MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Paris Lee Hill,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 31, 2023

Court of Appeals Case No. 23A-CR-547

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-1903-F2-11

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] Paris Lee Hill appeals his convictions, following a jury trial, for level 5 felony dealing in a narcotic drug, level 6 felony possession of a narcotic drug, level 2 felony dealing in a narcotic drug, level 4 felony possession of a narcotic drug, and level 6 felony theft of a firearm. The trial court also found Hill guilty of unlawful possession of firearm as a serious violent felon (SVF). Hill contends that he is entitled to a new trial due to the State's alleged violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Batson v. Kentucky*, 476 U.S. 79 (1986), and/or that he is entitled to reversal of his convictions due to alleged prosecutorial misconduct. We disagree in all respects and affirm.

Facts and Procedural History

[2] In October 2018, a confidential informant (CI) working with the Tippecanoe County Drug Task Force reported to officers that Hill "was a heroin narcotics dealer" in Lafayette. Tr. Vol. 3 at 143. An officer verified the CI's claim after surveilling Hill on four or five occasions in the "area surrounding Wal-Mart" and a house on Vineyards Court. *Id*. at 144. Accordingly, on November 27, 2018, officers conducted a controlled buy during which the CI purchased one gram of heroin from Hill for $150. During the buy, officers watched Hill leave the house on Vineyards Court, travel to Wal-Mart for the transaction, and then return to the house. The substance purchased from Hill later tested positive as a combination of fentanyl and heroin weighing .92 grams.

[3] Following this buy, officers continued to surveil Hill's behavior, and, on December 4, 2018, they performed a "trash pull" at the Vineyards Court residence. *Id*. at 158. Officers found several plastic sandwich baggies containing drug residue with one or both corners removed containing drug residue. On January 22, 2019, officers performed a second trash pull and again found several baggies with drug residue and the corners removed. Officers also found mail that was addressed to Hill.

[4] On January 22, after the second trash pull, officers observed Hill leave the Vineyards Court residence and conduct a transaction at Wal-Mart. Officers stopped both Hill's vehicle and the other vehicle involved in the transaction. In Hill's car, officers found plastic baggies with missing corners, $611.32 in cash, and what appeared to be synthetic urine. Drugs, later determined to be fentanyl, were collected from the other vehicle. The driver of the other vehicle admitted that he had purchased drugs from Hill. That same day, officers executed a search warrant at the Vineyards Court residence. In one of the bedrooms, officers found plastic baggies without corners, two scales with powdery residue on them, a desk with cuts on it consistent with razor blades, an apparent drug ledger, cash, and a bag of narcotics later determined to be heroin and fentanyl weighing 9.95 grams. Also in that bedroom, officers observed a picture of Hill and two temporary driver's licenses for Hill. A black jacket hanging on a hook in the room contained a nine-millimeter handgun that officers determined had been stolen out of a car in December 2018. Officers who had conducted surveillance on Hill recognized it as the same jacket they had seen him wearing.

In the garage of the residence, officers located a safe containing what they believed to be ecstasy pills, additional drugs, two pistols, another temporary identification card for Hill, and $10,000 in cash. The suspected ecstasy was later tested and determined to be methamphetamine with a weight of 10.73 grams.

[5] The State charged Hill with ten criminal counts: level 5 felony dealing in a narcotic drug (heroin/fentanyl), level 6 felony possession of a narcotic drug (heroin/fentanyl), level 5 felony dealing in a narcotic drug (heroin), level 2 felony dealing in a narcotic drug (heroin/fentanyl), level 4 felony possession of a narcotic drug (heroin/fentanyl), level 2 felony dealing in methamphetamine, level 3 felony possession of methamphetamine, two counts of level 6 felony theft of a firearm, and level 4 felony unlawful possession of a firearm by a SVF. A jury trial began on December 7, 2021. At the close of the State's evidence, the trial court dismissed one count of theft of a firearm on the State's motion. At the conclusion of trial, the jury found Hill guilty on four counts and not guilty on three counts. Hill waived a jury trial as to unlawful possession of a firearm by an SVF, and following a bench trial, he was found guilty.

[6] A sentencing hearing was held on April 19, 2022, and the trial court sentenced Hill to an aggregate thirty-year sentence with twenty years executed in the Department of Correction, two years to be served in community corrections, and eight years suspended to probation. Hill filed a motion to correct error alleging, among other things, that the State withheld exculpatory evidence in violation of *Brady*. The trial court denied the motion. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion in denying Hill's motion to correct error based on an alleged *Brady* violation.

[7] Hill first contends that the trial court abused its discretion in denying his motion to correct error. Specifically, he alleges that the trial court should have granted him a new trial because the State withheld exculpatory evidence from the defense in violation of *Brady*, 373 U.S. 83. In *Brady*, the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id*. at 87. "To prevail on a *Brady* claim, a defendant must establish: (1) that the prosecution suppressed evidence; (2) that the evidence was favorable to the defense; and (3) that the evidence was material to an issue at trial." *Minnick v. State*, 698 N.E.2d 745, 755 (Ind. 1998), *cert. denied* (1999). "Evidence is material under *Brady* 'only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome.'" *Bunch v. State*, 964 N.E.2d 274, 297 (Ind. Ct. App. 2012) (quoting *U.S. v. Bagley*, 473 U.S. 667, 682 (1985)), *trans. denied*. Suppression of *Brady* evidence is constitutional error warranting a new trial. *Turney v. State*, 759 N.E.2d 671, 675 (Ind. Ct. App. 2001), *trans. denied* (2002).

[8] A *Brady* violation can be raised by a motion for a new trial based on newly discovered evidence, or, as in this case, a motion to correct error. *Prewitt v. State*, 819 N.E.2d 393, 400 (Ind. Ct. App. 2004), *trans. denied* (2005). "A trial court has discretion to grant or deny a motion to correct error and we reverse its decision only for an abuse of that discretion." *Hayden v. State*, 830 N.E.2d 923, 930 (Ind. Ct. App. 2005), *trans. denied*. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it, or when the court has misinterpreted the law. *Id*.

[9] Hill's *Brady* claim is based upon the State's failure to disclose handwritten notes taken by Lafayette Police Department Detective Zachary Hall while he was surveilling Hill. In its response to Hill's motion to correct error, the State conceded that the surveillance notes were not provided to the defense prior to trial, so Hill has met the first prong of the *Brady* analysis. Hill argues that the evidence was favorable to the defense because although Detective Hall testified that he saw Hill wearing the black jacket that was subsequently found during the search of the residence with a handgun in the pocket, the handwritten notes failed to make any mention of the black jacket. Hill asserts that he could have used this information to impeach Detective Hall's testimony that he had observed Hill wearing the same jacket because that observation was not recorded in his surveillance notes.

[10] Hill is correct that "[f]avorable evidence" for *Brady* purposes includes both exculpatory evidence and impeachment evidence. *Bunch*, 964 N.E.2d at 297-98. However, we must agree with the State that Detective Hall's failure to mention

the black jacket in his handwritten notes would have been of questionable impeachment value to Hill. The notes were not extensive and simply included basic information such as names, dates, times, locations, and a brief summary of the witnessed activities. As found by the trial court, the clear intent of the notes was to "assist the officer's recollection[,]" but they "were not meant to be all inclusive[,]" as they "do not detail every observation." Appellant's App. Vol. 3 at 240. Indeed, the notes contain no reference to Hill's clothing at all. Accordingly, we fail to see how the notes would have impeached Detective Hall's testimony that he observed Hill wearing the black jacket.

[11] Moreover, the evidence does not constitute material evidence under *Brady* as there was ample additional evidence linking Hill to the black jacket. Notably, Officer Daniel Long also testified that he had observed Hill wearing the black jacket during surveillance operations. And the jacket was found in a bedroom of the residence that contained numerous other items belonging to Hill. In the context of all the evidence presented, we cannot say that Detective Hall's surveillance notes that simply omitted any reference whatsoever to Hill's clothing constituted evidence that was overly favorable or material to the defense.

[12] Still, even assuming that the evidence was both favorable and material, it is well established that the State will not be found to have suppressed material information if that information was available to a defendant through the exercise of reasonable diligence. *Stephenson v. State*, 864 N.E.2d 1022, 1057 (Ind. 2007), *cert. denied* (2008). Our supreme court has observed that "[i]f the

favorable evidence becomes known to the defendant before or during the course of a trial, *Brady* is not implicated." *Williams v. State*, 714 N.E.2d 644, 649 (Ind. 1999), *cert. denied* (2000). In denying Hill's motion to correct error, the trial court concluded,

> [I]t is important to consider that the existence of the [surveillance] notes was discovered *during* the first day [of] trial, when the detective testified. Defense counsel could have asked the Court to order the detective and the state to present the notes during the recess between the first and second day of trial. That request would likely have been granted by the Court. Counsel could have also requested a recess before cross-examination or an opportunity to recall the detective once the notes were procured. He did not avail himself of these opportunities. Thus, defense did not exercise reasonable diligence ….

Appellant's App. Vol. 3 at 241. We agree with the trial court that, under the circumstances presented, *Brady* is not implicated. The trial court did not abuse its discretion in denying Hill's motion to correct error.

Section 2 – The trial court did not clearly err in denying Hill's *Batson* claims.

[13] During voir dire, the State used peremptory challenges to exclude two African-American jurors from the first two venire panels. Hill objected to each strike based on *Batson*, 476 U.S. at 86, which provides that "[p]urposeful racial discrimination in selection of the venire violates a defendant's right to equal protection because it denies him the protection that a trial by jury is intended to secure." "The exclusion of even a sole prospective juror based on race,

ethnicity, or gender violates the Fourteenth Amendment's Equal Protection Clause." *Addison v. State*, 962 N.E.2d 1202, 1208 (Ind. 2012). "Pursuant to *Batson* and its progeny, a trial court must engage in a three-step process in evaluating a claim that a peremptory challenge was based on race." *Cartwright*, 962 N.E.2d 1217, 1220, (Ind. 2012). At the first step, the defendant must make a prima facie showing that there are "circumstances raising an inference that discrimination occurred." *Addison*, 962 N.E.2d at 1208. At the second step, if the defendant makes a prima facie showing, the burden shifts to the prosecution to "'offer a race-neutral basis for striking the juror in question.'" *Id*. at 1209 (quoting *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008)). "A race-neutral explanation means 'an explanation based on something other than the race of the juror.'" *Highler v. State*, 854 N.E.2d 823, 827 (Ind. 2006) (quoting *Hernandez v. New York*, 500 U.S. 352, 360 (1991)). "Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Addison*, 962 N.E.2d at 1209 (quoting *Purkett v. Elem*, 514 U.S. 765, 768 (1995)). "[T]he issue is the facial validity of the prosecutor's explanation." *McCormick v. State*, 803 N.E.2d 1108, 1110 (Ind. 2004) (quoting *Purkett*, 514 U.S. at 768).

[14] Even if the State's reasons appear on their face to be race neutral, at the third step, the trial court must perform the essential task of assessing whether the State's facially race-neutral reasons are credible. *Addison*, 962 N.E.2d at 1209. The second and third steps must not be conflated. *See id*. at 1210 ("The analytical structure established by *Batson* cannot operate properly if the second

and third steps are conflated.") (quoting *United States v. Rutledge*, 648 F.3d 555, 559 (7th Cir. 2011)). In determining whether the State's explanation for the strike is credible and not a pretext for discriminatory intent, the trial court must consider the State's explanation "in light of all evidence with a bearing on it." *Id*. (quoting *Miller-El v. Dretke*, 545 U.S. 231, 251-52 (2005)); *see also Snyder*, 552 U.S. at 478 ("[I]n considering a *Batson* objection, or in reviewing a ruling claimed to be *Batson* error, all of the circumstances that bear upon the issue of racial animosity must be consulted."). Although this third step requires the trial court to evaluate "the persuasiveness of the justification" proffered by the prosecutor, "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." *Highler*, 854 N.E.2d at 828 (quoting *Purkett*, 514 U.S. at 768). At this stage, the defendant may offer additional evidence to demonstrate that the prosecutor's reasons are pretextual. *Addison*, 962 N.E.2d at 1210. Then, "in light of the parties' submissions, the trial court must determine whether the defendant has shown purposeful discrimination." *Id*. at 1209 (quoting *Snyder*, 552 U.S. at 477).

[15] "[U]pon appellate review, a trial court's decision concerning whether a peremptory challenge is discriminatory is given great deference, and will be set aside only if found to be clearly erroneous." *Cartwright*, 962 N.E.2d at 1221 (quoting *Forrest v. State*, 757 N.E.2d 1003, 1004 (Ind. 2001)); *see also Jeter v. State*, 888 N.E.2d 1257, 1265 (Ind. 2008) ("On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous.") (citing *Snyder*, 552 U.S. at 478), *cert. denied*. "The trial court's conclusion that

the prosecutor's reasons were not pretextual is essentially a finding of fact that turns substantially on credibility. It is therefore accorded great deference." *Highler*, 854 N.E.2d at 828. We also note that "where ... a prosecutor has offered a race-neutral explanation for the peremptory challenge and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing of purposeful discrimination becomes moot." *Cartwright*, 962 N.E.2d at 1222 (emphasis omitted); *accord Addison*, 962 N.E.2d at 1209 n.2.

[16] In response to Hill's *Batson* objection to the strike of potential juror 13, the State explained that juror 13 had "at least four arrests and is listed as an offender in an assault case" but failed to respond when the panel was specifically asked about having any negative or positive interactions with law enforcement or the criminal justice system. Tr. Vol. 2 at 129. The trial court found this to be a sufficient race-neutral reason for excluding that juror and overruled Hill's objection. Regarding Hill's *Batson* objection to potential juror 12, the State explained that juror 12 was dishonest on his juror questionnaire in failing to disclose two prior criminal convictions. The State argued that "lying" on the questionnaire not only supported a preemptory strike, but "it should be a strike for cause quite frankly." *Id*. at 156. The State further noted that, as with potential juror 13, juror 12 failed to respond when the panel was specifically asked about having any negative or positive interactions with the criminal justice system. The trial court again overruled Hill's objection.

[17] Hill argues that the trial court clearly erred in overruling his *Batson* objections and concluding that the State's reasons for those two peremptory strikes were not a pretext for intentional discrimination. Hill's very brief argument on appeal appears to focus on the third step of the analysis. Specifically, he suggests that the State's indisputably race-neutral reasons for striking potential jurors 12 and 13 were pretextual and that the State's strikes indicated a "pattern of racial targeting." Appellant's Br. at 25. However, Hill offered no persuasive argument to the trial court based upon all of the circumstances that bear upon the issue of racial animosity as to why the State's race-neutral explanations regarding these two potential jurors were not credible. Indeed, the trial court found no indication that the State's strikes were racially motivated, and, upon our review of all of the circumstances presented, we must agree.[1] We remind Hill that he bore the ultimate burden of persuasion regarding racial motivation. *Highler*, 854 N.E.2d at 828. Moreover, it is the trial court's task to judge the credibility of the prosecutor, and we defer to its conclusion. *Id*. Therefore, we cannot say that the trial court clearly erred in finding that the State's race-neutral reasons for striking the two jurors were not a pretext for intentional discrimination.

[1] Although Hill suggests that the State excused "all the African American jurors[,]" Appellant's Br. at 25, the record shows only that the State struck the sole African-American juror from each of the first two jury venires. The record does not indicate the racial composition of the subsequent venires, and defense counsel made no further *Batson* objections. In other words, nothing in the record before us suggests that the final jury panel was the product of purposeful discrimination.

Section 3 – Hill failed to preserve his prosecutorial misconduct claim for appeal.

[18] Finally, we address Hill's claim that the deputy prosecutor committed misconduct and that he is therefore entitled to the reversal of his convictions. Specifically, Hill claims that, during rebuttal closing argument, the deputy prosecutor improperly commented on evidence that was inadmissible. However, it is well established that "[t]o preserve a claim of prosecutorial misconduct, the defendant must—at the time the alleged misconduct occurs—request an admonishment to the jury, and if further relief is desired, move for a mistrial." *Ryan v. State*, 9 N.E.3d 663, 667 (Ind. 2014).

[19] The record here indicates that during closing argument, defense counsel questioned the credibility of the State's witnesses who stated that they found documents in the trash pulls that linked Hill to the Vineyards Court residence where incriminating evidence was found. Defense counsel reminded the jury that, although officers testified that they had seen documents with Hill's name on them in the trash, the State had not presented "any document, whatsoever" from those trash pulls with Hill's name on it. Tr. Vol. 3 at 236. Counsel argued, "Believe me, ladies and gentleman, if one existed you would have seen it." *Id.* During rebuttal closing argument, the deputy prosecutor countered by mentioning all of the evidence linking Hill directly to the residence and then

stating, "Ladies and gentlemen, unfortunately, there's rules of evidence that dictate I can't show you certain documents." *Id*. at 246.[2]

[20] Hill's counsel made a general objection to the deputy prosecutor's comment and then requested a sidebar. The sidebar was "inaudible" and not transcribed for the record. *Id*. Following the sidebar, the trial court sustained Hill's objection and directed the deputy prosecutor to "move on" with the rebuttal closing argument. *Id*. The State argues that Hill's claim of prosecutorial misconduct regarding the State's comment is waived, as there is no indication in the record that Hill's counsel requested an admonishment to the jury or moved for a mistrial as required to preserve the issue for appeal.

[21] In order to avoid waiver, in his reply brief, Hill directs us to *Steinberg v. State*, 941 N.E.2d 515, 530 (Ind. Ct. App. 2011), *trans. denied*, in which this Court considered an arguably waived claim of prosecutorial misconduct on the merits despite a similarly silent record regarding a request for an admonishment or a mistrial. As in this case, in *Steinberg*, a sidebar was held following an objection on prosecutorial misconduct grounds, but the inaudible sidebar was not transcribed by the court reporter. However, unlike in this case, in an attempt to preserve his claim on appeal, Steinberg submitted a verified statement of evidence pursuant to Indiana Appellate Rule 31(A) in which trial counsel stated

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[2] According to the State, the deputy prosecutor was referencing the fact that documentary evidence of mail in the trash with Hill's name on it existed but was not presented at trial because it was ruled inadmissible due to its relation to a prior bad act pursuant to Indiana Evidence Rule 404(b). Specifically, officers recovered a court date card showing when Hill "was to appear in Court on a marijuana charge." Supp. Ex. Vol. at 4.

that he recollected that during the sidebar he "objected on the grounds that the prosecutor misstated the law" but he simply could "not remember whether he requested an admonishment and mistrial." *Id*. at 530. Under these unique circumstances, we determined:

> Because the record is silent on this point through no fault of Steinberg, and given our oft-stated preference for deciding issues on their merits, we will assume for purposes of this appeal that the issue has been preserved and address Steinberg's argument.

Id. at 530-31.

[22] Here, Hill has not attempted to supplement the silent record with evidence of what occurred during the sidebar. In other words, unlike in *Steinberg*, Hill has not done his part to persuade us as to even the possibility that trial counsel made the required requests for admonishment and mistrial following his general objection. Without more, we cannot say that Hill's claim of prosecutorial misconduct has been properly preserved for appeal so we decline to address it. We affirm Hill's convictions.

[23] Affirmed.

Riley, J., and Mathias, J., concur.