2016 IL App (1st) 142266-U

FIFTH DIVISION
September 23, 2016

No. 1-14-2266

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	13 CR 2230
	)	
CHRISTOPHER MCDONALD,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

Held: Judgment on jury verdict finding defendant guilty of the unlawful use or possession of a weapon by a felon affirmed where none of the issues defendant raises on appeal merit reversal of his conviction or sentence.

¶ 1 Following a jury trial, defendant Christopher McDonald was convicted of the unlawful use or possession of a weapon by a felon (UUWF) in violation of section 24-1.1(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/24-1.1(a) (West 2012)). He was sentenced to seven years' imprisonment. Defendant raises a number of issues on appeal, none of which warrant reversal of his conviction or sentence.

¶ 2 BACKGROUND

¶ 3 At trial, the State presented the testimony of two Chicago police officers, Andrew Janik and Michael Gentile. The following evidence was adduced.

¶ 4 On January 12, 2013, at approximately 12:30 a.m., officers Janik and Gentile, along with two fellow officers from their gun team were patrolling the area near 50th Street and Princeton Avenue in an unmarked squad car. The officers were dressed in civilian clothes, but were wearing their bullet-proof vests with their police stars displayed outside their clothing.

¶ 5 As the officers were driving northbound on Princeton Avenue they observed six black males, including defendant, crossing the street. All of the men, except defendant, were holding clear plastic cups in their hands. The cups contained a brown liquid, which the officers suspected was alcohol. The officers parked their squad car curbside in order to approach the group for a field interview. The squad car was parked approximately ten feet from the group of men.

¶ 6 The officers exited their vehicle. Officer Janik called out, "Police. Let me talk to you guys for a second." Defendant, who was wearing dark jeans and a winter coat with a fur lining around the hood, looked at the police and then broke away from the group and ran northbound on Princeton Avenue. Defendant ran hunched over with both of his hands holding his waistband area. No one else from the group of men ran. Based on their experience, the officers suspected

the defendant was attempting to conceal illegal narcotics or a weapon. The officers pursued defendant on foot.

¶ 7 With the officers in hot pursuit, defendant eventually ran into the front yard of a house located at 4947 S. Princeton. He attempted to gain entry into the basement of the house by knocking on the door while still holding his pants. As Officer Janik entered the front yard, a "fairly large woman" grabbed him from behind in a bear hug. In a matter of seconds, Officer Janik broke free of the woman with the assistance of Officer Gentile. The officers kept their eyes on defendant the entire time.

¶ 8 During the struggle, defendant gained entry into the basement of the residence. Officers Janik and Gentile followed him into the basement before the door closed. The doorway led to an unfinished basement where about twenty to thirty-five people were having a party. There was a strobe light and loud music was playing. None of the people at the party were wearing coats. As defendant and the officers entered the party, the crowd opened up and moved to the sidewalls, giving the officers a clear view of the defendant. The officers kept their flashlights shined on defendant, who was still wearing his coat.

¶ 9 Defendant moved to the back of the basement, near a nook where a table was set up with disk-jockey equipment. Officer Janik observed defendant remove a "blue steel" handgun from his waistband, and place it behind a speaker. Officer Janik moved toward defendant and ordered him down on the floor at gunpoint and placed him under arrest. Officer Gentile went to the speaker where he recovered a blue steel .44 caliber semiautomatic handgun loaded with eight live rounds, including one in the chamber. The officers testified that between the time defendant placed the handgun behind the speaker and the time Officer Gentile recovered the gun, no one

else in the basement had an opportunity to enter the area behind the speaker where the gun was recovered.

¶ 10 Following the police officers' testimony, the State read into the record a stipulation that the defendant had previously been convicted of the felony offense of possession of a controlled substance. The State then rested. The defense rested without presenting any evidence. Following closing argument, the jury found defendant guilty of the unlawful use or possession of a weapon by a felon (UUWF).

¶ 11 ANALYSIS

¶ 12 Defendant first contends the evidence was insufficient to establish beyond a reasonable doubt that he was guilty of UUWF. A criminal conviction will not be set aside on grounds of insufficient evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). When reviewing the sufficiency of the evidence in a criminal case, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Cooper*, 194 Ill.2d 419, 430-31 (2000). In reviewing a challenge to the sufficiency of the evidence, it is not our role to retry the defendant; rather, it is for the trier of fact to determine the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Enis*, 163 Ill. 2d 367, 393 (1994).

¶ 13 To sustain a conviction for UUWF, the State must prove defendant has a prior felony conviction and that he knowingly possessed a firearm. *People v. Hill*, 2012 IL App (1st) 102028, ¶ 40. In this case the parties stipulated to the defendant's prior felony conviction. Therefore, the

only issue at trial was whether the State established beyond a reasonable doubt that the defendant knowingly possessed a firearm. See, *e.g.*, *People v. Ingram*, 389 Ill. App. 3d 897, 899 (2009).

¶ 14 Defendant maintains the evidence was insufficient to establish beyond a reasonable doubt that he knowingly possessed a firearm. Specifically, defendant argues that the police officers' testimony linking him to the recovered firearm was all inconsistent and incredible.

¶ 15 "Knowledge can rarely be proved by direct evidence and is typically 'proved by defendant's actions, declarations, or conduct from which an inference of knowledge may be fairly drawn.' " *People v. Warren*, 2016 IL App (4th) 120721-B, ¶ 65 (quoting *People v. Roberts*, 263 Ill. App. 3d 348, 352 (1994)). Because of the difficulty in proving knowledge, when actual possession is established, then the trier of fact can generally infer knowledge from the surrounding circumstances. *Roberts*, 263 Ill. App. 3d at 352.

¶ 16 Given the chain of events and considering the evidence in the light most favorable to prosecution, we find the State presented sufficient evidence to permit the trier of fact to conclude that the defendant knowingly possessed the handgun. The officers testified that when they first approached the group of men, which included defendant, to conduct a field interview, the defendant broke away from the group and ran from the officers. "A trier of fact may infer consciousness of guilt from evidence of a defendant's flight [from] the police." *People v. Williams*, 266 Ill. App. 3d 752, 760 (1994) (citing *People v. Nightengale*, 168 Ill. App. 3d 968, 972 (1988)).

¶ 17 Moreover, not only did defendant run from the police officers when they approached him, but he ran from them while hunched over and with both of his hands holding his waistband area. Defendant running in this manner, caused the police, based on their experience, to suspect that he was attempting to conceal illegal narcotics or a weapon. After unsuccessfully trying to

elude the police, defendant entered the basement of a residence where Officer Janik observed him remove a handgun from his waistband and place it behind a speaker. Officer Janik's partner went to the speaker where he recovered a semiautomatic handgun. The officers testified there were no other individuals in the vicinity of the speaker where the handgun was recovered.

¶ 18 This evidence was also sufficient to allow a rational trier of fact to conclude beyond a reasonable doubt that defendant knowingly possessed the handgun. See, *e.g.*, *People v. Brown*, 309 Ill. App. 3d 599, 608-09 (1999) (evidence permitted rational trier of fact to conclude defendant knowingly possessed handgun where he was apprehended within 10 feet of where officer observed him drop object which turned out to be a handgun). Here, the defendant's flight, when considered with all the other evidence in the case, supported an inference that he knew he was in possession of a handgun. *People v. Lewis*, 165 Ill. 2d 305, 349 (1995) ("The fact of flight, when considered in connection with all other evidence in a case, is a circumstance which may be considered by the jury as tending to prove guilt").

¶ 19 In this case, the jury, as the finder of fact, weighed the evidence and found the two officers' testimony to be credible, and resolved the inconsistencies in their testimony in favor of the State. We defer to the jury's credibility findings. *People v. Gutierrez*, 387 Ill. App. 1, 7 (2008). We find the evidence was sufficient to support defendant's conviction for UUWF.

¶ 20 Defendant next contends the trial court erred in giving the jury a faulty version of Illinois Pattern Jury Instruction, Criminal, No. 3.13X (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 3.13X), relating to evidence of a defendant's prior conviction as an element of the charged offense. This jury instruction provides:

"Ordinarily, evidence of a defendant's prior conviction of a offense may [be considered by you only as it may affect his believability as a witness and must] not be considered by you as evidence of his guilt of the offense with which he is charged.

However, in this case, because the State must prove beyond a reasonable doubt the proposition that the defendant has previously been convicted of _____, you may [also] consider evidence of defendant's prior conviction of the offense of _____ [only] for the purpose of determining whether the State has proved that proposition." IPI Criminal 4th No. 3.13X.

¶ 21 This instruction is employed when a defendant's prior conviction is as an element of the charged offense and he testifies at trial. See Committee Note to IPI Criminal 4th No. 3.13X. However, where, as here, when the defendant does not testify at trial, then the only bracketed material that should be used is the bracketed word "[only]" in the second paragraph of the instruction. See Committee Note to IPI Criminal 4th No. 3.13X. The modified instruction would read as follows:

"Ordinarily, evidence of a defendant's prior conviction of a offense may not be considered by you as evidence of his guilt of the offense with which he is charged.

However, in this case, because the State must prove beyond a reasonable doubt the proposition that the defendant has previously been convicted of _____, you may consider evidence of defendant's prior conviction of the offense of _____ [only] for the purpose of determining whether the State has proved that proposition." IPI Criminal 4th No. 3.13X.

¶ 22 The tendered instruction at issue in this case reads:

"Ordinarily, evidence of a defendant's prior conviction of an offense may not be considered by you as evidence of his guilt of the offense with which he is charged.

However, in this case, because the State must prove beyond a reasonable doubt the proposition that the defendant had previously been convicted of Possession of a Controlled Substance, you may also consider evidence of defendant's prior conviction of the offense of Possession of a Controlled Substance for the purpose of determining whether the State has proved that proposition."

¶ 23 The instruction was faulty because the second paragraph of the instruction should have read the jury "may consider" evidence of defendant's prior conviction "only" for the purpose of determining whether the State has proved that proposition, rather than "may also consider" evidence of defendant's prior conviction for the purpose of determining whether that State proved that proposition. Defendant contends that by erroneously omitting the word "only" and including the word "also" in the instruction, this invited jurors to use his prior drug conviction as general evidence of his guilt rather than only as an element of the charged offense.

¶ 24 Defendant acknowledges he forfeited this issue by failing to object at the trial level or raise it in a posttrial motion (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). Nevertheless, he urges us to consider the issue under the plain-error doctrine. We decline to do so.

¶ 25 A limited exception to the forfeiture rule is contained in Illinois Supreme Court Rule 451(c) (eff. July 1, 2006), which provides that "substantial defects" in criminal jury instructions are not forfeited by the failure to make timely objections if the interests of justice require. This rule is coextensive with the plain-error doctrine (*People v. Keene*, 169 Ill. 2d 1, 32 (1995)), and applies to correct grave errors or when the case is so factually close that fundamental fairness requires that the jury be properly instructed. *People v. Lewis*, 2014 IL App (1st) 122126, ¶ 47.

¶ 26 The plain-error doctrine permits a reviewing court to consider forfeited claims of error if either: (1) the evidence is closely balanced and the jury's guilty verdict may have resulted from the error; or (2) the error was so fundamental and of such magnitude that the defendant was denied a fair trial and the error must be remedied to preserve the integrity of the judicial process. *People v. Hudson*, 228 Ill.2d 181, 191 (2008).

¶ 27 A defendant has the burden of persuasion under both prongs of the plain-error analysis. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). Defendant contends we should review this issue under both prongs. We disagree.

¶ 28 Although the jury instruction was erroneous, the error did not rise to the level of plain error. First, the evidence regarding defendant's possession of the handgun was not closely balanced. And second, the error was not so fundamental as to have threatened the fairness of defendant's trial. The parties stipulated to the defendant's prior felony conviction, and in closing argument the prosecutor argued that in light of the stipulation, the State did not have to prove defendant was a felon for purposes of the offense of UUWF. Moreover, the jury was instructed on the elements UUWF.

¶ 29 Therefore, we decline to find plain error in the jury instruction. There was no prejudice to defendant, and for this same reason, defendant's related claim of ineffective assistance of counsel, which requires a showing of prejudice, also fails.

¶ 30 Defendant next contends he was denied a fair trial on the ground that the trial court failed to question prospective jurors in accordance with the directives of Illinois Supreme Court Rule 431(b).[1] This rule imposes a *sua sponte* duty upon trial courts to question prospective jurors,

[1] The version of Rule 431(b) in effect when defendant was tried provides:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed

individually or in a group, as to whether they understand and accept the principles enumerated in *People v. Zehr*, 103 Ill. 2d 472, 477 (1984), "that a defendant is presumed innocent, that he is not required to offer any evidence in his own behalf, that he must be proved guilty beyond a reasonable doubt, and that his failure to testify in his own behalf cannot be held against him." See *People v. Johnson*, 2013 IL App (1st) 111317, ¶ 55.

¶ 31 Defendant claims the trial court erred when, after explaining each principle to the prospective jurors as a group, the trial court asked them if they had any "quarrel" about that specific principle. Defendant argues that such admonitions did not offer any insight as to whether prospective jurors actually understood these principles. Defendant maintains the error was not cured when the trial court subsequently asked prospective jurors a summary question as to whether they understood all four principles. And lastly, defendant contends the trial court erred by failing to address the principle that the defendant need not call witnesses, but instead admonished them that the defendant was not required to prove his innocence.

¶ 32 Assuming *arguendo* the trial court erred in the ways defendant claims, the plain-error doctrine would still not apply. We have already concluded that the evidence regarding defendant's possession of the handgun was not closely balanced. The evidence was not so closely balanced that the trial court's asserted errors regarding Rule 431(b) resulted in the

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> innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.
>
> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

defendant's conviction. See *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007) (under the first prong of the plain-error test, a defendant must show error and that the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant); *People v. Martin*, 2012 IL App (1st) 0935506, ¶ 78 (language used by trial court asking prospective jurors whether they "had any quarrel" with the principles enumerated in Rule 431(b), held not to be erroneous, but even if it was, it did not rise to the level of plain error since the evidence in the case was not closely balanced).

¶ 33 Defendant has also failed to establish that the claimed errors amount to plain error under the second prong of the plain error analysis. "Our supreme court has equated the second prong of the plain error test with structural error such that automatic reversal is only warranted when the error renders a defendant's trial fundamentally unfair or unreliable." *People v. Jackson*, 2013 IL App (3d) 120205, ¶ 25. Examples of structural errors include: the complete denial of counsel; trial before a biased judge; racial discrimination in the selection of the grand jury; denial of self-representation at trial; denial of a public trial; and a defective reasonable doubt instruction. See *People v. Thompson*, 238 Ill. 2d 598, 609 (2010).

¶ 34 In *Thompson*, our supreme court determined that a violation of Rule 431(b) does not automatically constitute a structural error subject to reversal. *People v. Hayes*, 409 Ill. App. 3d 612, 628 (2011). In regard to Rule 431(b), the supreme court in *Thompson* determined that a finding a defendant was tried by a biased jury would be the type of error which would satisfy the second prong of the plain-error test because it would affect the defendant's right to a fair trial and challenge the integrity of the judicial process. *Thompson*, 238 Ill. 2d at 614.

¶ 35 In this case, defendant has not presented any evidence that the trial court's alleged failure to fully comply with the mandates of Rule 431(b) resulted in a biased jury. He does not point to

any evidence that the jury was biased. Therefore, the second prong of the plain-error test does not provide a basis for excusing the defendant's forfeiture.

¶ 36 Defendant finally contends he established a *prima facie* case of racial discrimination under *Batson v. Kentucky*, 476 U.S. 79 (1986), in connection with the prosecutor's use of peremptory challenges to exclude African-American venirepersons from the jury pool. Defendant argues the trial court erred in finding that he failed to establish a *prima facie* case of discrimination under *Batson*. Defendant therefore claims we should remand this case for a hearing to determine whether the prosecutor's use of peremptory challenges to strike the African-American venirepersons was racially discriminatory and a denial of his equal protection rights.

¶ 37 A trial court's determination as to whether a *prima facie* case under *Batson* has been established will not be overturned unless it is against the manifest weight of the evidence. *People v. Williams*, 173 Ill. 2d 48, 71 (1996). A judgment is against the manifest weight of the evidence when an opposite conclusion is apparent, or when the findings appear to be unreasonable, arbitrary or not based on the evidence. *People v. Urdiales*, 225 Ill. 2d 354, 433 (2007). In the instant case, we do not believe the trial court's decision denying defendant's *Batson* motion was against the manifest weight of the evidence.

¶ 38 In *Batson*, the United States Supreme Court held it was a violation of the equal protection clause for the State to use its peremptory challenges to exclude prospective jurors solely on the basis of their race. *Batson*, 476 U.S. at 89; *People v. Houston*, 229 Ill. 2d 1, 5 (2008). Under *Batson*, a three-step process is employed in evaluating claims of alleged racial discrimination in jury selection. *Batson*, 476 U.S. at 96-98; *People v. Williams*, 209 Ill. 2d 227, 244 (2004).

¶ 39 First, the defendant must establish a *prima facie* case of purposeful discrimination by demonstrating that the relevant circumstances give rise to an inference the prosecutor exercised

peremptory challenges to remove panel members based on their race. *Houston*, 229 Ill. 2d at 5. Second, once such a *prima facie* case has been established, the burden shifts to the State to provide a race-neutral explanation for excluding each of the venirepersons in question; defense counsel may rebut the proffered explanations as pretextual. *Williams*, 209 Ill. 2d at 244. And third and finally, the trial court considers those explanations and determines whether the defendant has met his burden of demonstrating purposeful discrimination. *Williams*, 173 Ill. 2d at 70-71.

¶ 40 Some of the relevant circumstances a trial court may consider in determining whether a *prima facie* case of discrimination has been established include: (1) the racial identity between the defendant and the excluded venirepersons; (2) a pattern of strikes against African-American venirepersons; (3) a disproportionate use of peremptory challenges against African-American venirepersons; (4) the level of African-American representation in the venire as compared to the jury; (5) the prosecutor's questions and statements during *voir dire* examination and while exercising peremptory challenges; (6) whether the excluded African-American venirepersons were a heterogeneous group sharing race as their only common characteristic; and (7) the race of the defendant, victim, and witnesses. *Williams*, 173 Ill. 2d at 71. These examples are "merely illustrative" and are not all-inclusive. *People v. Holman*, 132 Ill. 2d 128, 173 (1989).

¶ 41 Initially, we reject the State's argument that the defendant waived the *Batson* issue by failing to raise it in his posttrial motion. See *People v. Primm*, 319 Ill. App. 3d 411, 419 (2000) ("a defendant who objects to the State's use of peremptory challenges but fails to raise a *Batson* claim in a posttrial motion does not waive his or her claim on review"). We also reject the State's contention that the defendant waived the *Batson* issue by failing to preserve an adequate record, since the record before us is adequate to allow meaningful review of the issue. See

People v. Andrews, 132 Ill. 2d 451, 460 (1989); *People v. Partee*, 268 Ill. App. 3d 857, 864-65 (1994).

¶ 42 Turning to the merits, we find no error in the trial court's finding that defendant failed to establish a *prima facie* claim under *Batson*. The jury selection began with twenty-seven venirepersons being called for questioning. In chambers, outside the presence and hearing of the venire, nine of those venirepersons were excused for cause at the request of the State: Derrick Brown, Jerome Crumpton, Eric Winkelhake, Joel Springer, Gloria Rodriguez-Rojas, Christopher Curry, Alexander Rutter, John Jacobsen, and Gena Lynch Bomar.

¶ 43 After the trial court ruled on the for-cause challenges, the parties returned to the courtroom, and the court announced the following eleven venirpersons as jurors: Richard Heller, Samuel Galindo, Hugo Espana, Joseph Taiber, Brooke Lesniak, Robert Acosta, Joseph McGann, David Leshyn, Santos Robles, Frances Weisman, and Ryne Markvart. The record is silent as to who exercised peremptory challenges to the seven other venirepersons who were not stricken for cause or placed on the jury.

¶ 44 An additional fourteen venirepersons were called. Following the questioning of ten of the venirepersons by the trial court, neither the prosecutor nor defense counsel had any questions for the venirepersons. The parties then engaged in another sidebar in chambers, outside the presence and hearing of the venire. When the trial court asked counsels if there were any venirepersons who did not own up to a criminal background, one of the prosecutors responded that Crystal Powers had admitted to having a traffic offense, but had failed to admit that the offense was actually a DUI. The prosecutor also pointed out that Devan Clark had expressed difficulty in signing a possible guilty verdict and also in following the principles enumerated in

Rule 431(b) because he had been previously incarcerated for a drug offense. Shortly thereafter, the following colloquy occurred between the trial court and counsels:

"THE COURT: All right. Did you have any you wanted to exercise for cause?

PROSECUTOR: I think Counsel wanted to address –

DEFENSE COUNSEL: Judge, I'm going to raise a Batson before the State knocks off anymore African Americans. They have successfully, with their causes and their preemptory [sic] challenges, knocked off every black on the jury. So I'd like to inquire as to –

THE COURT: Do you have anything else you want to say about it?

DEFENSE COUNSEL: No. I've tried to say it succinctly.

THE COURT: That's pretty succinctly, except you haven't established a prima facie case.

DEFENSE COUNSEL: Well, I would like to know that their challenges – their race neutrality chall – or their neutrality of their challenges are, and –

THE COURT: You haven't established a prima facie case. We don't get to that yet.

DEFENSE COUNSEL: Every single African American has been knocked off the jury, your Honor. So far. Out of –

THE COURT: They've used two challenges.

DEFENSE COUNSEL: And causes, which –

THE COURT: They've only used two preemptories [sic].

DEFENSE COUNSEL: Yes, I understand, but you –

THE COURT: One was for an African American and one was for a Caucasian person.

DEFENSE COUNSEL: But, all of the other ones that they did for cause, I was hoping that I would get a chance to rehabilitate the individuals to see if they had names – since

some of them are similar to common names, to see if they are people that they were in error about. But you wouldn't let me, so –

THE COURT: No, no. Your motion for Batson is denied. You haven't established a prima facie case."

¶ 45 The above colloquy clearly shows defense counsel attempted to skip the first step of the *Batson* analysis – establishing a *prima facie* case of discrimination, by producing evidence sufficient to permit the trial court to draw an inference that discrimination has occurred – and proceed immediately to the second step by attempting to inquire as to the State's race-neutral reasons for using its peremptory strikes. Defendant does not point us to anything in the record that would support a finding that the State engaged in purposeful discrimination. "The mere number of black venirepersons peremptorily challenged, without more, will not establish a *prima facie* case of discrimination." *People v. Heard*, 187 Ill. 2d 36, 56 (1999). "The number of persons struck takes on meaning only when coupled with other information such as the racial composition of the venire, the race of others struck, or the *voir dire* answers of those who were struck compared to the answers of those who were not struck." *People v. Rivera*, 221 Ill. 2d 481, 512 (2006). Accordingly, we find no error in the trial court's determination that defendant failed to establish a *prima facie* claim of discrimination under *Batson*.

¶ 46 For the foregoing reasons, we affirm the jury's verdict and the sentence imposed by the trial court.

¶ 47 Affirmed.