Circuit Court for Wicomico County
Case No. C-22-CR-21-000061

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1252

September Term, 2022

LEVONTE JAVAR MARTIN

v.

STATE OF MARYLAND

Reed,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 28, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Convicted by a jury in the Circuit Court for Wicomico County of first degree murder and related offenses, Levonte Javar Martin, appellant, presents for our review a single issue: whether the court erred in "denying the defense's *Batson*[1] challenge without conducting the proper analysis." For the reasons that follow, we shall affirm the judgment of the circuit court.

During jury selection, the prosecutor used peremptory strikes to strike prospective juror numbers 896 and 980. Defense counsel challenged the strikes on the ground that both jurors were African-American. The prosecutor stated that he struck juror number 896 because "[s]he said [that] she had a brother in and out of jail" and "she didn't know whether she could be fair or not," and because the prosecutor did not "think she ha[d] the life experience to sit on the jury." The prosecutor stated that he struck juror number 980 because "[w]hen he was at the bench," the prosecutor "sensed some cognitive issues" and the juror's "speech was slow." The prosecutor further stated: "[The juror] also indicated that he knew people involved in . . . a different case with a different body found in a field . . . [w]hich . . . if he's talking about the person I think he's talking about, . . . he said he knew that person's mother, that's also the mother of the victim here." The court stated that it was "satisfied [that] the State has recited neutral reasons that don't relate to race for the exercise of [the prosecutor's] challenges," and denied defense counsel's challenge.

[1]*Batson v. Kentucky*, 476 U.S. 79 (1986).

Later, the prosecutor used peremptory strikes to strike prospective juror numbers 856 and 748. Defense counsel challenged the strikes on the ground that both jurors were African-American. The following colloquy then occurred:

> [PROSECUTOR]: Well, to 856, . . . looking at his juror sheet, there is no data on his education. Again, it's a question of life experience that is of concern to the State. I don't know anything about him, and I don't feel compelled to take a chance on someone I don't know anything about.
>
> THE COURT: Because of his education?
>
> [PROSECUTOR]: Because I don't know what education he has. And, again, because of his age and life experience.
>
> THE COURT: Okay.
>
> * * *
>
> So did you want to offer an explanation for [juror number 748]?
>
> [PROSECUTOR]: He indicates he was familiar with a named person who was accused, who, I don't know how to, I mean, the investigation is ongoing, but it's tied up in and has relations to some of the same people in this case, that's what concerns me.
>
> THE COURT: He did disclose that he had a friend who was accused.
>
> [PROSECUTOR]: And there's also the age, young age/life experience factor there.
>
> THE COURT: I believe that that's a race neutral reason, that he was, well, his age in part but also because of his other experiences.
>
> * * *
>
> So two of the last three were African-American, and the one who had a race neutral reason, and then the other is, you're contending that age is the reason and the fact that his education is not reflected. And so for those reasons you don't feel that you should want him on the jury.

> [PROSECUTOR]: Right, and age, if Your Honor looks at the last three strikes that [defense counsel] brings up, age is a factor in all of those last, a factor in all of those last three strikes.
>
> THE COURT: Okay.
>
> [PROSECUTOR]: Life experience, I shouldn't say age, it's a life experience question.
>
> It seems to me just as valid as a middle age –
>
> THE COURT: It is, I think it is.
>
> [PROSECUTOR]: – reason.
>
> THE COURT: I think the State has articulated a race neutral reason for their concerns, and I'll deny your *Batson* challenge.

(Italics added.)

Following the close of jury selection, the court stated: "Counsel, look upon our first twelve jurors and determine whether the State and Defense are now satisfied, other than for the reasons stated at the bench." Defense counsel replied: "Other . . . than the matters previously raised, there's nothing in addition to that." The court stated: "Okay, very good."

Mr. Martin contends that the court "failed to conduct the required analysis in ruling on the defense's *Batson* challenges," because "it did not make a final determination regarding the credibility of the prosecutor's purportedly race-neutral explanations for his peremptory strikes." The State contends that Mr. Martin "failed to preserve this claim because he did not request an explicit determination or object to the trial court's failure to make an explicit determination." Alternatively, the State contends that the court "properly addressed the *Batson* challenges and properly made implicit determinations."

With respect to whether Mr. Martin's contention is preserved, we disagree with the State. Although the "process [that] a court must follow in assessing a *Batson* claim" has three steps, *Edmonds v. State*, 372 Md. 314, 329 (2002), the State does not cite any authority that requires a defendant to modify and re-argue such a claim after each step. Also, the Supreme Court of Maryland (formerly known as the Court of Appeals of Maryland)[2] stated in *Edmonds* that the "petitioner did not waive appellate review of his *Batson* claims" where he "objected repeatedly to the State's exercise of peremptory challenges to exclude African-American venirepersons" and "excepted to the final composition of the jury[.]" *Id.* at 328 (citation omitted). Here, defense counsel twice objected to the prosecutor's exercise of peremptory challenges and qualified his acceptance of the final composition of the jury. We conclude that these actions were sufficient to preserve Mr. Martin's contention for our review.

Nevertheless, we agree with the State that the court "properly addressed the *Batson* challenges." It is true that "to conduct a proper *Batson* analysis," a court must "mak[e] a final determination regarding the credibility of the prosecutor's race-neutral explanations and therefore whether [the defendant] established purposeful discrimination in the strikes of jurors[.]" *Id.* at 339. But, "[s]ometimes the record is adequate for a reviewing court to

[2]At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Rule 1-101.1(a) ("[f]rom and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland").

find that the trial judge *implicitly* ruled on the pretextuality of a proffered race-neutral reason," and "[a]n implicit finding may be acceptable if it is apparent from the record that the court found the reason to be nondiscriminatory." *Id.* at 337 n.13 (citations omitted). Here, the court's statements indicated that it had accepted the prosecutor's reasons for striking the jurors and found the reasons to be nondiscriminatory. We further note that the court did not make inconsistent comments as to whether it found the prosecutor's explanations to be credible. *See id.* at 338 ("[b]ecause of the judge's inconsistent comments, it is unclear whether the trial court found the prosecutor's explanation credible"). Finally, the Supreme Court of Maryland has stated that "[a]lthough it [is] preferable for [a] trial judge to state the reasons for [a] ruling expressly, we presume that the trial judge properly applied the law." *Whittlesley v. State*, 340 Md. 30, 48 (1995) (citation omitted). It is apparent to us from the record that the court implicitly found the reasons given by the prosecutor for his strikes to be nondiscriminatory, and hence, the court did not err in denying the *Batson* challenges.

JUDGMENTS OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.