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**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CV-22-725

HAMILTON MITCHELL, AS TRUSTEE  
OF THE BANKRUPTCY ESTATE OF  
JASLYN DEANS

APPELLANT

V.

JAMES STRAYHORN

APPELLEE

Opinion Delivered January 24, 2024

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[NO. 72CV-19-91]

HONORABLE BETH STOREY  
BRYAN, JUDGE

AFFIRMED

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**N. MARK KLAPPENBACH, Judge**

Following a jury trial, the Washington County Circuit Court entered judgment in favor of appellee James Strayhorn on a counterclaim filed by Jaslyn Deans.<sup>1</sup> On appeal, appellant argues that the circuit court erred in allowing Strayhorn to exercise one of his peremptory strikes to exclude an African American woman from the jury in violation of the Equal Protection Clause as construed by the United States Supreme Court in *Batson v. Kentucky*, 476 U.S. 79 (1986). We affirm.

This case began with an unlawful-detainer action filed by Strayhorn against Deans, his tenant. Deans filed a counterclaim alleging causes of action for sex-based discrimination,

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<sup>1</sup>Prior to trial, Hamilton Mitchell, as trustee of the bankruptcy estate of Jaslyn Deans, was substituted as the party of interest.

quid pro quo harassment, and hostile-environment harassment in violation of federal and state fair-housing laws. The unlawful-detainer action was disposed of prior to the trial on the counterclaim. A key piece of evidence at trial was a video Deans secretly recorded of Strayhorn inside her home. The topic of recording a video of a person without the person's knowledge was raised by both parties' attorneys during voir dire. After each side exercised three peremptory strikes, appellant raised a *Batson* challenge to Strayhorn's strike of Darnesha Davis, an African American woman. Appellant's counsel stated that "we believe she was stricken on the basis of race" and requested that Strayhorn offer a race-neutral and gender-neutral reason.

Strayhorn's counsel stated initially that he struck "young females" and mentioned "the video stuff." He then stated that "my strikes are primarily because of the age of them. Younger kids, you know, I think are more in tune to this. I think my—a jury would be better—older people on the jury would be better for me. The reason for my strikes is primarily for age." Appellant's counsel responded that there are others who "may be younger" who were not struck. Strayhorn's counsel stated that he did not look at the jurors' ages on their questionnaires, but his strikes were based on jurors who appeared to be young. He argued that the jurors he struck were "all young-looking people. Not females, young-looking people." Appellant's attorney argued that age was not a nondiscriminatory reason, especially since Strayhorn's counsel did not know the jurors' actual ages. The court ruled as follows:

Mr. Snively [Strayhorn's counsel] has stated that he struck Ms. Davis not because of her race, but because of what he perceived to be her young age. The other three that he stroke ~ that he struck were all women that have the appearance certainly to be

younger.<sup>2]</sup> One of the main issues for both attorneys during voir dire was potential jurors' beliefs and opinions as it relates to recording and whether or not they believe that recording is right or wrong. And there was argument ~ well, not argument ~ but statements made by plaintiff's counsel about ~ or how sort of the younger generation ~ and these aren't exact quotes, obviously ~ the younger generation is more comfortable with recording. That was a statement and sentiment expressed by many of the potential jurors. So, I ~ I think Mr. Snively has offered a nondiscriminatory reason for striking Ms. Davis. So, based on that, I'll deny the challenge.

Accordingly, Davis was struck from the jury. Following a verdict in Strayhorn's favor, appellant filed a motion for new trial on the basis of the *Batson* challenge. The motion was deemed denied, and appellant now appeals.

Appellant argues that the circuit court erred in finding that Strayhorn's strike of Davis did not violate *Batson*. Although *Batson* dealt with racial discrimination, the Supreme Court later held that the Equal Protection Clause forbids intentional discrimination on the basis of gender just as it prohibits discrimination on the basis of race. See *J.E.B. v. Alabama*, 511 U.S. 127 (1994). In determining whether such a violation has occurred, we apply a three-step analysis. *MacKintrush v. State*, 334 Ark. 390, 978 S.W.2d 293 (1998). The first step requires the opponent of the peremptory strike to present facts that show a prima facie case of purposeful discrimination. *Stokes v. State*, 359 Ark. 94, 194 S.W.3d 762 (2004). Once a prima facie case of discrimination has been shown, the process moves to the second step, wherein the burden of producing a racially neutral explanation shifts to the proponent of the strike. *Id.* This explanation must be more than a mere denial of discrimination, but this

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<sup>2</sup>The court commented earlier in the discussion that "Ms. Davis certainly appears to be young."

explanation need not be persuasive or even plausible. *MacKintrush, supra*. If a race-neutral explanation is given, the inquiry proceeds to the third step, in which the circuit court must decide whether the opponent of the strike has proved purposeful discrimination. *Stokes, supra*.

In the third step, the strike's opponent must persuade the circuit court that the expressed motive of the striking party is not genuine but, rather, is the product of discriminatory intent. *MacKintrush, supra*. This may be in the form of mere argument or other proof, but it is crucial that the circuit court weigh and assess what has been presented to it to decide whether, in light of all the circumstances, the proponent's explanation is or is not pretextual. *Id.* If the strike's opponent chooses to present no additional argument or proof but simply to rely on the prima facie case presented, then the circuit court has no alternative but to make its decision on the basis of what has been presented to it, including an assessment of credibility. *Id.* We will reverse a circuit court's finding on a *Batson* challenge only when the circuit court's decision was clearly against the preponderance of the evidence. *Stokes, supra*.

Appellant argues that Davis was the only African American member of the eighteen-member jury panel and that Strayhorn used all three of his peremptory strikes to strike women. Appellant acknowledges that age has not been recognized as a prohibited basis for striking jurors, but he claims that choosing a categorical reason such as age did not clearly articulate that there was a nondiscriminatory basis for exercising the strike. Appellant argues that striking jurors because of their young age was improper because counsel did not know

the jurors' actual ages, he based his strikes on their appearance, and he did not strike a white woman who was younger than Davis.

After appellant made a prima facie case of discrimination at trial, the burden of producing a nondiscriminatory explanation shifted to Strayhorn. Strayhorn's counsel ultimately stated that he struck younger people who he thought were "more in tune to this," and he believed older people would be better for him. As appellant recognizes, "some of the jurors discussed the fact that they associated age and finding recordings acceptable." When questioned by appellant's attorney, one potential juror, who was ultimately struck by Strayhorn, stated that she would not care if someone took a video of her without her knowledge since she is "younger." Another juror referenced her age when explaining her thoughts on the subject, and unidentified jurors raised their hands in agreement or disagreement during the discussion. Strayhorn's explanation that he struck jurors on the basis of age was race neutral and gender neutral and was rationally related to the trial. See *Sonny v. Balch Motor Co.*, 328 Ark. 321, 330, 944 S.W.2d 87, 92 (1997) (overruled on other grounds by *MacKintrush*, *supra*).

The analysis then proceeded to the third step, in which appellant had the burden of persuading the circuit court that Strayhorn's expressed motive was not genuine but, rather, was the product of discriminatory intent. *MacKintrush*, *supra*. After Strayhorn offered his nondiscriminatory reason, appellant did not argue or offer proof that there were other jurors who were, in fact, younger than Davis or others who appeared younger than Davis. Despite having the jurors' questionnaires at the time of the *Batson* challenge, appellant did not argue

that there were jurors younger than Davis until filing a motion for new trial.<sup>3</sup> *Batson* arguments not made to the circuit court are not preserved for our review on appeal, and a general objection does not preserve a specific point. *Weston v. State*, 366 Ark. 265, 234 S.W.3d 848 (2006). While appellant claimed that Strayhorn had the burden to show that he knew the jurors’ actual ages, the burden of persuasion to establish purposeful discrimination never leaves the opponent of the strike. *MacKintrush*, *supra*.

Accordingly, the circuit court was left to make its decision at trial on the basis of what had been presented to it. See *Sonny*, 328 Ark. at 330, 944 S.W.2d at 92 (“We note that after the explanations were given, Mr. Sonny did not seek to provide additional evidence, but simply asserted that the explanation was insufficient.”). The circuit court was not persuaded that the strike was the product of discriminatory intent based on either race or gender, and we cannot say that this decision was clearly against the preponderance of the evidence. To the extent appellant attempts to argue that Strayhorn’s other two strikes—both women—were the product of gender discrimination, this argument was not preserved.

Affirmed.

BARRETT and MURPHY, JJ., agree.

*Legal Aid of Arkansas, Inc.*, by: *Laura Avery*, for appellant.

*Tim Snively*, for appellee.

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<sup>3</sup>In the motion for new trial, appellant noted the ages of three jurors who served: a white woman who was younger than Davis, a white man who was the same age as Davis, and a white woman who was older than Davis.