

2012 IL App (2d) 110175-U
No. 2-11-0175
Order filed September 11, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE)	Appeal from the Circuit Court
STATE OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-3215
)	
MAURICE D. SIMMONS,)	Honorable
)	John R. Truitt,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

Held: The evidence was sufficient to find defendant guilty beyond a reasonable doubt of the offense of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)). Defendant's challenges to *voir dire* pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), were properly denied by the trial court because the prosecutor provided race-neutral and nonpretextual reasons for excluding African-American jurors and defendant failed to establish a *prima facie* case for gender discrimination during *voir dire*.

¶ 1 Defendant, Maurice D. Simmons, appeals from his conviction of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)). On appeal, defendant contends that the evidence

was insufficient to find him guilty of the offense of aggravated discharge of a firearm and that the State engaged in impermissible racial and gender discrimination during jury selection. We affirm.

¶ 2 We begin by summarizing the facts appearing of record. On October 20, 2010, defendant, along with his codefendant, Derrick Newburn, was charged in a 12-count indictment with, among other things, aggravated discharge of a firearm (count 1), conspiracy (count 3), unlawful use of a weapon by a street gang member, (count 5), unlawful use of a weapon by a felon (count 7) aggravated unlawful use of a weapon that was uncased and accessible (count 9), and aggravated unlawful use of a weapon (no FOID card) (count 11), with Newburn being charged with the remaining counts. The matter was severed regarding the codefendants, and defendant severed counts 5 and 7 resulting in the matter being set for trial on counts 1, 3, 9, and 11. In January 2011, the State attempted to sever counts 1 and 3, but the trial court denied the request. Instead the State dismissed counts 9 and 11, and, on January 4, 2011, the matter proceeded to trial on counts 1 and 3.

¶ 3 *Voir dire* commenced. Defendant is an African-American male. In the venire, there was one person who was “obviously” African-American, Stacy Caton, a female. The parties represent that one other member of the venire was also African-American, Gillian Arreguin, a female, although it appears that she was of Jamaican descent and possibly of mixed race or possibly African-American. Additionally, the venire consisted of 17 males and 10 females. During the course of jury selection, the State exercised four peremptory challenges, all against women, and including the two African-Americans in the venire, Caton and Arreguin. During jury selection, defendant exercised one peremptory challenge against Lorel Lundy, a woman. Five jurors were excused for cause. Of the venirepersons who were empaneled in the jury, 11 were male, one was female, and the single alternate juror was also female.

¶ 4 Defendant challenged the State's use of peremptory strikes, arguing that the State had discriminated in the use of them along gender and racial lines. The trial court dealt first with the racial challenge, concluding that defendant had made out a *prima facie* case of racial discrimination.

¶ 5 The State explained its rationale regarding the peremptory challenges used against the African-Americans in the venire. Regarding Caton, the prosecutor explained (1) she did not know Caton was the only "obvious" African-American on the panel, and (2) Caton indicated during voir dire that something had been stolen from her garage, but she had not contacted the police, from which the prosecutor concluded that Caton had a lack of faith in the justice system. Regarding Arreguin, the prosecutor explained (1) that, in her mind, Arreguin neither any more nor less a minority than juror Shah, a man of apparent Indian or Pakistani descent who was kept on the jury, (2) Arreguin had a relative who was deported "by the State" after possessing illegal drugs, and (3) according to the prosecutor, Arreguin reported in an "odd" way that she had observed a criminal case as a civilian but in conjunction with her job or a class.

¶ 6 Defendant argued that Caton's decision not to call the police after the theft from her garage was meaningless because no follow-up questions were asked about the theft. Defendant also argued that the comparison of Arreguin to Shah was improper because they did not belong to the same racial groups, Arreguin had not expressed any particular dismay about her relative's deportation, and the fact that she observed a criminal trial was not unusual because she observed the trial pursuant to instructions from her work or class.

¶ 7 The trial court accepted the State's explanation as race-neutral and determined that it was not pretextual. The trial court denied defendant's challenge on the basis of racial discrimination.

¶ 8 Regarding defendant's gender-based challenge, the court first noted that, of the first 13 venirepersons called, 10 were men, and defendant exercised a peremptory challenge against one of the women. In addition to Caton and Arreguin, the State exercised peremptory challenges against Debra James and Mary Kay Grans. The trial court considered whether defendant had made a *prima facie* case for gender-based discrimination. Defendant acknowledged that the challenge against Grans was neutral because she knew the judge presiding over the trial. The State noted that it had tendered two women to defendant; defendant struck one of them. The court concluded that defendant had not made out a *prima facie* case of gender-based discrimination and denied defendant's challenge.

¶ 9 The matter proceeded to the trial. Regnesha Joiner testified that, on August 5, 2010, between 6 and 6:30 p.m., she and her then-boyfriend, Darius Foster, were walking north on Central Avenue near Andrews Park in Rockford. While Joiner and defendant have two children together, in August 2010, Joiner was not dating defendant, but was dating Foster, and defendant was dating another woman at that time. Joiner testified that, as she and Foster approached Sherman Avenue, she saw a gold, four-door vehicle approach, and she observed that defendant and Newburn were in the car. Joiner testified that defendant was driving the car and Newburn was in the front passenger seat.

¶ 10 Joiner testified that shots were fired, and she ran toward the park and Ashland Avenue. Joiner testified that, at that moment, she observed her mother rounding the corner, and she jumped in her mother's car. Joiner and her mother drove around trying to find Foster. Eventually, they found Foster at Joiner's mother's house.

¶ 11 Joiner testified that she did not know if there were any problems between defendant and Foster, but she knew that there were problems between Foster and Newburn. Joiner testified that

her mother had children with Newburn and, at the time of the trial, Joiner's sister had a two-week-old baby with Newburn.

¶ 12 Joiner testified that, on August 5, 2010, when the incident began, she and Foster were close to a yellow sign near the intersection of Central and Sherman. The park was on their right. Joiner testified that Foster began yelling and cursing at Newburn. Joiner testified that she did not see Foster display a gun as he was cursing at Newburn. Joiner testified that she was not sure who fired first, but she began running before the shooting began. Joiner also testified that she tried to stop Foster from shooting, but she did not see him take out his gun. Joiner testified that she saw Newburn shoot a gun at Foster, and the car then turned left onto Central. Joiner testified that she could not see if the gold car turned at Arthur Avenue, and she noted that Foster continued to travel north, running past Sherman on the same side of the street.

¶ 13 Joiner testified that, when the police questioned her about the shooting, she did not tell them that Foster had a gun. She also admitted that she told the police that Newburn had displayed his gun first during Foster and Newburn's argument. Joiner could not recall what she told police about Newburn shooting other than her statement that it was Newburn alone who fired. At trial, however, she testified that she was certain that Foster had a gun and fired at Newburn. Joiner further testified that, at the time of trial, she was again dating defendant.

¶ 14 Tarsha Franklin testified that she lives at the northeast corner of Central and Sherman. On August 5, 2010, she was in her bathroom on the west side of the house, when she observed a man, who she believed to be wearing a cast, and a woman walking along the street. Franklin testified that she heard four or five gunshots and observed the man with the cast and woman continue walking. She testified that she next saw a man without a cast and carrying a gun run north along Central.

Franklin testified that she also saw a gold-colored car driving north on Central, but she was not able to see into the car. Franklin testified that the occupants of the car were shooting at the man who was running away from the car, but she could not see from where inside the car the gunshots were coming. According to Franklin, the man running on the street shot at the gold-colored car first, then someone in the car, who she thought was the driver, returned fire at the man running in the street. Franklin testified that the police asked her to look at a single individual, and she identified him as the man who was doing the shooting and also as the man who was wearing a cast. Franklin testified that the man's gun was silver, long, and large. Franklin testified that she did not know defendant. Franklin testified that she did not observe the woman to be running during the incident; the woman just kept walking while the shooting was occurring.

¶ 15 Police recovered four 9 mm and four .45-caliber shell casings at the corner of Sherman and Central. Police further recovered only 9 mm shell casings one block north of the Sherman and Central intersection, at Central and Arthur. At the Sherman and Central intersection, the 9 mm shell casings were recovered from the western part of the intersection on Sherman, while the .45-caliber shell casings were recovered south of Sherman on the west side of the street, adjacent to the park and sidewalk. Specifically, one of the .45-caliber casings was located near the gutter close to the intersection with Central, and other 45-caliber casings were located by the gutter on Sherman, a few feet from the curb on Central.

¶ 16 Officer Heidi Kuhls testified that she interviewed Franklin after the shooting. Kuhls testified that Franklin identified herself as Sonya, not Tarsha. Kuhls testified that Franklin informed her that the gold-colored car turned right on Sherman and then turned north on Oakley. Oakley is the street one block east of Central, but Oakley was not visible from Franklin's bathroom.

¶ 17 Detective David Cone testified that he was directed to a location a few blocks away from the shooting. There, officers found a gold-colored car. The car's rear windshield was broken in spots and there were shards of glass inside the car on the back seat. In addition, 9 mm shell casings were found in the back seat. Cone took pictures and collected evidence, including at the intersections of Sherman and Central and Central and Arthur. Cone identified and laid the foundation for photographs of the relevant areas. Cone testified that all of the .45-caliber shell casings would likely have come from the one gun while all the 9 mm shell casings would likely have come from a different gun. Cone opined that the significance of the glass inside the car meant that someone outside the car shot into it, breaking the rear window. Cone also noted that a hole in the rear window was on the passenger side of the car.

¶ 18 The State rested, and the trial court denied defendant's motion for a directed verdict regarding the aggravated discharge count, reasoning that there was testimony, from Franklin, that the driver of the gold-colored car might have been the shooter. The trial court also reserved its ruling on the conspiracy count.

¶ 19 Defendant presented his case. William Spack testified that he lives at the northwest corner of Sherman and Central. On August 5, 2010, Spack was cleaning his kitchen, located in the southeast corner of the house, when he heard gunshots. Spack testified that he looked out of his window and saw a black man on the sidewalk, about 50 feet from the intersection, and holding a large silver gun. The man fired two shots in a northerly direction along Central. Spack testified that the man continued northbound on Central, but soon passed out of his line of sight.

¶ 20 Spack testified that he observed a car at a stop sign located at the northeast corner of Sherman and Central. The car was facing west, but, upon the shooting, the car backed up and then turned

north onto Oakley. Spack testified that the man had already passed by his house and, about three or four seconds later, the car backed up. Spack testified that he did not see who fired first, but he did see the man on the sidewalk take two shots. Spack testified that he did not hear any other gunshots. Spack testified that, later, police brought a man past his house for him to identify. Spack told police that the man they brought was the shooter.

¶ 21 Defendant recalled Kuhls to testify on his behalf. Kuhls had interviewed Spack and performed the show-up identification of the shooter. Kuhls testified that Spack identified Foster as the man who was the shooter. Kuhls testified that Spack did not tell her anything about observing a car or seeing a car go in any particular direction at the time of the shooting.

¶ 22 Officer Jeff Schroeder testified that he conducted the show-up identification with Franklin. Schroeder testified that the man Franklin identified was Foster. Schroeder also testified that, by the night of the incident, he had placed Newburn in custody.

¶ 23 Defendant testified on his own behalf. Defendant first told the jury that he and Joiner had two children together. In spite of this fact, on August 5, 2010, he had been dating Monique Thomas, and it had been about a year since he had been with Joiner. Defendant also denied that he was again dating Joiner, but he admitted that he had contact with her while he was imprisoned.

¶ 24 Defendant testified that, on the date of the incident, he started the day at his grandmother's house with his mother. Defendant was using the computer when his brother came in and asked what he was doing. Defendant told his brother he was not doing anything because he had no transportation. Defendant's brother asked if he wanted to get out of the house for a while, defendant agreed, and they decided to go driving. As they were leaving defendant's grandmother's house,

defendant saw Newburn pacing in the driveway and talking on a cell phone. All three entered defendant's "brother's baby mother's car," with defendant's brother driving.

¶ 25 Defendant testified that Newburn offered defendant's brother \$10 to drive him to his girlfriend's job so he could get her car. Defendant's brother did so and, when they arrived, defendant told his brother that he was going to ride with Newburn until Newburn had to pick up his girlfriend after she finished work. Defendant testified that he and Newburn got into the car, a gold-colored Buick, with Newburn driving. Defendant testified that Newburn drove to a liquor store, where he got a beer, and then they drove south on Main. Newburn then pulled over and asked defendant to drive because Newburn wanted to drink the beer.

¶ 26 Defendant was not able to recall all of the route that he and Newburn drove, but he did remember that, as they got near to Andrews Park, they were going north on Central. Defendant testified that they went west on Ashland, turned north on Sunset, and then turned east on Sherman, once again heading toward Central. Defendant testified that, as they circled the park, they stopped to talk with friends at the basketball courts at the park. They decided to leave, telling their friends that they were heading to McDonald's. Defendant testified that they pulled away from the basketball courts and resumed heading east on Sherman.

¶ 27 Defendant denied that he had any notion that Newburn had a gun. Defendant amplified, noting that Newburn never mentioned a gun, never talked about shooting anyone; further defendant did not tell Newburn to shoot at Foster and he did not make an agreement with Newburn or anyone else to go and shoot Foster. Defendant further testified that he never touched a gun on August 5, 2010.

¶ 28 Defendant testified that, as they reached the corner of Sherman and Central, he pulled behind a car that was stopped at the stop sign. At that point, Newburn noticed Joiner and Foster walking nearby and mentioned it aloud. Defendant asked Newburn, “What’s that mean?” Defendant testified that Newburn did not answer, but ducked down as if he were scared. Defendant testified that Foster approached the car, and defendant noticed that Foster was carrying a gun by his side. According to defendant, Foster was demanding whether Newburn, known as “Tugga,” or “Tigger,” was looking for him. Defendant asserted that Newburn had not yet pulled out his gun and stated that he never saw Newburn holding a gun in his lap.

¶ 29 Defendant testified that, as Foster approached their car, he heard Joiner exclaim, “No!” and then take off running. Defendant testified that Foster pointed the gun at the car and fired. When the firing started, the car in front of them turned north onto Central. Defendant also turned north on Central. Defendant testified that he observed Newburn take a gun, a 9-mm automatic pistol, from his front pocket and shoot at Foster. Defendant testified that he did not know how many shots were fired, because he was not counting, but just trying to get out of the line of fire. Defendant testified that he drove north on Central and turned right on Arthur. Defendant testified that, as he was turning, Newburn again shot at Foster. Defendant testified that he drove for one block east along Arthur and then turned right onto Oakley and proceeded south towards Ashland for a few blocks. Defendant testified that he parked the car and both he and Newburn got out. Defendant testified that he called his brother to come and get him, while Newburn took off in another direction. Defendant did not pay attention to where Newburn went.

¶ 30 Defendant testified that he had prior convictions of mob action, obstructing a police officer, and unlawful possession of a stolen vehicle. Defendant admitted that he did not go to the police or

try to contact them. Defendant admitted that he spoke to police only after August 10, 2010, when the police picked him up. Defendant asserted that he heard, after the incident, that Foster was “looking to kill” Newburn. Defendant then rested his case.

¶ 31 Defense counsel made a motion for a directed verdict at the close of the evidence. The trial court granted the motion regarding count 3 (conspiracy). The trial court held that, while the heart of a conspiracy charge is the agreement between the parties, there had been no evidence whatsoever of any agreement between defendant and Newburn to shoot Foster. Regarding count 1 (aggravated discharge), defendant could be deemed accountable for Newburn’s actions even without being a coconspirator, and the evidence demonstrated that defendant aided Newburn by driving the vehicle.

¶ 32 The parties argued to the jury, with the State emphasizing that defendant not only drove the car, but also stayed in the area of the shooting and, rather than immediately fleeing, drove in the same direction that Foster was running, allowing Newburn to fire some more shots at Foster. Defendant argued that he was unwittingly in the middle of the incident, lacking knowledge that Newburn had a gun and lacking control over the two “idiots” shooting at each other. The jury found defendant guilty of aggravated discharge of a firearm.

¶ 33 On January 27, 2011, defendant filed a motion for a new trial. In the motion, defendant alleged that the State exhibited gender and racial discrimination in using its peremptory challenges and also challenged the sufficiency of the evidence. The trial court denied the motion. The matter then proceeded to a sentencing hearing. After hearing defendant’s evidence in mitigation, the trial court sentenced defendant to an eight-year term of imprisonment. Defendant’s motion to reconsider sentence was denied, and defendant timely appeals.

¶ 34 On appeal, defendant makes two contentions. First, defendant challenges the sufficiency of the evidence. Second, defendant raises a claim of purposeful discrimination in the use of the State's peremptory challenges during *voir dire*. We consider defendant's contentions in turn.

¶ 35 Defendant first argues that the evidence was insufficient to find him guilty of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (2010)) beyond a reasonable doubt.¹ Specifically, defendant contends that the evidence of his intent was so wholly lacking that the State did not prove his accountability for Newburn's actions beyond a reasonable doubt. We disagree.

¶ 36 In reviewing a challenge to the sufficiency of the evidence, the relevant question is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Kirchner*, 2012 IL App (2d) 110255, ¶ 11. The trier of fact determines the credibility of the witnesses, weighs the evidence, draws inferences, and resolves any conflicts in the evidence, and this court will defer to the trier of fact's judgment on issues of witnesses' credibility and weight of the evidence. *Kirchner*, 2012 IL App (2d) 110255, ¶ 11. Finally, we will not set aside the trial court's judgment unless the evidence is so improbable, unreasonable, or unsatisfactory that there is a reasonable doubt of the defendant's guilt. *Kirchner*, 2012 IL App (2d) 110255, ¶ 11.

¹Defendant notes that the statutory citation in the indictment reads, "720 ILCS 5/24-1.29(a)(2)." Neither party challenged the indictment in the trial court and defendant concedes that the indictment "clearly charges an offense" under section 24-1.2(a)(2) of the Criminal Code of 1961 (720 ILCS 5/24-1.2(a)(2) (West 2010)). Further, defendant does not challenge the adequacy of the indictment on appeal, so we need not further comment on this apparent typographical error.

¶ 37 In addition to our standard of review, we further note that a person commits the offense of aggravated discharge of a firearm when he or she knowingly or intentionally discharges a firearm in the direction of another person. 720 ILCS 5/24-1.2(a)(2) (West 2010). Additionally, as pertinent here, a person is accountable for the criminal acts of another when, “either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.” 720 ILCS 5/5-2(c) (West 2010). Thus, here, the State was required to prove beyond a reasonable doubt that defendant directly shot the 9 mm handgun at Foster, or that he was accountable for Newburn’s actions, by aiding or otherwise facilitating them, before or during the commission of the offense. With these principles in mind, we consider the sufficiency of the evidence.

¶ 38 It is undisputed that the evidence adduced at trial shows that defendant was driving Newburn in a gold-colored car around Andrews Park. While the car was stopped at the corner of Central and Sherman, an altercation erupted between at least one of the occupants of the gold-colored car and Foster. Rather than turning south or otherwise avoiding Foster, the gold-colored car turned north, in the same direction that Foster was heading. At the next corner, someone in the gold-colored car fired again as the car was turning and the car continued driving around in the area of the park. At some point, defendant stopped, and he and Newburn abandoned the car, running off in different directions. The undisputed facts alone are insufficient to support defendant’s conviction of aggravated discharge of a firearm, either directly or under a theory of accountability.

¶ 39 Nevertheless, we are supposed to review the evidence in a light most favorable to the prosecution. Thus, the fact that the undisputed facts may be insufficient is not enough; we must view the disputed facts and resolve any disputes in favor of the State. Thus, we note that Franklin testified

that she believed that the driver of the gold-colored car was also the shooter. This evidence obviously supports defendant's conviction beyond a reasonable doubt if it can be credited. See *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51 (the positive and credible testimony of a single witness is sufficient to convict). Defendant contends that the physical evidence renders Franklin's belief that the driver was the shooter impossible. We disagree.

¶ 40 Defendant argues that the positions of the shell casings found at Central and Sherman and at Central and Arthur demonstrate that it was impossible for the driver to be the shooter. Defendant argues that the placement of the 9 mm shell casings demonstrate that the driver could not have fired the 9 mm pistol. We note, however, that at least one 9 mm shell casing was found inside of the car in the back seat area, which at least supports the idea that the driver could have shot the pistol. Further, there is no evidence of whether the gun was extended outside of the car or if it was fired from the inside (although the shell casing in the back seat suggests at least one shot was fired more or less from the inside of the car). While the evidence cited by defendant is certainly suggestive, there was no testimony about what happens to shell casings when fired from an automatic pistol, how far and in which direction they tend to be ejected, the variance of ejections between shots and between different models of pistols, the importance of the shooter's position to the ultimate disposition of an ejected spent shell casing, and the like. Thus, while there is physical evidence supporting defendant's argument, there is also evidence contradicting it (the shell casing that remained in the car). As a result, we cannot say that Franklin's testimony that the driver was the shooter is foreclosed by the physical evidence noted by defendant.

¶ 41 Defendant also points to flaws and inconsistencies in Franklin's testimony and argues that they render Franklin's testimony unworthy of belief. Defendant argues that, further, when Franklin's

testimony is coupled with the physical evidence, no rational juror should have been able to conclude that defendant, occupying the driver's seat of the gold-colored car, was the shooter. We still cannot conclude that the flaws and inconsistencies plus the physical evidence clearly demonstrate that the driver could not have been the shooter. It is the trier of fact's province to resolve inconsistencies and conflicts in a witness's testimony. *Alvarez*, 2012 IL App (1st) 092119, ¶ 55. Further, neither evidentiary contradictions nor credibility assertions by the defendant will cause a court to automatically reverse the defendant's convictions. *Alvarez*, 2012 IL App (1st) 092119, ¶ 55. We recognize that there are inconsistencies in Franklin's testimony. Nevertheless, the jury could have credited Franklin's testimony as it was not directly contradicted by the physical evidence. Thus, we cannot conclude that no rational trier of fact could have believed, beyond a reasonable doubt, that the driver of the gold-colored car was the shooter.

¶ 42 Aside from Franklin's testimony, which was not optimal, sufficient evidence in the record demonstrates that defendant was guilty beyond a reasonable doubt of the offense on the basis of accountability.

¶ 43 To establish accountability for another's unlawful actions, the State must prove the defendant's intent to promote or facilitate the commission of the offense. 720 ILCS 5/5-2(c) (West 2010). Intent is usually proven by circumstantial evidence. *People v. Rudd*, 2012 IL App (5th) 100528, ¶ 14. In addition, although accountability requires that the aid given by the defendant occurred before or during the commission of the offense, assistance may be inferred from activities occurring after the offense, such as concealment or destruction of evidence. *People v. Modrowski*, 296 Ill. App. 3d 735, 741 (1998). Here, despite defendant's testimony that he was unaware that Newburn had a gun with him and was unaware of Newburn's intention to shoot at Foster, there is

ample circumstantial evidence to prove that defendant intended to aid and abet Newburn in shooting at Foster and committing the offense of aggravated discharge of a firearm.

¶ 44 The evidence demonstrates that the encounter between Foster, Newburn, and defendant was unplanned and fortuitous. Defendant further testified that he did not know that Newburn was carrying a gun at any time before Newburn fired it, and he did not enter into a plan or agreement with Newburn to look for and shoot Foster. This is primarily the evidence on which defendant relies to argue that he lacked the intent to help Newburn accomplish his offense.

¶ 45 On the other hand, the evidence clearly showed that defendant aided Newburn in his design to shoot at Foster. The evidence showed that, at the corner of Central and Sherman, the first shots were exchanged. Foster proceeded north. Rather than backing away or turning south, the gold-colored car also traveled to the north as did Foster. When the car turned, the shooter was able to fire more shots at Foster.

¶ 46 In addition, the evidence showed that the gold-colored car circled the park. The route explained in the evidence brought the car to the corner of Central and Sherman at the precise time Foster and Joiner arrived at the same corner. The trier of fact could reasonably infer that, in driving around the park, despite defendant's testimony that he was simply trying to find friends and girls, he and Newburn saw Foster walking and circled the rest of the way around the park to allow Newburn to shoot at Foster.

¶ 47 Last, although defendant testified that he was fleeing from Foster, defendant continued to stay near the scene and circle around the park rather than driving straight away from it. As he was driving after the shots had been fired, defendant passed within one block of the corner of Central and Sherman and ultimately parked about three blocks from the scene of the shooting. Defendant's

actions of staying in the area (despite his contrary testimony) lead to the reasonable inference that he and Newburn were looking for another opportunity to engage Foster in additional gunfire. Finally, we note that, despite defendant's claim that he contacted the police, he did not actually report the shooting to the police.

¶ 48 At oral argument, defendant strongly emphasized the purported impracticality of availing himself of any other avenue of escape different than the one actually chosen. Defendant imagined, for example, that if he backed up, Foster could have shot directly at Newburn and him through the front windshield; if he had continued north without turning, Foster could have continued to shoot at the rear of the car. Defendant thus concluded that any other attempt to evade Foster would have been nigh suicidal. Defendant thus concludes that his view on this point is the only reasonable construction from the evidence and circumstances that the jury could and should have made. We disagree. In the first place, it is speculative. The relative merits of turning and providing Newburn with another shooting opportunity versus accelerating away northward if defendant truly wished to escape are debatable. The physical evidence shows that Foster shot from the corner of Central and Sherman, while someone in the gold-colored car shot from that corner and the corner of Central and Arthur, one block to the north. The accurate range of a handgun is limited; had defendant truly wished to escape, accelerating northwards along Central would appear to be a good way to accomplish that purpose. In the second place, our standard of review constrains us to view the evidence in the light most favorable to the State. Thus, the turning maneuver, while it could have been an attempt at escape, was not so obviously only an attempt to escape rather than an attempt to offer the shooter another chance to shoot at Foster that we must accept the rationale favoring defendant and not the State. Last, the totality of the circumstances, from defendant's circling the

park in a possible stalk of Foster, to the second opportunity to shoot, to the continued circling of the park after shots had been exchanged all point to directed behavior to facilitate shooting at Foster. Thus, the jury could have accepted defendant's contention, but the jury also could have reasoned along the lines of the foregoing and not accepted defendant's contention. Here, the jury apparently did not accept defendant's view, and this was not unreasonable. Accordingly, we cannot accept defendant's argument on this point.

¶ 49 All of defendant's actions following the shooting can be used to infer his intent, and the jury could have believed that staying in the area of the incident (as well as during the incident when defendant drove so as to provide a second group of shots at Foster) and not reporting to the police despite his claim that he contacted the police indicated defendant's intent to aid and assist Newburn in shooting Foster. *Modrowski*, 296 Ill. App. 3d at 741. Because defendant's actions could reasonably be seen to have facilitated Newburn in committing the offense, and his intent to aid Newburn can be reasonably inferred from the evidence, the defendant properly could have been found guilty of the offense of aggravated discharge of a firearm under a theory of accountability.

¶ 50 Defendant argues that, because the trial court determined that there was not any evidence to support a conspiracy to shoot Foster, the accountability theory is similarly unsupported and unavailing. Defendant reasons, erroneously, that "[f]or accountability, there had to have been an agreement plus the completed offense—without one or the other, accountability cannot be proved beyond a reasonable doubt." Defendant misstates the requirement for accountability; there need not be an express agreement, only an intent to facilitate the other party's commission of an offense (plus action facilitating or aiding the offense). 720 ILCS 5/5-2(c) (West 2010). Defendant's logical flaw

is manifest: if accountability required an actual agreement, then the offense of conspiracy would be redundant and subsumed by accountability. Accordingly, we reject defendant's argument.

¶ 51 Defendant also argues that *People v. Taylor*, 186 Ill. 2d 439 (1999), should control the outcome in this case. In *Taylor*, the defendant was the driver of the car. His passenger had a handgun in his pocket and showed the defendant the handgun. There was a traffic altercation during which the passenger pulled the gun and fired it. *Taylor*, 186 Ill. 2d at 442-43. The defendant then drove away from the scene. *Taylor*, 186 Ill. 2d at 444. The defendant was subsequently convicted of aggravated discharge of a firearm under a theory of accountability. *Taylor*, 186 Ill. 2d at 444.

¶ 52 Our supreme court reversed the conviction. The court first noted that intent without action does not make a defendant guilty of the offense under an accountability theory. *Taylor*, 186 Ill. 2d at 446. Likewise, the defendant's presence at the scene or acquiescence in another's commission of an offense does not make the defendant guilty of the offense based on accountability. *Taylor*, 186 Ill. 2d at 446. Based on these principles, the court noted that the defendant did not know that the passenger was going to fire his gun and did not facilitate shooting at the particular victims. The court held that no rational trier of fact could have found beyond a reasonable doubt that the defendant, before or during the commission of the offense, aided or abetted the passenger in any element of the offense of aggravated discharge of a firearm. *Taylor*, 186 Ill. 2d at 448. Specifically, the court rejected the State's argument that the defendant could have formed an intent to aid or abet the passenger's commission of the offense during the brief time between the gunshots at the victims, as well as the argument that, by not leaving after the second shot, the defendant demonstrated a willingness to aid and abet the passenger. *Taylor*, 186 Ill. 2d at 447-48. Finally, the court held that the unforeseen nature of the traffic altercation militated against the notion that the defendant knew

that the passenger was likely to shoot at someone, and the slim possibility that the defendant intended to help the passenger to escape the scene did not render the defendant accountable where the defendant did not intend to aid or abet the passenger in committing the offense. *Taylor*, 186 Ill. 2d at 448-49.

¶ 53 Defendant contends that *Taylor* is indistinguishable from this case and that, indeed, this case presents a stronger argument for reversal because defendant was unaware that Newburn was carrying a gun. We disagree. The evidence gave rise to inferences that defendant and Newburn were stalking Foster as they circled the park. The actions of driving around the park coupled with the lack of evidence that defendant and Newburn exited the gold-colored car to speak with friends at the basketball courts lead to the inference that they were biding their time. Further, their arrival at the intersection of Central and Sherman at the precise moment that Foster and Joiner arrived after having circled the park further gives support to a conclusion that they were stalking. Thus, there is support in the record for the conclusion that the encounter between defendant, Newburn, and Foster was not inadvertent or fortuitous, unlike the altercation in *Taylor*.

¶ 54 In addition, the evidence showed that defendant did not try to escape from the scene. Rather, defendant followed Foster and made sure to give Newburn a second opportunity to shoot at Foster. After providing the second shooting opportunity, defendant continued to circle around the area of the park, giving rise to the inference that he and Newburn were continuing to look for opportunities to further engage Foster in additional gunfire. Thus, unlike *Taylor*, where the defendant there did no more than help the passenger to escape, here, the defendant aided Newburn in shooting at Foster by providing a second firing opportunity and continued to hunt for further shooting opportunities by circling throughout the area after the initial exchange of gunfire. Accordingly, because the evidence

here showed that defendant was directly involved in the offense, we find that *Taylor* is distinguishable, and we reject defendant's invitation to follow that case in deciding the outcome here. Thus, we hold that the evidence was sufficient to prove beyond a reasonable doubt that defendant, either directly or under a theory of accountability, committed the offense of aggravated discharge of a firearm.

¶ 55 Defendant next argues that the State used its peremptory challenges during *voir dire* in a discriminatory manner on the bases of gender and race, pursuant to the principles set forth in *Batson v. Kentucky*, 476 U.S. 79 (1986). It is well settled that discrimination on the bases of gender, race, and other historical prejudices is unconstitutional. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 146 (1994). The “*Batson* challenge” is a claim addressing the fairness of the jury selection process and is designed to make sure that no improper bias enters into the process. *People ex rel. City of Chicago v. Hollins*, 368 Ill. App. 3d 934, 943 (2006). The exclusion of even a single prospective juror on account of a discriminatory animus is unconstitutional and requires the reversal of the defendant's conviction. *People v. Easley*, 192 Ill. 2d 307, 324 (2000).

¶ 56 *Batson* established a framework to determine whether a peremptory challenge was used in an impermissibly discriminatory fashion. *Easley*, 192 Ill. 2d at 323. First, the defendant must make a *prima facie* showing that the State used its peremptory challenges because of a discriminatory criterion, such as race or gender. *Easley*, 192 Ill. 2d at 323. Second, if the defendant has made the *prima facie* showing, the burden shifts to the State to provide a race- or gender-neutral (or neutral on the discriminatory criterion) explanation for excluding each prospective juror in question. *Easley*, 192 Ill. 2d at 323-24. A neutral explanation is one based on something other than the purportedly discriminatory criterion used to exclude the venireperson in question, *e.g.*, a race- or gender-neutral

explanation. *Easley*, 192 Ill. 2d at 324. The neutral explanation need not be persuasive or plausible; it need be only a reason that does not deny equal protection. *Easley*, 192 Ill. 2d at 324. Third, the trial court weighs the evidence in light of the *prima facie* case, the State's proffered neutral explanations, and any rebuttal by the defense. The court must determine whether the defendant has met his or her burden of proving the existence of purposeful discrimination. *Easley*, 192 Ill. 2d at 324.

¶ 57 In evaluating a *Batson* challenge, the court is often required to consider the juror's demeanor, such as his or her nervousness, inattention, and the way he or she emphasizes certain words to express different meanings, making the trial court's personal observation critically important. *People v. Davis*, 231 Ill. 2d 349, 363-64 (2008). The court must determine whether the prosecutor's demeanor belies purposeful discrimination and whether the juror's demeanor exhibited the basis for the prosecutor's explanation as to why a peremptory strike was used. *Davis*, 231 Ill. 2d at 364. As a result, the reviewing court gives deference to the trial court's judgment on a *Batson* challenge by disturbing that determination only if it is clearly erroneous. *Davis*, 231 Ill. 2d at 364. Although not an issue in this case, we note for purposes of completeness that, if the trial court *sua sponte* raises a *Batson* issue regarding the State's use of peremptory challenges, then it employs a bifurcated review: factual determinations and observations bearing on demeanor and credibility will be accorded deference, but the ultimate determination regarding the discriminatory use of peremptory challenges is reviewed *de novo*. *Davis*, 231 Ill. 2d at 364. With these principles in mind, we consider defendant's arguments.

¶ 58 Defendant does not really separate the issue of purported racial discrimination from that of purported gender-based discrimination. However, as it is analytically simpler to do so, we shall

address each of the discrimination claims separately. Further, the record demonstrates that the issues were presented separately to the trial court.

¶ 59 Turning first to the racial discrimination issue, we note that the record is somewhat unclear about the racial composition of the venire. The parties, however, seemed to agree that only two venirepersons out of the entire venire, Caton and Arreguin, were African-American. Defendant, too, is African-American. The State used peremptory challenges against both Caton and Arreguin, dismissing them from serving on the jury. Defendant timely raised a *Batson* challenge based on purported racial discrimination.

¶ 60 In addressing defendant's charge, the trial court first found that, because all of the African-American venirepersons had been peremptorily stricken from the jury, defendant had made out a *prima facie* case of improper racial discrimination. The trial court then required the State to provide its reasons for striking Caton and Arreguin. The State explained that it dismissed Caton because she had been the victim of a theft but did not report the theft to the police, which, to the State, indicated a lack of faith in the system. The State dismissed Arreguin because she stated that she had a relative who was "deported by the State" due to drug charges. The prosecutor expressed concern that Arreguin would view the State in the instant case as being the same body that had deported her relative. Additionally, the prosecutor believed that something about Arreguin's statement that she observed a criminal case for a class was "very odd," prompting her to make a note about striking her. The court first noted that, like the State, it had not noticed that Arreguin was African-American until defendant raised his *Batson* challenge. The trial court held that the deportation of a relative was a nondiscriminatory and nonpretextual reason for using a peremptory challenge. Likewise, the trial

court held that Caton's failure to call the police was a valid, nondiscriminatory and nonpretextual reason for using a peremptory challenge.

¶ 61 Defendant argues that the State's reasons were pretextual for dismissing Arreguin and Caton. Defendant contends that other venirepersons were the victims of crimes, but they were not stricken from the jury. Defendant points particularly to potential juror Lundy, a white woman who was accepted by the State but eventually excused by defendant, as giving responses that were substantially similar to Caton's, who was excluded by the State. Lundy had been the victim of a burglary to her home (while Caton had experienced only a theft from her garage), as well as had a friend who had been convicted of a drug offense and a grandmother who was assaulted. Lundy did, however, call the police following the burglary. Defendant further notes that, while Lundy volunteered that she called the police, the State did not further inquire into the theft from Caton's garage. Defendant concludes, after comparing Caton's and Lundy's responses to *voir dire*, that the prosecutor's rationale for excusing Caton was pretextual. We disagree.

¶ 62 We note that there are similarities between Caton's and Lundy's responses. There is, however, the key difference in that Caton did not call the police and Lundy did. The State drew an inference from that fact that is neither unreasonable nor unwarranted. Defendant supposes that the burglary was a more serious offense than the theft from the garage. Defendant further speculates that the theft that Caton experienced was so minimal as to not warrant contacting the police. We find defendant's argument to be based solely on speculation on this point, and while it may appear not to be unreasonable, it nevertheless remains speculation. What is not speculation, however, is the fact that Caton did not contact the police. Additionally, it is not speculation to note that the failure to contact the police is a real and palpable difference between Lundy's and Caton's responses.

Accordingly, we hold that the State's expressed rationale for dismissing Caton from the jury was race-neutral and nonpretextual.

¶ 63 With regard to Arreguin, the State noted both that she had a relative deported "by the State" after committing a crime, and that there was something odd about her response that she had observed a criminal trial for a class. The State further noted that, with the deportation, Arreguin had offered that the State had deported her relative, and because the prosecutor was being referred to as the State at trial, she was concerned that Arreguin would believe the prosecutor was an agent of the particular governmental unit that deported Arreguin's relative and hold it against her. The trial court accepted the State's explanation and held that it was nonpretextual.

¶ 64 Defendant argues that the State's reasoning was pretextual because the State accepted other male venirepersons whose family or friends had committed crimes. Defendant also points out that there is nothing "odd" in attending a criminal trial for a class. Defendant concludes that the State's rationale was pretextual. We disagree.

¶ 65 It is true that other white, male potential jurors were accepted who had family or friends who had been arrested and imprisoned. What differentiates Arreguin's response, however, was that she noted that her relative had been deported "by the State." The prosecutor emphasized that she was concerned that Arreguin would blame her for the deportation because she too worked for "the State." We agree with the trial court that this constitutes a nonpretextual reason to excuse Arreguin and not other potential jurors who had friends and family convicted of crimes. In addition, the State observed that Arreguin responded oddly when she stated that she had observed a criminal trial for class. We agree with defendant that observing a criminal trial is not unusual by itself. That, however, misstates the prosecutor's reason. It was not the fact that she observed the trial that was

odd, but the way she reported that fact. We note that the potential juror's demeanor and way he or she answers questions may be legitimate neutral explanations for exercising a peremptory challenge, even though they must be carefully scrutinized. *Mack v. Anderson*, 371 Ill. App. 3d 36, 48 (2006). Here the trial court accepted the State's explanation as to the odd way Arreguin responded and we see nothing in the record that undercuts the State's concern over her odd way of responding. Accordingly, we hold that the State's expressed rationale for dismissing Arreguin from the jury was also race-neutral and nonpretextual.

¶ 66 We next address defendant's gender discrimination contentions. Defendant again argues that the State's reasons for striking the women from the jury were pretextual. We disagree. As noted above, the first step in evaluating a *Batson* challenge is to determine whether the defendant made out a *prima facie* case of gender discrimination. Here, the trial court concluded that defendant had not made his *prima facie* case for gender discrimination and thus denied defendant's motion.

¶ 67 The following exchange occurred during the trial court's *Batson* hearing on the gender discrimination issue:

“MR. LIGHT [Defense Counsel]: We also have [a *Batson* issue] on the basis of gender. I understand I excused one female juror, and that's because she had indicated strong opposition to being here because of her pay. I am not sure that the State has—I will have to go back over my notes. At least the majority, if not all, of the jurors excused by the State have been women.

THE COURT: Let me get my notes.

Prior to this group the State has exercised two preempts [*sic*], Arreguin who we have already talked about and Debra James. Now, I will add that the majority—

MR. LIGHT: (Interrupting) Right now we have nine men, for the record.

THE COURT: And there were only—when you look at that first group of 12, there were—actually we could even call it 13 because we got rid of Brazinskas right away for cause. Out of 13, 10 were men. And out of the three women up to that point, Arreguin who we have already talked about, Lundy you [defense counsel] exercised the preempt [sic] and Deb James—

MS. QUADE [Prosecutor]: And we have kept Susan Persing and Carol Middleton.

THE COURT: Right, who is on this group. I was just looking up until we got to this group.

MS. QUADE: This is in the first group—just to emphasize your point, out of the third group of six, it is the first group that we have had multiple women.

THE COURT: We had two women in the very first group, one excused by the State, one by defense. The next group had one woman excused by the defense—or State; State. The next group—well, the vast majority—we have had almost all men up until this group. This is the first group we have had where we actually have one, two, three, four women and two men.

MS. QUADE: And the State kept two women out of the four.

THE COURT: Yeah.

MR. LIGHT: It's the same with race; one does not need a unanimous preemptory [sic] used. For instance, if there had been an African American juror kept, that does not preclude a finding of non[-]race[-]neutral reasons. The second—the first lady in the panel that

we currently have was also excused. She knows you, but that's about it. That would not to me indicate a problem with her from either direction. Presumably that would be neutral.

THE COURT: The only other thing I will add, which is obvious—but just to make a record, the defendant is a male. He is not a member of the class that you are claiming as being systematically excused by the State, meaning females.

And again, I believe there is a—the fact that the State has kept some women is a factor that the [c]ourt can consider, just as if there had been an African American male or female that they had accepted.

In this group, although you were tendering everyone until—with the exception of Ms. Grans and Ms. Caton, I corrected you that you were only to address the first—

MS. QUADE: (Interrupting) Three—four.

THE COURT: Technically we shouldn't have even been to Caton now. But since we have done it, I am denying it [defendant's *Batson* challenge] on a gender basis as well.

MR. LIGHT: So just one thing for the record.

THE COURT: Uh-huh (affirmative response).

MR. LIGHT: I don't believe that the [c]ourt can—the [c]ourt can correct me if I am wrong; that the defendant, if making a gender challenge, must be of a gender which, you know, is in question.

THE COURT: He doesn't. But it's one thing that you are to look at; is the defendant a member of the excluded class. He doesn't have to be, but it's something I need to address. No, he absolutely doesn't have to be. But it is a factor in all the *Batson* factors you are to consider.”

¶ 68 The foregoing exchange illustrates that the trial court was considering whether defendant had established a *prima facie* case of gender discrimination under *Batson*. In assessing whether the defendant has demonstrated the existence of a *prima facie* case, the trial court must consider the totality of the circumstances. *People v. Hogan*, 389 Ill. App. 3d 91, 99 (2009). Among the factors a court can use is “comparative juror analysis,” in which the court compares the questions asked of jurors and their responses to try and discern whether the prosecutor treated otherwise similar potential jurors differently based on the possession of discriminatory criteria (*e.g.*, race or gender). *Hogan*, 389 Ill. App. 3d at 99. In addition to comparative juror analysis, the court can also consider the following factors in determining whether a *prima facie* case exists:

“(1) the racial [or gender or other discriminatory] identity between the party exercising the peremptory challenge and the excluded venirepersons; (2) a pattern of strikes against [persons possessing the discriminatory characteristic] on the venire; (3) a disproportionate use of peremptory challenges against [those possessing the discriminatory characteristic]; (4) the level of [the discriminatory characteristic] 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 *** venirepersons were a heterogeneous group sharing [the discriminatory characteristic] as their only common characteristic; and (7) the [characteristics] of the defendant, victim and witnesses.” *Davis*, 231 Ill. 2d at 362.

With these principles and factors in mind, we consider the evidence in the record concerning whether defendant established the existence of a *prima facie* case of gender discrimination under *Batson*.

¶ 69 Initially, we note that the comparative juror analysis yields a result in favor of the State and finding a lack of purposeful gender-based discrimination in the use of peremptory challenges. Our review of the record reveals that the State did not question male jurors differently than female jurors. Likewise, there was no indication of differing treatment between male and female jurors. Because both male and female jurors were questioned and treated similarly, this factor weighs in favor of the State.

¶ 70 Next, we consider the seven factors enumerated above. First, we note that defendant is a male African American and the prosecutors are female. The first factor deals with the characteristic identity between the party exercising the peremptory challenge and the excluded venirepersons. Here, the prosecutors and the excluded venirepersons were female. Because they share the same characteristic, we find that this factor weighs in favor of the State.

¶ 71 The second factor deals with the pattern of strikes against a class of the venire. Here, the State used its peremptory strikes only against women; it struck no male venirepersons. On the other hand, the State also accepted women into the jury and tendered three women to the defense, so this mitigates any pattern that we discern. Because of the State's exclusive use of its peremptory challenges against female venirepersons, but coupled with the mitigating fact that the State accepted other women, we hold that this factor is slightly in favor of defendant.

¶ 72 The third factor deals with the disproportionate use of peremptory challenges against a class of venirepersons. Here, the State exercised four peremptory challenges against females and none against males. The venire was predominantly male, having 10 females and 17 males. We hold that this factor squarely favors defendant.

¶ 73 The fourth factor considers the composition of the jury compared with the composition of the venire. The jury comprised 11 males and 1 female, with 1 alternate, who was also a female. Thus, 2 of 13 jurors were female. The venire comprised 17 males and 10 females. For rough equality between the gender-composition of the jury and the venire, we would expect to see roughly eight or nine men and four or five females. In actuality, there were only two females serving on the jury, so despite the predominance of males in the venire, the female representation was a little less than would be expected if the jurors had been chosen randomly. We also note that, with such a small panel, we might expect that random selection could significantly skew the composition of the jury one way or another. This is seen by the court's consideration of its six-person panels: the first two panels contained only one or two females each; the third panel contained four females. We hold that this factor is neutral to slightly favoring defendant.

¶ 74 The fifth factor considers whether any questioning or statements revealed a discriminatory animus. The State asked similar question to all the venirepersons. It further made no statements, other than the indication that it would use its peremptory challenge, that indicated the existence of any gender-based discrimination against the venirepersons. Because there is nothing in the record that indicates any gender-based animus on the part of the State, we hold that this factor favors the State.

¶ 75 The sixth factor considers the relation between the members of the venire and particularly the relation between the excluded venirepersons. The venire was heterogeneous, with a mixture of males and females and backgrounds. The excluded females appear to be disparate. Caton was a crime-victim who did not report the crime to the police; Arreguin had family who had been convicted of a drug offense and deported "by the State"; Mary Kay Grans knew the judge presiding

over the trial. Debra James's characteristics were not discussed. Caton and Arreguin were African-American, Grans and James were white. Nevertheless, they were all female. Consideration of this factor shows that the four persons against whom peremptory challenges were exercised were heterogeneous, each appearing to be excluded for different reasons related to their backgrounds, but that their shared characteristic was also obvious. We hold that this factor is neutral to slightly favoring the State.

¶ 76 The seventh and last factor considers the relationship between the defendant, victim, witnesses and excluded venirepersons. Here, defendant, his codefendant, and his victim were all male. The witnesses were both male and female. The excluded jurors were all female. We hold that this factor favors the State.

¶ 77 Reviewing all of the factors, we see that, on balance, they favor the State. Further, reviewing all of the circumstances in the record, as well as the arguments of the parties and the statements of the trial court, we conclude that the trial court properly determined that defendant had not made out a *prima facie* case for gender discrimination. Accordingly, we hold that the trial court properly rejected defendant's gender-based *Batson* claim.

¶ 78 We are also compelled to make two more observations about defendant's gender-based *Batson* issue. First, defendant's charge of improper gender-based discrimination against the female members of the venire presupposes that the female members would have looked upon the crime, indiscriminate shooting next to a public park at a time the park would be used, differently or more leniently than male members. We cannot conceive that any women in the venire would have looked upon the charged offense any differently than the men in the venire. This fact sharply undercuts defendant's claim of purposeful gender-based discrimination.

¶ 79 Second, and more importantly, it was defendant's obligation to pursue any *Batson* claim. Thus, if, as defendant indicated at oral argument, the trial court's decision regarding gender-based discrimination was ambiguous, defendant's counsel was obligated to press for clarification. The fact that he did not (plus our interpretation of the relevant passage quoted above) suggests that defense counsel also believed that the trial court was speaking about whether defendant had established a *prima facie* case of gender-based discrimination in the jury selection. These considerations reinforce our conclusion that the trial court properly denied defendant's *Batson* challenge based on improper gender discrimination.

¶ 80 Defendant argues primarily that the State did not give adequate reasons, and that its reasons were pretextual regarding the exclusion of the four female venirepersons. This argument is misplaced. See *Davis*, 231 Ill. 2d at 360-63 (setting forth the three-step procedure to resolve a *Batson* claim). Defendant simply does not directly argue whether he made out a *prima facie* case of gender-based discrimination in the selection of the jury; rather, defendant assumes that the *prima facie* case existed and combines his analysis of it with his analysis of his race-based *Batson* claim. Because we determined that the trial court resolved the gender-based *Batson* claim in the first step, we need not consider defendant's arguments regarding pretextual reasoning.

¶ 81 We examined defendant's *Batson* challenges. We determined that the trial court properly denied the race-based challenge because the State's reasons were race-neutral and were not pretextual. We then considered whether defendant demonstrated the existence of a *prima facie* case of gender-based discrimination in *voir dire*. We concluded that the trial court properly decided that a *prima facie* case of gender-based discrimination did not exist. Accordingly, we hold that the trial court's judgment to deny defendant's *Batson* claims was not clearly erroneous.

¶ 82 Accordingly, for the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 83 Affirmed.