SIXTH DIVISION
November 10, 2016

No. 1-14-1745

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 13271
	)	
WALTER WILSON,	)	Honorable
	)	Evelyn B. Clay,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's convictions for attempted first degree murder, aggravated battery with a firearm, and aggravated unlawful restraint, holding that the trial court did not err in denying his *Batson* motion.

¶ 2 A jury convicted defendant, Walter Wilson, of the attempted first degree murder of Carolyn Brown, aggravated battery with a firearm of Inecia Sneed, and aggravated unlawful restraint of Louise Thomas. The jury also found that during the attempted first degree murder, defendant personally discharged a firearm that proximately caused great bodily harm to Ms. Brown. The trial court sentenced defendant to 31 years' imprisonment for the attempted first degree murder, a consecutive six-year term of imprisonment for the aggravated battery with a firearm of Ms. Sneed, and a concurrent three-year term of imprisonment for the aggravated

unlawful restraint of Ms. Thomas. On appeal, defendant contends the trial court erred in denying his motion for a mistrial based on the State's violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). We affirm.

¶ 3 At trial, the evidence showed that Ms. Brown and defendant had known each other for about 38 years and had been romantic for all but the last eight of those years. They had a daughter, Ms. Thomas, who was born at a time when defendant was married to another woman.

¶ 4 On August 4, 2011, Ms. Brown was working at Changing Faces Beauty Salon at 6238 S. Western in Chicago. Ms. Sneed, the owner of the salon, also was working at the time. Ms. Thomas was in the salon with her daughter and step-son.

¶ 5 At about 11:15 p.m., Ms. Thomas left the salon. She was putting her daughter in the car when defendant approached, pointed a gun at her, and told her to get Ms. Brown out of the salon. Ms. Thomas took her daughter and approached the front door of the salon; defendant was next to her, holding a gun at her side. Ms. Brown observed Ms. Thomas mouth words indicating that defendant had a gun.

¶ 6 Defendant pushed Ms. Thomas and her daughter aside as he tried to get in the door. Ms. Sneed tried to push the door closed to keep defendant from coming in, but he managed to get his hand with the gun inside the door and shot her in the leg. Defendant entered the salon and pointed the gun at Ms. Brown, who turned to run. Defendant shot Ms. Brown in the back of her head and she fell to the ground. Defendant stood over Ms. Brown, cursed at her, and shot her in the pelvic area, abdomen, and leg.

¶ 7 Ms. Brown pretended to be unconscious until defendant walked away from her, and then she managed to get up and walk out the front door of the salon. She walked for about one block until she found people outside and asked for help.

¶ 8 Defendant left the salon and was arrested. Police recovered the gun—a revolver that contained six empty cartridge cases, meaning the gun had been discharged six times. They also recovered 18, live, .22 caliber bullets in defendant's shirt pocket, as well as a paper listing the salon's address and phone number.

¶ 9 Following his arrest, defendant gave a statement to an Assistant State's Attorney. Defendant stated he was born on March 11, 1932, and was then 79 years old. Defendant married a woman named Alice in 1959, or 1960, and they remained married until she died in 2006. Defendant met Ms. Brown in 1972, and they started dating six months after they met. Their daughter, Ms. Thomas, was born in 1982. Defendant helped raise Ms. Thomas.

¶ 10 Defendant and Ms. Brown stopped dating in 2010 but continued to see each other from time to time. On August 3, 2011, defendant called the police to report that Ms. Brown had taken $900 in cash, some important papers, and a gun from his house. The police told defendant that an officer would contact him.

¶ 11 Defendant had not heard from the police on August 4, 2011, so he decided to talk to Ms. Brown about whether she had taken his gun, important papers, and $900. Defendant wrote down the address of the salon where she worked, took a loaded .22 gun from his house, put extra bullets in his pocket, and drove to the salon.

¶ 12 When he arrived at the salon, defendant saw Ms. Thomas, who was putting her daughter into a car. Defendant told Ms. Thomas to come with him to the salon so she could tell Ms. Brown to come outside. They walked to the salon and Ms. Thomas called for Ms. Brown to come outside. When Ms. Brown walked to the front of the salon, defendant asked her why she was doing "this" to him, and he pulled his gun from his waistband and shot her. Defendant did not know how many times he shot Ms. Brown and did not remember whether he shot her after

she fell to the ground. Defendant shot another woman he knew as Cocoa because she cursed at him. When the police arrived, he was standing by his car. He put the gun on the hood of the car and the police arrested him.

¶ 13 Defendant was convicted and sentenced as described earlier in this order, and he now appeals. On appeal, defendant contends the trial court erred in denying his pre-trial *Batson* motion.

¶ 14 The State's use of a peremptory challenge to exclude a prospective juror solely on the basis of his race violates a defendant's fourteenth amendment right to equal protection. *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 102 (citing *Batson*, 476 U.S. at 84). In *Batson*, the United States Supreme Court established a three-step process for evaluating claims of discrimination in jury selection. *Id*. First, the trial court must determine whether defendant has made a *prima facie* showing that the prosecutor exercised a peremptory challenge on the basis of race. *Id*. In assessing the existence of a *prima facie* case, the court can use comparative juror analysis, by which the court examines the prosecutor's questions to the prospective jurors and their responses, to see whether the prosecutor treated otherwise similar jurors differently because of their race. *People v. Hogan*, 389 Ill. App. 3d 91, 99 (2009). In addition to the comparative juror analysis, the trial court may consider the following factors in determining whether a *prima facie* case exists:

> "(1) the racial identity between the party exercising the peremptory challenge and the excluded venirepersons; (2) a pattern of strikes against African-Americans on the venire; (3) a disproportionate use of peremptory challenges against African-Americans; (4) the level of African-American representation in the venire compared to the jury; (5) the prosecutor's questions and statements of the challenging party during *voir dire*

examination and while exercising peremptory challenges; (6) whether the excluded African-American venirepersons were a heterogeneous group sharing race as their only common characteristic; and (7) the race of the defendant, victim and witnesses." *People v. Davis*, 231 Ill. 2d 349, 362 (2008).

¶ 15 Further, "when a *Batson* claim is made regarding discrimination against a particular race, the unchallenged presence of jurors of that race on the seated jury is a factor properly considered [citations] and tends to weaken the basis for a *prima facie* case of discrimination." *People v. Rivera*, 221 Ill. 2d 481, 513 (2006).

¶ 16 Once a *prima facie* showing is made, the matter proceeds to the second step, where the burden shifts to the State to present a race-neutral explanation for striking the venireperson. *Crawford*, 2013 IL App (1st) 100310, ¶ 102. The race-neutral explanation need not be persuasive or even plausible; as long as it is not inherently discriminatory, it suffices. *Id*.

¶ 17 Once the State articulates a race-neutral reason for striking the venireperson, the matter proceeds to the third step, where the trial court must determine whether defendant has carried his burden of proving purposeful discrimination. *Id*. "[T]he ultimate inquiry for the judge is not whether counsel's reason is suspect, or weak, or irrational, but whether counsel is telling the truth in his or her assertion that the challenge is not race-based." (Internal quotation marks omitted). *United States v. Montgomery*, 210 F. 3d 446, 453 (5th Cir. 2000)

¶ 18 "This third step of the *Batson* inquiry involves an evaluation of the prosecutor's credibility and the best evidence of discriminatory intent often will be the demeanor of the attorney who exercises the challenge. The trial court has a pivotal role in evaluating *Batson* claims. This is because the State's race-neutral reasons for peremptory challenges often involves a juror's demeanor, such as nervousness or inattention, which makes the trial court's firsthand

observations of even greater importance. The trial court must then evaluate the demeanor of not only the prosecutor (to determine whether the demeanor belies a discriminatory intent), but also the juror (to determine whether the demeanor arguably exhibited the claimed basis for the strike). Both of these determinations lie peculiarly within a trial judge's province. For this reason, a reviewing court must defer to the trial court absent exceptional circumstances. Consequently, we must uphold a trial court's ruling on the issue of discriminatory intent unless it is clearly erroneous. Under this standard, we may not reverse unless we are left with a definite and firm conviction that a mistake has been committed. In essence, where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." (Internal quotation marks and citations omitted). *Crawford*, 2013 IL App (1st) 100310, ¶ 103.

¶ 19 In the present case, for the reasons that follow, the trial court's denial of defendant's *Batson* motion was not clearly erroneous.

¶ 20 In the first panel of jurors presented, the State accepted two African-American jurors, Marilyn Moore and Tiffany Walker, and used its first peremptory challenge on an African-American woman named Irma Palton. In the second panel, the State used its second and third peremptory challenges on an African-American man named Robin Scott, and an African-American woman named Felicia Roberson. In the third panel, the State used its fourth and fifth peremptory challenges on a Caucasian woman named Keelin Burke, and on an African-American man named Rudolph Meo. After the State moved to strike Mr. Meo, defendant responded with a *Batson* motion, arguing that four of the State's five peremptory strikes were against African-Americans. The trial court found, based on the disproportionate use of peremptory strikes against African-Americans, that defendant established a *prima facie* case of

racial discrimination, and the matter proceeded to the second step, for the State to present race-neutral explanations for the striking of the African-American venire members.

¶ 21 At the second step, the State explained that it struck Ms. Palton because during questioning of the entire venire, she indicated that she had a family member with a case pending in Cook County.

¶ 22 The State explained it struck Mr. Scott because he failed to disclose an arrest for criminal trespass to a vehicle from 2002.

¶ 23 The State explained it struck Ms. Roberson because when asked if she had been to the courthouse or any jail or prison for any reason, she stated she had visited someone in prison. The State argued that Ms. Roberson's prison visit may make her hesitant to sign a guilty verdict. When the court expressed some skepticism, the State explained that Ms. Roberson's prison visit may make her "more sympathetic to the defendant and especially when there are things about the defendant, him sitting out there in a wheelchair, being a little older, that would be something that we would be concerned about a juror maybe being sympathetic, so that is why we struck Ms. Roberson."

¶ 24 The State explained it struck Mr. Mao because he indicated he has a cousin who recently had been arrested for possession of a gun. The State argued that it did not know what Mr. Mao's "feelings are about guns. A gun is a question in this case. The defendant is carrying a gun, shooting people with a gun."

¶ 25 Following the State's race-neutral explanations, the trial court gave defendant the chance to respond. With respect to Ms. Palton, defendant argued the State's race-neutral reason for striking her based on a family member having a court case was invalid where she never indicated that *she* had a case pending.

¶ 26 With respect to Mr. Scott, defendant argued that the State should have looked him up on the computer prior to *voir dire*, discovered his arrest, and then inquired about it when questioning him.

¶ 27 With respect to Ms. Roberson, defendant argued "they used the reason that she was visiting a relative in the Department of Corrections. Well, I think that you can look around at the Department of Corrections, and the most people there are African-American men. Of course, anyone who goes to see these people are probably relatives or friends, and they will be African-Americans. Most people who go to visit people in the jail are African-Americans. They are using that as an excuse to strike Ms. Roberson even though she said she could be fair."

¶ 28 With respect to Mr. Mao, defendant argued that if the State was so concerned with his thoughts on gun possession, it should have asked him more questions on the subject during *voir dire*.

¶ 29 Defendant further argued that Ms. Palton, Ms. Roberson, Mr. Mao, and Mr. Scott had each stated during *voir dire* that they could be fair and impartial.

¶ 30 The State then responded:

> "Judge, I take this very personally that this accusation has been made. If you look at the first two jurors on this jury, one and two, they are African-American females. If we are striking people based on their race, we would have used peremptory strikes to strike those individuals, too. The very first two jurors are African-American females, and I think we have given non-race specific reasons clearly for every one of those jurors that we have stricken. If [defendant] is saying that because the population of the Cook County jail is largely African-American, that that is not a basis for us to strike someone who is visiting someone in the jail, we don't even know if it was the Cook County jail she

> was visiting. I asked if she had been to this building, any jail or any prison for any purpose, and she indicated she had been to a prison or a jail to visit someone, and to say that because most of the inmates in the jail here are African-American means that we are likely to strike African-Americans if we use that basis, that is like most African-Americans visit someone in the jail. That is not necessarily true. They are turning that into a race issue. We gave a non-race basis for our strike of Ms. Roberson as we did to each one of the four we struck. As I said, the first two jurors on this panel are African-American females that we kept and had no problem with."

¶ 31 The trial court then made its ruling, stating that Mr. Scott's failure to disclose his arrest was a race-neutral reason for striking him. With respect to the other three African-American venire persons stricken, the trial court stated that it accepted the State's reasons as race-neutral, but noted that some of the reasoning was "flawed." Particularly, as to Ms. Patton being struck because she had a family member with a case pending in Cook County, the trial court stated that Ms. Patton "is not the person who has this case pending against her. Everyone is entitled on their own merits to serve on a jury if they are qualified, and I think it is unfortunate that you would hold [a family member] of somebody else, what they are doing and having a case pending against them, and holding it as to her qualifications to sit on this jury. That is most unfortunate reasoning, but I believe you have a bona fide belief that it would affect the outcome against the State—not having anything to do with the race, but just on that answer. It was flawed, but in terms of qualifications—but I believe it was bona fide."

¶ 32 With respect to Mr. Meo being struck because his cousin had been arrested for gun possession, the trial court stated:

"He circled that he had been a victim and so has a member of his family and friends had been victims. When I asked him about that, he said this about his cousin. I said oh, was he the victim. He said no. Again, this is flawed reasoning as to analyzing a person's qualifications to serve. The cousin was not the prospective juror, and we have to walk a fine line when you are talking about protected classes and their ability to serve. I cringed when I heard the question about, 'Have you ever visited someone in the jail?' I actually cringed. I just don't know how any prosecutors think *** that goes to qualifications. People visiting family members, that makes them a decent family member to go check on them and see what they can do. Sometimes they are with church groups. African-American churches do this all the time, and it has nothing to do with juror qualifications, but to the extent that you think it was a bona fide reason to bump Mr. Meo because of his cousin and not having to do with Mr. Meo's race, I will accept you at that word. I do find that it is flawed, however, but I will accept your word for it that it is race neutral."

¶ 33 The State responded:

"Judge, if I could add that a big concern with the State in this case and something we think we are going to be dealing with during the course of trial more than other trials necessarily is the sympathy factor because [defendant] is going to be seated in front of this jury in a wheelchair, and despite all of the evidence that we believe we have against him, we believe our biggest battle will be with anyone on the jury who may be sympathetic and may disregard evidence because of the overpowering feelings of sympathy they may have for someone who is older and is in a wheelchair and is before them on trial. That is why more than any other case issues of sympathy and someone

who is very sympathetic to someone who is in whatever type of situation and would be visiting them at the jail or have a pending case and being in support of them is something that was a big factor for us in making these decisions, and so I take to heart everything you are saying, Judge, and I understand what you are saying, and I appreciate that you are giving us the benefit of the doubt, but I do want to make the record clear that that is what is going into our line of thinking here."

¶ 34 The trial court then addressed the State's striking of Ms. Roberson:

"[V]isiting someone in the jail in the African-American community is really no reason to disqualify that visitor. You have got mothers, you have got in-laws, you have got sisters, brothers who visit, and they should, and that makes them decent human beings, not disqualified ***. You thought it was a race-neutral reason that they would have because of pending cases, because of visiting in the county jails that these persons would somehow be more sympathetic to the defendant because they had persons over there charged with crimes that they were visiting. It simply is flawed thinking. Again, your actual reasoning is flawed, but I do not believe that you had race—that you had race neutral—you have presented your reasons that are racially neutral for these exclusions on these four persons."

¶ 35 The State responded:

"Judge, the last thing is we have three victims in this case and four additional eyewitnesses, all who are African-American females, so we certainly would not be striking jurors on the basis of race, but this is not a case that is going to be about racial issues anyway. Everyone that will be testifying in this case that are civilians on the State's side, on the defense side, are all African-American."

¶ 36 The trial court denied the *Batson* motion, finding "the State has tendered race neutral reasons, and the court accepts them for the comments that I have stated."

¶ 37 On appeal, no argument is made that the trial court erred in finding that the defendant made a *prima facie* case of racial discrimination under the first step of the *Batson* analysis. Rather, defendant argues that the trial court erred during the third step of the *Batson* analysis by finding in favor of the State with regard to its striking of Ms. Palton, Ms. Roberson, and Mr. Meo.[1] Defendant contends the trial court "blindly accept[ed] the State's assertion that its peremptory strikes were race neutral" and thereby "allowed racial discrimination to infect the jury-selection process."

¶ 38 To the contrary, the record indicates that the trial court did not simply "blindly accept" the State's race-neutral reasons, but rather that the court engaged the State and the defense in lengthy discussions regarding the State's reasoning for its striking of Ms. Palton, Ms. Roberson, and Mr. Meo. The trial court heard the State argue that it was concerned defendant would be particularly sympathetic to the jurors given his age and physical condition and therefore that it was being extra cautious in striking venire members whose answers during *voir dire* indicated their feeling of sympathy may overpower their ability to decide the case on the evidence. The State argued that Ms. Palton's support for a family member with a case in Cook County, Ms. Roberson's support for a friend or family member in prison, and Mr. Meo's support for a cousin with a gun possession charge, could lead all of them to be unduly sympathetic to the elderly, infirm defendant facing prison if found guilty. The State further argued that Ms. Patton's, Ms. Roberson's, and Mr. Meo's African-American race had nothing to do with its decision to exercise preemptory challenges against them, noting in support that the defendant and victims were all

[1] Defendant makes no argument on appeal that the trial court erred in finding that Mr. Scott's failure to disclose his prior arrest was a valid race-neutral reason for striking him.

African-Americans and that the State had not challenged the seating of two other female African-American jurors at the beginning of *voir dire*.

¶ 39 The trial court considered some of the State's arguments to be "flawed," particularly noting that a potential juror should not be considered biased for visiting friends and/or family in prison, or for having a family member involved in a court case. However, after hearing all the arguments and engaging the State and defense in discussion, the trial court made a credibility determination that the prosecutor was being truthful when stating that she exercised the peremptory challenges, not on the basis of race, but rather on her genuine belief that the answers of Ms. Palton, Ms. Roberson, and Mr. Meo indicated they would be unduly sympathetic to the elderly, infirm defendant. On this record, we cannot say that the trial court's findings and credibility determination were clearly erroneous such that we are left with a definite and firm conviction that a mistake has been committed.

¶ 40 Defendant argues that *People v. Hogan*, 389 Ill. App. 3d 91 (2009), compels a different result. In *Hogan*, the defendant made a *Batson* motion after the State used two out of three peremptory strikes on African-American venire members. *Id.* at 93. The trial court found that the defendant had failed to establish a *prima facie* case of racial discrimination. *Id.* at 94. The State later moved to strike two more venire members, one of whom was African-American, and defendant renewed his *Batson* motion. *Id.* After both parties made arguments, the trial court found that the State had not engaged in "systematic exclusion of jurors based on race" and denied the *Batson* motion. *Id.* at 96.

¶ 41 On appeal, the defendant argued that the trial court erred in denying his *Batson* motion where the State failed to provide "genuine, race-neutral reasons for exercising three out of its five peremptory challenges against black venirepersons." *Id.* at 97. The appellate court reversed

and remanded, holding in pertinent part: "An inference of purposeful racial discrimination is raised where the State accepts white jurors having the same characteristics as black venirepersons that were excused for having that characteristic." *Id*. at 104. The appellate court examined the characteristics and experiences of one of the excused African-American venire members, Charlie Jackson, noting the State explained its reasons for striking him were because he and his wife had been the victim of a robbery, and he had no children. *Id*. at 95. The appellate court found that the State had accepted Caucasian venire members with similar characteristics and, thus, that the State's proferred reasons for excusing Mr. Jackson had been pretextual. *Id*. at 104-05.

¶ 42 Defendant argues that, as in *Hogan*, the State here accepted one Caucasian venire member with characteristics and similarities similar to one of the stricken jurors, Ms. Palton. Specifically, defendant argues that the State purportedly struck Ms. Palton because one of her family members was involved in pending litigation, but it did not strike Angela Martinelli, a Caucasian venire member who also had a family member who was the subject of pending litigation. However, the record shows that the panel that included Ms. Martinelli was tendered to defendant first and that defendant struck her; the State never had the chance to use a peremptory challenge to excuse her. Accordingly, *Hogan* is inapposite.

¶ 43 *Hogan* is further inapposite because the appellate court there found that the trial court did not follow the *Batson* three-step procedure when evaluating the State's peremptory challenge of Mr. Jackson and of another venire member, Ms. Knickerson. *Id*. at 101-103. By contrast, the trial court here correctly applied the *Batson* three-step procedure in evaluating the State's peremptory challenges of Ms. Palton, Ms. Roberson, and Mr. Meo.

¶ 44 Defendant also argues that the State's failure to engage in any meaningful *voir dire* examination of Ms. Palton, Mr. Meo, and Ms. Roberson regarding the topics that supposedly formed the basis for its peremptory challenges of them demonstrates that its stated reasons for striking them was a sham.

¶ 45 In support, defendant cites *Miller-El v. Dretke*, 545 U.S. 231 (2005). In *Miller-El*, the prosecution peremptorily struck an African-American venire member, Billy Jean Fields, and gave as its reason that Mr. Fields had expressed reluctance to vote for the death penalty if the defendant could be rehabilitated. *Id*. at 243. The prosecutor's stated reason was a mischaracterization of Mr. Fields' stated views. *Id*. at 244. After the defendant pointed out this mischaracterization, the prosecutor suddenly stated that the prior conviction of Mr. Fields' brother was a reason for the peremptory strike. *Id* at 246. The trial court denied the defendant's *Batson* motion and the appellate court affirmed. *Id*. at 236-237.

¶ 46 The United States Supreme Court reversed, holding: "It would be difficult to credit the State's new explanation, which reeks of afterthought." *Id*. at 246. The Supreme Court found that the trial court's "readiness to accept the State's substitute reason ignores not only its pretextual timing" but, also, ignores that the State had failed to inquire, during *voir dire*, on the influence Mr. [Fields'] brother had on him, "as it probably would have done if the family history had actually mattered." *Id*. The Supreme Court concluded: "There is no good reason to doubt that the State's afterthought about [Mr. Fields'] brother was anything but makeweight." *Id*.

¶ 47 In contrast to *Miller-El*, the State here did not mischaracterize the *voir dire* testimony of Ms. Palton, Mr. Meo, and Ms. Roberson, nor did it provide multiple explanations that "reek[ed] of afterthought" (*id*.) in an attempt to justify their exclusion[2]. Rather, the State provided only

[2] In his reply brief, defendant argues that the State mischaracterized Ms. Palton's *voir dire*

one explanation each for excusing Ms. Palton, Mr. Meo, and Ms. Roberson and, as discussed earlier in this order, the trial court found the State's explanations for peremptorily striking each of the three venire members to be credible and race-neutral. Accordingly, *Miller-El* is inapposite.

¶ 48 Defendant also argues for reversal because at the time of the *Batson* motion the State had used peremptory challenges against four out five (80%) of the African-Americans in the venire, and because only 2 out of 14 (14%) of the petit jury was African-American, even though 6 out of 23 (26%) of the venire was African-American. The trial court considered the disproportional use of peremptory strikes against African-American venire members in finding that defendant had made a *prima facie* case of racial discrimination, advancing the *Batson* inquiry to the second stage, where the State gave its race-neutral explanations. The trial court then advanced the *Batson* inquiry to the third stage, engaged the State and defense in lengthy conversation regarding the peremptory strikes, and made a credibility determination that there was no discriminatory intent on the part of the State. As discussed earlier in this order, the trial court's credibility determination was not clearly erroneous.

¶ 49 For all the foregoing reasons, we affirm the circuit court's order denying defendant's *Batson* motion.

¶ 50 Affirmed.

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testimony when it stated that it was peremptorily striking her because she had volunteered information about her family member having a pending court case. We find no mischaracterization, where review of the record indicates that during *voir dire*, the trial court asked the prospective jurors whether any of them had a pending court case in Cook County, and Ms. Palton responded, "Does that include anybody in your family?" Ms. Palton's response indicated to the State that a member of her family had a pending court case.