



**In the Missouri Court of Appeals  
Eastern District  
DIVISION FIVE**

STATE OF MISSOURI,	)	No. ED89968
	)	
Respondent,	)	
	)	Appeal from the Circuit Court of
vs.	)	the City of St. Louis
	)	
TYRONE C. BATEMAN,	)	Honorable Joan L. Moriarty
	)	
Appellant.	)	FILED: February 24, 2009

Tyrone Bateman (hereinafter, “Bateman”) appeals from the trial court’s judgment convicting him of murder in the first degree, Section 565.020 RSMo (2000),<sup>1</sup> and armed criminal action, Section 571.015. Bateman was sentenced to a term of life imprisonment without the possibility of parole on the murder count and received a consecutive term of ten years’ imprisonment on the armed criminal action count.

Bateman raises two points on appeal. First, Bateman challenges the sufficiency of the evidence to support the murder conviction in that he claims the State failed to prove beyond a reasonable doubt that he coolly reflected prior to shooting the victim. Second, Bateman argues the trial court erred in overruling his objection to the State’s preemptory strike of an African-American venireperson, Benjamin Thompson (hereinafter, “Thompson”), in violation of Batson v. Kentucky, 476 U.S. 86 (1987). We find Bateman’s second point meritorious, and thus, we reverse and remand for a new trial.

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<sup>1</sup> All statutory references are to RSMo (2000) unless otherwise indicated.

The facts are undisputed. Viewed in the light most favorable to the verdict, the evidence adduced at trial was as follows: Bateman and the victim, Miles Bateman (hereinafter, “the victim”), were cousins who lived on the same street, but several houses apart. The victim stayed overnight at Bateman’s house a few days prior to the shooting. When the victim awoke the next morning, he discovered Bateman had borrowed his van and his money. Bateman later returned the van, but not the money. Bateman left a pair of shoes or boots in the van, which the victim retained until he could collect the missing money from Bateman.

A few days later, on March 21, 2005, the victim was repairing a flat tire on his van when Bateman drove up with a mutual friend to retrieve his shoes. When the victim refused to return the shoes until Bateman returned his money, the cousins began arguing. The arguing escalated into a physical confrontation, where Bateman stuck or grabbed the victim, who retaliated by striking Bateman in the head with the jack handle he was holding. The victim’s blow caused Bateman’s head to bleed profusely. The cousins continued to wrestle on the ground in front of the house until another family member broke up the fight. Bateman told the victim, “...[W]hen you get up off me, I’m gonna hurt you real bad.” The victim went into his house to wash his face.

Bateman staggered back to his car, put the car in reverse, and drove erratically back to his house and retrieved a shotgun. Bateman returned to the victim’s house, kicked down the front door, and shot the victim once.

After shooting the victim, Bateman got back into his car and drove away, exclaiming, “I got him. I got him.” The police recovered the shotgun and a shotgun shell consistent with the gun used to shoot the victim. The victim died three weeks later as a

result of the injuries inflicted from the gunshot wound. Bateman was apprehended over a month later, partially hidden in a bedroom closet. Bateman resisted arrest so much so that the police had to subdue him with a taser.

At trial, Bateman admitted he shot the victim, but argued he was not guilty of first degree murder. Bateman believed he was only guilty of voluntary manslaughter. The jury weighed the evidence to the contrary and convicted Bateman of first degree murder and armed criminal action. Bateman appeals.

In his first point on appeal, Bateman challenges the sufficiency of the evidence to sustain the first degree murder conviction. Bateman argues the State failed to prove beyond a reasonable doubt that he coolly reflected prior to shooting the victim. Bateman believes the reasonable inference to be drawn from the evidence was that he was “acting out of the influence of a violent anger or passion,” and therefore, his conviction should be overturned.

We limit our review of a challenge to the sufficiency of the evidence supporting a criminal conviction to a determination of whether sufficient evidence was presented from which a reasonable juror could find the defendant guilty beyond a reasonable doubt. State v. Grim, 854 S.W.2d 403, 405 (Mo. banc 1993). We consider the evidence and all reasonable inferences drawn therefrom in the light most favorable to the jury’s verdict and disregard all contrary evidence and inferences. State v. Gonzales, 253 S.W.3d 86, 89 (Mo. App. E.D. 2008). While reasonable inferences may be drawn from direct and circumstantial evidence, “the inferences must be logical, reasonable and drawn from established fact.” State v. Presberry, 128 S.W.3d 80, 91 (Mo. App. E.D. 2003).

“In considering the sufficiency of the evidence, there must be sufficient evidence of each element of the offense.” State v. Jordan, 181 S.W.3d 588, 592 (Mo. App. E.D. 2005)(quoting State v. Dixon, 70 S.W.3d 540, 544 (Mo. App. W.D. 2002)). The State has the burden to prove each and every element of a criminal case beyond a reasonable doubt. State v. Barnes, 245 S.W.3d 885, 889 (Mo. App. E.D. 2008). If the State fails to produce sufficient evidence to sustain a conviction, we must reverse the trial court’s judgment. See State v. Deadmon, 118 S.W.3d 625, 628 (Mo. App. S.D. 2003).

Section 565.020.1 states a person is guilty of murder in the first degree if he or she “knowingly causes the death of another person after deliberation upon the matter.” Deliberation is defined as “cool reflection for any length of time no matter how brief.” Section 565.002(3). Deliberation need only be momentary, so long as the State demonstrates “the defendant considered taking another’s life in a deliberate state of mind.” State v. Miller, 220 S.W.3d 862, 868 (Mo. App. W.D. 2007). Stated differently, “[a] deliberate act is a free act of the will done in furtherance of a formed design to gratify a feeling of revenge or to accomplish some other unlawful purpose and while not under the influence of violent passion suddenly aroused by some provocation.” Id.

Bateman does not dispute he shot the victim and the gunshot wounds ultimately caused the victim’s demise. Rather, Bateman argues his actions demonstrate he was acting under the influence of a violent passion or anger. Specifically, Bateman points to the evidence that supports the fact that he was hurt and bleeding when he drove the car recklessly back to his house to retrieve the shotgun. Bateman then returned quickly, kicked down a door, and shot the victim. Bateman contends this evidence can only lead

to the reasonable inference that he was deeply impassioned and angry immediately before the shooting. We disagree.

It is clear from the record that the fight between the cousins ceased when the family member separated them and the victim went into the house to wash his face. Rather than letting this conclude the confrontation, Bateman left the victim behind, drove to his home, retrieved a shotgun, and returned to fatally shoot the victim. We may infer deliberation from the fact that Bateman had the opportunity to terminate the attack after it began. *See State v. Cole*, 71 S.W.3d 163, 169 (Mo. banc 2002). Moreover, Bateman threatened the victim after they were separated, telling the victim he was “gonna hurt [him] real bad” and returned with a shotgun. This further supports a finding of deliberation. *See Rhodes v. State*, 157 S.W.3d 309, 313 (Mo. App. S.D. 2005)(finding time lapse between the threat and the shooting would have established a period of deliberation).

Thus, after examining the totality of the circumstances, we cannot say a reasonable jury could not have found Bateman deliberated prior to shooting the victim. We find the State carried its burden of proving beyond a reasonable doubt that Bateman coolly deliberated when he shot and killed the victim after their altercation. Point denied.

In his second point on appeal, Bateman alleges the trial court erred in overruling his objection to the State’s peremptory strike of Thompson. Bateman believes the State’s strike was motivated by race, and thereby denied Thompson’s right to equal protection under the law. Bateman argues the State mischaracterized Thompson’s response and there was a similarly situated Caucasian venireperson, Bob Brindell (hereinafter, “Brindell”), who was not struck by the State.

“Under the Equal Protection Clause, a party may not exercise a peremptory challenge to remove a potential juror solely on the basis of the juror’s gender, ethnic origin, or race.” State v. Hampton, 163 S.W.3d 903, 904 (Mo. banc 2005)(*quoting State v. Marlowe*, 89 S.W.3d 464, 468 (Mo. banc 2002)). Missouri courts employ a three-step process to resolve a Batson challenge. “First, the defendant must raise a Batson challenge with regard to one or more specific venirepersons struck by the [S]tate and identify the cognizable racial group to which the venireperson or persons belong.” Hampton, 163 S.W.3d at 904 (*quoting Marlowe*, 89 S.W.3d at 468; State v. Parker, 836 S.W.2d 930, 939 (Mo. banc 1992)). Second, the party making the peremptory strike must articulate a race-neutral explanation for the strike. State v. Morton, 238 S.W.3d 732, 734 (Mo. App. E.D. 2007). This explanation “is deemed race-neutral unless a discriminatory intent is inherent in the prosecutor’s explanation, and if it would result in a disproportionate removal of minority venirepersons.” State v. Hopkins, 140 S.W.3d 143, 148 (Mo. App. E.D. 2004). In the third step, “the defendant must demonstrate the [S]tate’s proffered reasons were merely pretextual and that the strike was racially motivated.” State v. Strong, 142 S.W.3d 702, 712 (Mo. banc 2004).

This Court will reverse the trial court’s determination on a Batson challenge only upon a showing of clear error. State v. Chambers, 234 S.W.3d 501, 514 (Mo. App. E.D. 2007); State v. Barnett, 980 S.W.2d 297, 302 (Mo. banc 1998). A finding is clearly erroneous when the reviewing court is left with the definite and firm conviction that a mistake has been made. State v. McFadden, 216 S.W.3d 673, 675 (Mo. banc 2007).

Based upon our review of the record, the evidence supports the finding that the trial court improperly analyzed Bateman’s Batson challenge in that the State’s proffered

explanation mischaracterized Thompson's statements and was racially motivated. This erroneous Batson analysis resulted in clear error, requiring reversal.<sup>2</sup>

First, Bateman properly asserted a Batson challenge by objecting to the State's peremptory strike of Thompson on the basis of his race as required by the first step of the Batson analysis. Second, the State offered a facially race-neutral explanation for striking Thompson. The record reflects the State asked the venire panel if it could apply the law to the facts of the case based upon the trial court's instructions. Thompson responded to the State's question as follows:

Thompson: I believe I can. But one question, when you say degree, what do you mean by that, First Degree, Second Degree?

[The State]: That will be entailed in the instruction that the Court gives you that there are elements that go into making a homicide a Murder in the First Degree. There are certain requirements, certain things that need to be sustained before it's Murder in the First Degree or to make it Murder in the Second Degree.

Thompson: I mean, is that like more of a harsher sentence?

[The State]: Murder in the First Degree is a higher charge, per se, than Murder in the Second Degree or even manslaughter. There's kind of a ranging of them. Murder in the First Degree in some instances carries the death penalty. It does not in this case. Any of those questions that you have as far as degrees go, the Court will give you an instruction on.

Let me ask you this: If your personal belief is one thing but the Court's instructions is [sic] another, will you be able to follow the Court's instruction and apply it to the facts of the case?

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<sup>2</sup> The dissenting author states the defense counsel was able to win a Batson challenge on one of the State's peremptory strikes in support of his position that the trial court properly struck Thompson. Recognizing this issue is not properly before this Court on appeal, but may offer insight into the totality of the circumstances surrounding voir dire, we comment upon it briefly. Based upon the record, when overruling the State's potential strike of an African-American female, the trial court spoke of the retention of a similarly situated African-American venireperson, as opposed to a similarly situated Caucasian venireperson. This comment demonstrates the trial court's misunderstanding of the Batson procedure was not confined to the issue raised on appeal.

Thompson: Yes.

Based upon this testimony, the prosecutor articulated his explanation for striking Thompson as follows:

Your Honor, I struck Mr. Thompson for the sole reason that each -- before I asked a question about following the Court's instructions and eluding as to different degrees of murder or homicide shortly after reading the charge, it was a Murder in the First Degree case, Mr. Thompson beat me to that question and asked if there are different degrees of murder charges and there are other things than First Degree to consider. And the reason I strike him ... is because I take that initiative that he showed as, you know, maybe a sign that he has a more lenient bend to his personal disposition in this matter or in criminal matters....

On its face, this appears to be a race-neutral reason for striking Thompson. However, defense counsel responded she believed the State's reasons were pretextual as required by the third step in the Batson analysis. Defense counsel explained the State misstated what Thompson's statements were with respect to the degrees of murder, stating, "I think his question was he did not understand that there were degrees and what does that mean."

Further, upon hearing the State's proffered explanation that Thompson had a "more lenient bend to his personal disposition," defense counsel cited Brindell as a similarly situated Caucasian juror who was not struck by the State. One of the four factors used to determine pretext is the presence of similarly situated white jurors who were not struck from the venire panel.<sup>3</sup> State v. Pointer, 215 S.W.3d 303, 306 (Mo. App. W.D. 2007). This factor is crucial to determining pretext, although not conclusive. Id.

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<sup>3</sup> The other three factors are: the degree of logical relevance between the proffered explanation and the case to be tried; the prosecutor's credibility based on his or her demeanor or statements during voir dire and the trial court's past experiences with that prosecutor; and the demeanor of the excluded venireperson. Pointer, 215 S.W.3d at 303. We are constrained from analyzing these factors because the record is devoid of any discussion of these issues, particularly with respect to the prosecutor's credibility, the trial court's past experience with the prosecutor, and the excluded venireperson's demeanor. While the dissenting author colorfully expresses an opinion with respect to the experience of the trial judge and the young

The record reveals upon resuming voir dire on the second day of trial, and before Thompson ever responded to the prosecutor, the prosecutor asked, “[H]as anyone else had a chance to sleep on anything about what we talked about and have a response to anything we may have talked about yesterday or you re-thought as of last night or today?” Brindell stated:

Yesterday we were talking. And I’m not talking about presumption of innocence here or anything like that. But the State is not asking for the death penalty or it’s been ruled out completely. And I’m trying, in my mind, to justify why if we determine that there was guilt in this case that we wouldn’t be allowed to consider all possible punishment. Not that we would necessarily go for that, but why would we eliminate some of the punishment possibilities from the deliberation?

The prosecutor explained to Brindell that there are several factors and legal issues that come into play when deciding to seek the death penalty, but it was not an option in this case. The prosecutor also informed the jury it would not impose any sentence in this particular case. Based upon the prosecutor’s representations about the two venire men’s testimony and after hearing defense counsel’s argument, the trial court permitted the State to strike Thompson because it found the State’s reasoning was racially neutral without further comment or discussion.

“In evaluating a Batson challenge, the trial court’s ‘chief consideration should be the plausibility of the prosecutor’s explanations in light of the totality of the facts and circumstances surrounding the case.’” McFadden, 216 S.W.3d at 676 (quoting Parker,

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aggressive trial attorneys below, there is nothing in the record to demonstrate the trial judge, who is the one tasked with weighing credibility under Batson, was aware of the attorneys’ reputations or had past experience with the attorneys. In the absence of any evidence to the contrary, this Court may not and should not substitute its personal opinions of the capabilities of the trial judge or the attorneys of record or give these officers of the court the “benefit of the doubt” when applying a standard of review which allows the Court to address the inevitable occasional errors committed by even the most accomplished practitioners of the profession.

836 S.W.2d at 939). It is clear from the record that the State mischaracterized Thompson's testimony when stating its alleged race-neutral reason, in that Thompson did not take "initiative" by asking about potentially harsher sentencing when the record demonstrates Thompson was responding to a direct question by the prosecutor. Even if Thompson's follow up question could be construed as "initiative," then one would surmise Brindell likewise took "initiative" when he inquired about the range of punishment after being invited to do so by the prosecutor's open-ended question when voir dire resumed. Additionally, nothing contained within Thompson's response or question demonstrated an apparent disposition toward leniency; the same can be said for Brindell based upon his question about the range of punishment. Moreover, the trial court did not attempt to clarify Thompson's comments or compare these comments to Brindell's statements.<sup>4</sup>

In light of the totality of the facts and circumstances presented in this case, the trial court improperly analyzed Bateman's Batson challenge and wrongfully relied upon the State's mischaracterizations of Thompson's comments. The State's peremptory challenge was in error without more in the record to support the venirepersons' alleged motivation in asking about sentencing during voir dire. We will not speculate about the possible motivations underlying the venirepersons' questions, and in the absence of this evidence, we find the venirepersons were similarly situated with nothing to distinguish them other than their race.

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<sup>4</sup> Had the trial court required clarification with respect to the venirepersons' testimony, the trial court had at its disposal the transcript prepared by the court report to utilize for reference. We encourage trial courts to exercise this practice in order to prevent potential Batson violations.

In instances such as these, an improper strike infringes upon the right of the venireperson to perform his or her civic duty of sitting on a jury. Powers v. Ohio, 499 U.S. 400, 111 S.Ct. 1364, 1370, 113 L.Ed.2d 411 (1991); Parker, 836 S.W.2d at 933. The proper remedy is “to quash the strikes and permit those members of the venire stricken for discriminatory reasons to sit on the jury if they otherwise would.” State v. Grim, 854 S.W.2d 403, 416 (Mo. banc 1993). “This remedy vindicates the equal protection rights both of the accused and the stricken venireperson.” Hampton, 163 S.W.3d at 905. “The survival of [the peremptory strike] procedure in a constitutionally permissible manner need be neither offensive nor unduly burdensome to our courts and lawyers. Whatever complications that may result are a small price to make citizen participation in our judicial process free from the taint of racial, gender-based, religious, or ethnic discrimination.” Parker, 836 S.W.2d at 942 (Price, J., concurring).

Accordingly, we find the trial court clearly erred in overruling Bateman’s objection to the State’s peremptory challenge of Thompson. Bateman’s second point is granted. The trial court’s judgment is reversed and remanded for a new trial.

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George W. Draper III, Judge

Nannette A. Baker, C.J., concurring  
Kenneth M. Romines, J., dissents



**In the Missouri Court of Appeals**  
**Eastern District**  
**DIVISION FIVE**

STATE OF MISSOURI,	)	No. ED89968
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	the City of St. Louis
v.	)	Cause No. 22051-01429
	)	Honorable Joan L. Moriarty
TYRONE C. BATEMAN,	)	
	)	
Appellant.	)	Filed: February 24, 2009

**DISSENT**

I dissent. My review of the transcript, and consideration of our standard of review, compels a conclusion contrary to the majority.

Defendant was charged with first degree murder and armed criminal action as a prior and persistent offender. A jury, to which both the prosecutor and Defendant assented, found Defendant guilty.<sup>5</sup> The case was tried before an experienced trial judge--herself an experienced trial lawyer--with an aggressive young prosecutor and an equally aggressive young defense counsel, formerly an associate of Rosenblum, Schwartz, Rogers & Glass. On appeal two claims of error are made: (1) the State did not prove cool reflection; and, (2) a peremptory strike violated *Batson v. Kentucky*, 476 U.S. 86 (1987).

Here's what the record shows: Defendant and his cousin engaged in a fight in the streets of St. Louis over money and a pair of shoes. Defendant's cousin won the fight

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<sup>5</sup> Of course the witnesses who testified were relatives of both the defendant and the victim.

with the help of a tire tool. Defendant's aunt separated the men, with the cousin going into his house to clean up. Defendant, however, went home, got his shotgun, came back to his cousin's house, kicked in the front door, and blew his cousin to his eternal reward.<sup>6</sup>

I find the transcript of voir dire reveals the trial court's consideration of the strikes proper and indeed thorough. What is reflected is not the narrow version of the majority but a rather rough and tumble exercise between two good young lawyers.

After voir dire, the trial court stated on the record that it was allowing strikes for cause as to fifteen venire members to which both the State and the defense had agreed. The State then requested the court strike five additional jurors for cause, all of which the court granted. Defense counsel did not request any additional strikes for cause.

The court then confined the jury pool to twenty-four jurors and six alternates. The court allowed each side six peremptory strikes from the main panel and two from the alternates. The State exercised five of its six jury peremptory strikes on black members of the panel. Defense counsel challenged each under *Batson*, and the court upheld one of those challenges, placing that juror on the final panel. Defense counsel then exercised her strikes, all of them--including the alternates--to strike white jurors. The State objected to one of these strikes under *Batson*, and the court sustained the challenge. The eventual jury, including the two alternates, had three black members.

The majority ignores the standard of review and reaches the bald conclusion that the trial court "improperly analyzed" the *Batson* challenge. Indeed the majority does not analyze how it reached these conclusions. After trotting out the standard of review--clear

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<sup>6</sup> Thus disposing of the first claimed error--failure to prove deliberation. See *State v. Wilson*, 645 S.W.2d 372, 373 (Mo. banc 1983) (deliberation can be merely momentary so long as it is clear the defendant considered taking another's life in a deliberate state of mind). See also *State v. Cole*, 71 S.W.3d 163, 169 (Mo. banc 2002) (deliberation may be inferred from the fact that a defendant had an opportunity to terminate the attack after it began).

error--the majority proceeds to require the record to prove that the trial judge made the correct decision. This is not our task, and in fact turns the standard on its head. The error must be clear--must jump off the page in a manner of speaking. Here the majority says they will not speculate as to motives, yet I see no other way they were able to find clear error.

The majority only discusses in a vacuum the inter-play involving two veniremen. They conclude these were similarly situated. They gloss over the substance of the questions, concluding for the trial judge that there was no way to interpret from either venireman any bent toward leniency, harshness, or otherwise. However, it is clear the trial judge *did* see the bent to their questions, and this was the trial judge's question to determine. That is where we as an appellate court must stop. Just because one judge may have given Thompson the benefit of the doubt does not mean that another has to when Thompson asks follow-up questions about degrees of the crime and sentencing. We did not see the demeanor--we did not actually hear the answers; the trial court did. Our standard requires the record to prove clear error, and there simply is none.

Revealingly, the majority says no harshness could be interpreted from Brindell's inquiry as to why the jury could not consider the death penalty, yet they choose not to acknowledge that defense counsel peremptorily struck Brindell. Far from being similarly situated, the two men the majority chooses to consider asked such differing questions that it led opposing sides to strike them.

In sum the trial court saw and heard the voir dire; saw and heard the lawyers; made judgments; and upheld and rejected *Batson* challenges from both the prosecutor and

Defendant. There is no "clear error," indeed no error at all, just a trial. This result should be affirmed.

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Kenneth M. Romines, Judge