Willis' body and that it was in an advanced stage of postmortem decomposition when it arrived at the medical examiner's office. Because the facial features were not readily identifiable, Lavezzi confirmed that the body was Willis with dental records. Lavezzi testified that three bullets were removed from Willis' body, which were packaged, labeled and submitted to the police. Willis had sustained a gunshot wound in the left shoulder and two gunshot wounds in the back of the head. In Lavezzi's opinion, the manner of death was homicide and the cause of death was multiple gunshot wounds.

¶ 20 Although Lavezzi could not give an exact date of death, she testified that the decomposition of the body was consistent with Willis having died in early February 2006. She testified that there were maggots on Willis' body when it arrived at the medical examiner's office and stated that she had spoken with detectives regarding whether there were flies at the scene when the police discovered the body. Lavezzi explained that northern flies can hatch from maggots in about three to four weeks, and those flies can lay eggs and repeat the same life cycle.

¶ 21 On May 14, 2006, Willis' van was processed by forensic investigators. The items recovered from the van included: a jacket with a Remy Martin bottle inside the pocket, two gloves, a cell phone, a purple towel, a knit cap, cigarette butts, cigar filter tips, cigars, a can of

Wildwood Cola, a folding knife, a Gatorade bottle, CDs, CD holders, and a Winchester 380 fired cartridge casing. The items were inventoried and some were sent to the Illinois State Police crime lab for testing.

¶ 22 Other crimes evidence: the restaurant shooting

¶ 23 Johnny Williams testified that on January 14, 2006, at about 10:00 p.m., he, his brother, his two cousins, and his cousin's one-year-old son, drove to Fat Albert's on the 6800 block of Ashland Avenue. Upon entering the restaurant, they ran into two men, one of which Williams later identified as defendant. After words were exchanged between the groups, Williams and his group went into the restaurant. When Williams' group left the restaurant, words were again exchanged with defendant and the other man, and a physical fight broke out. Williams testified that the man he identified as defendant pulled out a gun and began shooting. Williams and his brother were struck by the gunshots before defendant and the other man fled. Williams testified that he was able to see the shooter's face within ten feet of him and that the area was well lit with artificial lighting.

¶ 24 Detective Brian Lutzow testified that he and his partner responded to the restaurant shooting, and three 380 caliber shell casings were recovered from outside the restaurant by an evidence technician. Detective Lutzow spoke with Williams at the hospital and was given a description of the shooter; however, Detective Lutzow was unsuccessful in locating the suspect for several weeks.

¶ 25 On May 23, 2006, Williams was contacted by the police to look at a photo array. After viewing the photo array, Williams identified a photo of defendant as the person who shot him. On March 13, 2008, Williams again identified defendant from a physical line-up as the person who shot him.

¶ 26 Other crimes evidence: the gas station shooting

¶ 27 Earlin Pinnix testified that at approximately 2:00 a.m. on February 4, 2006, he and a friend, Judith Palmer, went to the BP gas station located at 755 West Lawrence Avenue to buy water and snacks. Pinnix approached the gas station window, where all purchases were to be made, while Palmer remained in the car.

¶ 28 Pinnix testified that as he approached the window, he ran into a man leaving the window who he knew to be Earl Willis. Pinnix had known Willis for over ten years; they played basketball together and lived on the north side together. After exchanging greetings, Willis got into his white conversion van. Pinnix testified that he saw the silhouette of one other person in Willis' van; however, Pinnix had told detectives on the date of the gas station shooting that there were multiple people inside Willis' van.

¶ 29 After making his purchase, Pinnix turned around to find a man standing in front of him with a gun to his forehead saying "Give me what you got." Pinnix testified that the man with the gun was defendant; he had known defendant from the neighborhood for several years. According to Pinnix, Willis and defendant were friends and he had seen them together before.

¶ 30 After Pinnix gave the shooter whatever was in his pockets, he tried to grab the gun and a struggle for the gun ensued during which Pinnix was shot in the pelvis. After initially walking away, the gunman returned and tried to shoot Pinnix again, but the gun would not fire. Pinnix testified that during the last attempt to shoot him, the gunman cocked the gun and a shell flew out. The gunman then got into the van with Willis and drove off. At trial, Pinnix identified from a surveillance video the white van and the man who shot him. One unfired bullet cartridge and one expended cartridge casing were recovered from the scene of the gas station shooting by an evidence technician.

¶ 31 After Pinnix went to the hospital, he spoke with the police on February 10, 2006, and viewed two photo arrays from which he identified Willis and defendant. A few weeks later, Pinnix identified defendant in a physical line-up as the person who shot him. Pinnix testified that the bullet was not initially removed from his body because it was close to his spine and "they didn't want to do two surgeries to jeopardize [his] life."

¶ 32 Pinnix testified that "at some point" following the gas station shooting, he went to Northwestern Hospital and had the bullet removed. Pinnix asked the doctor if he could take the bullet home with him after surgery and the doctor said yes. Pinnix testified that the next morning after the surgery, a nurse came into his room and gave him a container with a bullet inside. Pinnix took the bullet home and left it on his dresser with the intention to make a necklace out of it. At trial, Pinnix identified the container with the bullet inside of it and noted that the container had a sticker on it with Pinnix' name, date of birth, and the name of the doctor who performed the surgery. Pinnix testified that the bullet and container presented at trial were in the same or substantially the same condition as when he turned them over to the police.

¶ 33 Detective Stover testified that on August 4, 2008, he was in the Assistant State's Attorney's office with Pinnix and others when the subject of Pinnix having the bullet removed came up. The next day, Detective Stover went to Pinnix' home at 94th and Loomis Avenue and recovered a plastic container with a bullet inside of it; he inventoried it and sent it to the crime lab for testing.

¶ 34 Ivan Byers, Pinnix' cousin, testified that at the time of trial he was serving a ten-year sentence in the federal penitentiary for a weapons and drug charge that he had pled guilty to in exchange for his cooperation in this case. Byers testified that in July 2006, he was incarcerated in the Cook County jail house in the same tier as defendant. Byers knew both Willis and

defendant from the neighborhood and would see them together a lot. On August 19th, while Byers and defendant both had visitors, Byers was with Pinnix while defendant was with someone else when defendant came over to Byers and began arguing with Pinnix. After that day, Byers and defendant began communicating a lot.

¶ 35 Byers testified that in September 2006, he was speaking with defendant and the topic of Earl Willis came up. Byers testified that defendant told him that Willis had owed him money, did not pay him, and that defendant "J down" on Willis the same night he shot Pinnix. Byers testified that "J down" meant to kill.

¶ 36 Forensic Evidence

¶ 37 Several expert witnesses testified regarding the ballistic and DNA evidence recovered in the instance case and in the other crimes cases. Of relevance to this case, the experts testified that: (1) the three cartridge cases recovered at the scene of the restaurant shooting, the one case recovered at the scene of the gas station shooting, and the one case recovered from Willis' van were all fired from the same firearm; (2) the bullet that Pinnix claimed was removed from his body and two of the three bullets that were removed from Willis' body were fired from the same firearm; (3) DNA found on the mouth of the Gatorade bottle that was recovered from the inside of Willis' van was found to be a mixture of Willis' DNA and the DNA of an unknown male; (4) DNA found on the mouth of the Remy Martin bottle recovered from inside Willis' van contained a mixture of DNA with a major contributor matching defendant's DNA and a minor contributor matching Willis' DNA; and (5) DNA taken from one of the cigarette filter papers found inside Willis' van was found to be a mixture of Willis' DNA and that of an unknown female.

¶ 38 The jury found defendant guilty of first-degree murder and further found that defendant personally discharged a firearm that proximately caused the death of Willis. Following a

sentencing hearing, the trial court judge sentenced defendant to a 60-year imprisonment for the first-degree murder charge and a natural life term for the firearm enhancement.

¶ 39 Defendant filed a motion for a new trial which, in relevant part, argued that the trial court erred when it denied him the opportunity to make his *Batson* motion. The trial court denied defendant's request for a new trial and noted: "You made a general *Batson* motion near the end of the jury selection when there was no remedy. But furthermore, the Court does not find his *prima facie* case, and therefore, there is no *Batson* issue for this case."

¶ 40 Defendant now challenges his conviction claiming that the trial court erred when it denied him the opportunity to hold a *Batson* hearing after the State used four peremptory challenges to exclude African American jurors like him from the jury. Defendant also alleges that the trial court erred when it admitted into evidence a bullet from a prior crime that defendant was implicated in because the State failed to establish a sufficient chain of custody for that evidence. For the reasons below, we remand this matter to the trial court for a *Batson* hearing.

¶ 41 ANAYLSIS

¶ 42 Defendant first argues that the trial court erred when it denied him the opportunity to hold a *Batson* hearing based upon an erroneous assumption that his *Batson* motion was untimely. Alternatively, defendant argues that if we find that the trial court did hold a sufficient *Batson* hearing, based upon the arguments and evidence presented before the trial court during post-trial motions, defendant had established a *prima facie* case to show that the State's peremptory challenges were based on race, thus requiring a hearing on the second and third *Batson* requirements.

¶ 43 In response, the State argues that defendant's counsel's request for a *Batson* hearing was untimely since defendant delayed making his motion until the entire jury had been selected. In

effect, the State argues that this delay amounted to a concession by defendant that the State did not exercise its peremptory challenges on the basis of race. Specifically, the State argues that "by allowing the excused jurors to be dismissed and continuing with jury selection, defendant effectively conceded that the [State] had not excused jurors on the basis of race." With respect to the issue of whether defendant established a *prima facie* case under *Batson*, the State concedes that "adequate facts are not in the record" to resolve this issue because "a *Batson* hearing was not held here." As such, the State asserts that if we find that a *Batson* hearing was warranted, this matter should be remanded to the trial court for that purpose.

¶ 44 Initially, we find that defendant's motion for a *Batson* hearing, which was made prior to the jury being sworn in, was timely. "[A] *Batson* motion made after jury selection but before the entire jury is sworn is timely." *People v. Lockhart*, 201 Ill. App. 3d 700, 709 (1990) (citing *People v. McDonald*, 125 Ill. 2d 182, 194 (1988)). Nevertheless, the State argues that defendant effectively admitted that the State did not improperly exercise its peremptory challenges on the basis of race because defense counsel suggested he would make a *Batson* motion after the first jurors were impaneled, but then held off on asserting his motion until after the entire jury was impaneled. The State argues that this delay in raising a *Batson* motion until it was able to see the final composition of the selected jury, as opposed to after the allegedly improper strike was made, amounted to defendant's admission that it did not believe the State improperly used its four peremptory challenges based on race. Given that our courts have held that a *Batson* motion may be made any time prior to the jury being sworn in, we find the State's argument to be unpersuasive. Defendant made his *Batson* motion prior to the jury being sworn in and we see no authority, and have not been presented with any authority, that would require defense counsel here to make his motion any earlier.

¶ 45 Given our finding that defendant's *Batson* motion was timely, it follows that the trial court should have held a *Batson* hearing. "In *Batson*, the United States Supreme Court held that, in a criminal case, the fourteenth amendment's equal protection clause prohibits a prosecutor from using a peremptory challenge to exclude a prospective juror solely on the basis of his or her race. [Citation.] Under *Batson*, the equal protection clause is violated when the facts show that the State excluded an African-American venireperson on the assumption that he or she will be biased in favor of defendant simply because of their shared race." *People v. Davis*, 345 Ill. App. 3d 901, 907 (2004). There is a three-step process that the court must engage in when reviewing a *Batson* motion. First, the party objecting to the exercise of a peremptory challenge is 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." See *Batson v. Kentucky*, 476 U.S. 79, 93-94 (1986). 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. *Batson*, 476 U.S. at 97-98. Finally, the trial court considers the reasons provided for the peremptory strike and determines whether those reasons are pretextual or whether the objector has established purposeful discrimination. *Batson*, 476 U.S. at 98.

¶ 46 While the trial court judge made comments on the record during post-trial motions that he did not believe defendant made out a *prima facie* case for purposes of a *Batson* hearing, the fact of the matter is, and the State admits, no *Batson* hearing was ever held. Thus, defendant was never given the opportunity to make a *prima facie* case, which is the first of three procedural requirements for a *Batson* hearing. Instead, the trial court denied defendant's request for a *Batson* hearing based on the incorrect assumption that the motion was too late. Thus, defendant

never had an opportunity to properly comply with the first step of *Batson*, and for that reason, this matter must be remanded to the trial court for a *Batson* hearing. See *People v. Hogan*, 389 Ill. App. 3d 91, 101-02 (2009); *People v. Martinez*, 317 Ill. App. 3d 1040, 1046 (2000); *People v. Crockett*, 314 Ill. App. 3d 389, 397 (2000). At that hearing, when determining whether defendant has made a *prima facie* case, the trial court will have to weigh several considerations which include, but are not limited to: "(1) the racial identity between the defendant and the excluded venireperson; (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 during *voir dire* examination and while exercising peremptory challenges; (6) whether the excluded African-American venirepersons were a heterogenous group sharing race as their only common characteristic; and (7) the race of the defendant, victim and witnesses." *Davis*, 345 Ill. App. 3d at 907.

¶ 47 Our supreme court has directed that where such remand for *Batson* proceedings is necessary, "the correct procedure" is for this court to withhold disposition of other unrelated issues, retaining jurisdiction to consider them after the *Batson* proceedings. *People v. Ramirez*, 230 Ill. App. 3d 231, 238 (1992); *People v. Garrett*, 139 Ill. 2d 189, 194 (1990) ("It would have been preferable if the appellate court in the present cause had simply retained jurisdiction while remanding for a *Batson* hearing, as this court did when deciding *People v. Hooper*, 118 Ill. 2d 244 (1987)[.]"). As such, we remand this matter so that the trial court may conduct a proper *Batson* hearing, withholding our disposition on the remaining issues until after those proceedings have been completed.

¶ 48

CONCLUSION

¶ 49 We conclude the trial court failed to conduct a *Batson* hearing in this case, despite defendant's timely request for one. Accordingly, we remand this cause to the trial court for an expedited hearing for the limited purpose of allowing the trial court to conduct the proper *Batson* analysis. The trial court shall make the requisite findings of fact and conclusions of law based on the *Batson* hearing and file them with the clerk of this court within 60 days of its decision, accompanied by the record of the proceedings on remand. See *Martinez*, 317 Ill. App. 3d at 1046. In remanding this cause, we express absolutely no opinion on the merits of defendant's *Batson* violation claims.

¶ 50 Remanded with instructions.