

IN THE SUPREME COURT OF THE STATE OF NEVADA

DONALD CHALMERS KELLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 56692

**FILED**

JAN 12 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY Angela  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of battery with the use of a deadly weapon, victim 60 years of age or older. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Donald Chalmers Kelley argues that the district court abused its discretion in granting the State's Batson<sup>1</sup> challenge to the use of one of his peremptory strikes. See Diomampo v. State, 124 Nev. 414, 422, 185 P.3d 1031, 1036 (2008) (explaining the three-pronged test for determining whether illegal discrimination has occurred); Foster v. State, 121 Nev. 165, 172, 111 P.3d 1083, 1088 (2005) (reviewing district court's decision on Batson challenge for abuse of discretion). We agree.

Determining whether a peremptory challenge was exercised in a discriminatory manner in violation of Batson requires a three-step inquiry: (1) the proponent of the challenge must make a prima facie showing that discrimination based on race has occurred based upon the totality of the circumstances, (2) the opposing party must provide a race-

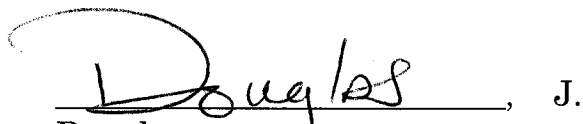
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<sup>1</sup>Batson v. Kentucky, 476 U.S. 79 (1986).

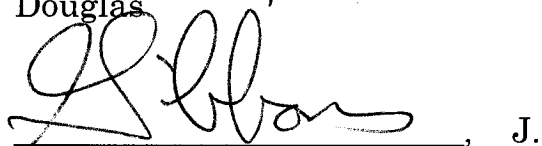
neutral explanation for its peremptory challenge, and (3) the district court must determine whether the proponent of the challenge demonstrated purposeful discrimination. Diomampo, 124 Nev. at 422, 185 P.3d at 1036. As Kelley immediately proffered an explanation for the strike, we need not decide whether the State made a prima facie case of discrimination. See Ford v. State, 122 Nev. 398, 403, 132 P.3d 574, 577 (2006) (providing where “the State gave its reasons for its peremptory challenges before the district court determined whether the opponent of the challenge made a prima facie showing of discrimination” the step is moot). As to step two of the inquiry, we conclude that the district court erred in concluding that Kelley’s proffered reasons for the strike (the juror’s age, lack of experience, eagerness to sit on the jury, and lack of criminal history) were not race neutral. See id. at 403, 404, 132 P.3d at 574, 578 (providing that where “discriminatory intent is not inherent in the [party’s] explanation, the reason offered should be deemed neutral”); see also U.S. v. Pichay, 986 F.2d 1259, 1260 (9th Cir. 1993) (providing that the Equal Protection Clause does not prohibit a party from striking potential jurors on account of age); U.S. v. Bryce, 208 F.3d 346, 350 n.3 (2d Cir. 1999) (finding “lack of life experience” to be race-neutral explanation). Nothing in Kelley’s proffered reasons suggests race-based discrimination, and the district court’s analysis of the Batson challenge for cause ended there. Although the State suggests that the district court granted its Batson challenge having determined that Kelley’s reasons for striking the juror were pretextual, the record does not bear that out. There was no discussion of pretext or purposeful discrimination. Rather, the district court granted the State’s challenge having erroneously concluded that Kelley’s reasons were not race neutral.

Because the district court's erroneous Batson ruling constitutes "structural" error, Diomampo, 124 Nev. at 423, 185 P.3d at 1037, we

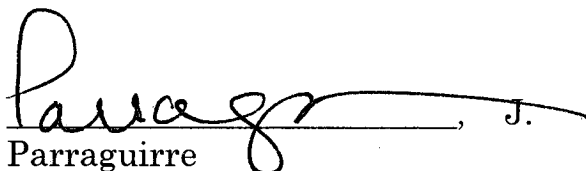
ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for a new trial.<sup>2</sup>

  
\_\_\_\_\_, J.

Douglas

  
\_\_\_\_\_, J.

Gibbons

  
\_\_\_\_\_, J.

Parraguirre

cc: Hon. Michelle Leavitt, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

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<sup>2</sup>Because we are reversing and remanding for a new trial, we need not address Kelley's other claims of error.