IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-KA-00895-COA

JELANI MILES A/K/A JELANI N. MILES **APPELLANT**

v.

STATE OF MISSISSIPPI **APPELLEE**

DATE OF JUDGMENT:	04/10/2019
TRIAL JUDGE:	HON. JANNIE M. LEWIS-BLACKMON
COURT FROM WHICH APPEALED:	YAZOO COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	CHUCK McRAE DREW McLEMORE MARTIN
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BARBARA WAKELAND BYRD
DISTRICT ATTORNEY:	AKILLIE MALONE OLIVER
NATURE OF THE CASE:	CRIMINAL - FELONY
DISPOSITION:	AFFIRMED IN PART; REMANDED IN PART - 06/29/2021
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

SMITH, J., FOR THE COURT:

¶1. A Yazoo County jury convicted Jelani Miles of shooting into a vehicle; aggravated assault; and the second-degree murder of Cortez Tate. The Yazoo County Circuit Court sentenced Miles to five years to serve for shooting into a vehicle; twenty years in custody, with five years suspended and fifteen years to serve, for aggravated assault; and life in prison for second-degree murder. The court ordered all sentences to run consecutively, with Miles in the custody of the Mississippi Department of Corrections (MDOC). Aggrieved, Miles appeals and alleges the trial court erred by (1) declaring a mistrial without a manifest

necessity; (2) failing to conduct a proper reverse-*Batson*[1] analysis; (3) admitting an unavailable witness's statement; and (4) denying his request to examine an adverse witness by asking leading questions. Finding an insufficient and unclear record of the trial court's application of *Batson* to Jurors 23, 32, and 35, we remand for the limited purpose of allowing the trial court to conduct a separate and complete analysis of *Batson* steps two and three. As for all of Miles's remaining assignments of error, we find no error and affirm.

FACTS AND PROCEDURAL HISTORY

¶2. On October 6, 2011, Frederick Washington and his girlfriend, Jasmine Young, got into an argument in an area of Yazoo City known as "Brickyard Hill." Young's brother, Omari, intervened on her behalf, and the situation escalated. Young said that Washington accused her of having an affair with a person named Tate and threatened to kill her, Omari, and Tate. Washington said that Young got upset and loud because he broke up with her. Omari called some of his friends, including Miles. Washington also called his friends, one of whom alerted Tate about the altercation. Shortly after the phone calls, Miles arrived at Brickyard Hill and parked across the street from where Washington and Omari were standing. As Miles approached Washington and began talking to him, Terry Moore pulled up at Brickyard Hill and parked behind Washington. Seconds later, Tate followed Moore into Brickyard Hill and parked near Moore and Washington, with Perry Hollins in Tate's passenger seat.

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

¶3. Miles then ran behind his car, which was parked across the street from Washington, Moore, Tate, and Hollins. Washington was talking to Moore at Moore's car when he heard multiple gunshots ring out. At this point, Moore, Tate, and Hollins were still inside their cars. Washington ducked behind the cars when he heard the first shot. Washington and Moore stated they saw Miles holding a gun immediately after they heard the first round of shots. The gun apparently jammed, and a second round of shots followed. There were no witnesses to the actual shooting. After the shooting stopped, Washington drove Tate and Hollins to the hospital. Tate later died from his injuries.

¶4. Detectives Willie Hubbard, Tillman Clifton, and Larry Davis were the primary case investigators. Washington talked to the detectives at the hospital but did not name Miles. Washington later explained that he thought Miles would kill him if he identified Miles as the shooter. Washington also testified that he was sure Miles had been the shooter because Miles was the only one he saw holding a gun. Detective Hubbard talked to Hollins at the hospital, and Hollins identified Miles as the shooter. Hollins also gave a recorded interview to Detective Clifton on October 11, 2011. Four days after the shooting, Miles turned himself in to law enforcement. On March 15, 2013, a grand jury indicted Miles.

¶5. Miles's case proceeded to trial in August 2014. Hollins, a State witness, was murdered early on in the trial before his scheduled testimony occurred. Miles's home was then allegedly shot into as well. After Hollins was murdered and Miles's home was shot into, Miles unsuccessfully moved for a mistrial. The following day, sometime after Miles made

a second motion for a mistrial, the trial court ordered a mistrial. The trial court later determined that venue should be transferred. Miles challenged the transfer of venue by filing a petition for interlocutory appeal with the Mississippi Supreme Court in March 2015. The supreme court allowed the appeal and reversed the trial court's decision, and the case was remanded for trial in Yazoo County.

¶6. Prior to the second trial, Miles moved to dismiss the charges against him. Miles argued that no manifest necessity existed to support the trial court's ordering a mistrial and that double jeopardy therefore attached. The trial court denied his motion. Miles filed a petition for an interlocutory appeal, but the Mississippi Supreme Court denied his petition specifically with respect to Miles's double jeopardy claim. Also before the second trial, Miles objected to the State's proposal to present the jury with Detective Clifton's October 11, 2011 recording of Hollins's statement. After the trial court allowed the statement, Miles sought to appeal, but the supreme court denied his subsequent petition for an interlocutory appeal. Over Miles's objection, the jury heard Hollins's statement during the second trial in April 2019.

¶7. During jury selection for the second trial, the State made reverse-*Batson* challenges to seven of Miles's peremptory strikes, alleging that all of Miles's strikes were against jurors of the same race. After finding that the State had made a prima facie case of a reverse-*Batson* violation with regard to all seven strikes, the trial court required Miles to proffer race-neutral reasons for each strike. The trial court ruled against Miles as to three of the strikes and empaneled those three jurors. Near the end of the trial, Miles called Detective Davis as a

witness, and the trial court ultimately ruled that Miles could treat Detective Davis as a hostile witness. When Miles examined Detective Davis, the trial court sustained the State's objections to certain leading questions. After considering all the testimony and evidence, the jury found Miles guilty of all three counts, and the trial court entered his sentence.

¶8. Miles now appeals and alleges that the trial court erred by (1) ordering a mistrial because there was no manifest necessity for doing so and, as a result, subjecting him to double jeopardy; (2) rejecting his race-neutral reasons for striking three jurors; (3) admitting Hollins's pre-trial statement in violation of the Confrontation Clause and Mississippi Rule of Evidence 804(b)(5); and (4) denying his request to ask Detective Davis leading questions.

DISCUSSION

I. Whether the mistrial ordered in August 2014 was proper.

A. Double Jeopardy Claims and Requests for Mistrial

¶9. Miles claims that the trial court's decision to declare a mistrial in August 2014 was not based on manifest necessity, and as such, the April 2019 trial violated his right against double jeopardy. Without including any evidentiary support, Miles argues the mistrial was "due mainly to the death of [Hollins,] one of the State's witnesses," and the issue here is whether Hollins's unavailability warranted a mistrial. He further alleges that the witness's unavailability did not constitute a manifest necessity warranting a mistrial since the witness was not a key witness, and the trial court failed to consider other alternatives to mistrial.

¶10. "The Double Jeopardy Clause of the Fifth Amendment protects a criminal defendant

from repeated prosecutions for the same offense." *Oregon v. Kennedy*, 456 U.S. 667, 671 (1982). Our state supreme court has repeatedly held that protection against double jeopardy attaches in this State when a jury is sworn. *Deeds v. State*, 27 So. 3d 1135, 1139 (¶10) (Miss. 2009). In this case, the trial court declared a mistrial after "having . . . sworn and seated a [j]ury and having accepted testimony in this cause." Thus, double jeopardy attached at that point in Miles's first trial. But on appeal, the specific issue is whether the trial court's ordering of a mistrial barred Miles's second trial.

¶11. "[W]hether to grant a mistrial is within the sound discretion of the trial court. . . . [Thus, we] review a motion for mistrial [for] abuse of discretion." *Dora v. State*, 986 So. 2d 917, 921 (¶8) (Miss. 2008). Determining whether double jeopardy bars a defendant from being retried after a mistrial depends on which party moved for a mistrial. *Oregon*, 456 U.S. at 672. Where a "mistrial is granted upon the court's motion[,] . . . a second trial is barred because of double jeopardy, unless taking into consideration all the circumstances[,] there was a 'manifest necessity' for the mistrial." *Jenkins v. State*, 759 So. 2d 1229, 1234 (¶18) (Miss. 2000) (citing *Watts v. State*, 492 So. 2d 1281, 1284 (Miss. 1986)).

¶12. On the other hand, if a "mistrial [was] declared at the behest of the defendant, quite different principles come into play." *Oregon*, 456 U.S. at 672. Because a mistrial may be granted based on a multitude of circumstances,

> and because those circumstances do not invariably create unfairness to the accused, [the defendant's] valued right to have the trial concluded by a particular tribunal is sometimes subordinate to the public interest in affording the prosecutor one full and fair opportunity to present his evidence to an

impartial jury.

Arizona v. Washington, 434 U.S. 497, 505 (1978). When the defendant moves for a mistrial, it "constitutes 'a deliberate election on his part to forgo his valued right to have his guilt or innocence determined before the first trier of fact.'" *Oregon*, 456 U.S. at 676. In such a case, "the defendant himself has elected to terminate the proceedings against him, and the 'manifest necessity' standard has no place in the application of the Double Jeopardy Clause." *Id*. at 672. Instead, our supreme court has held,

> Generally, a defendant who moves for mistrial is barred from later complaining of double jeopardy. To overcome this bar, [d]efendant must show that error occurred and that it was committed by the [State] purposefully to force [d]efendant to move for a mistrial. Without proof of judicial error prejudicing the defendant, or "bad faith prosecutorial misconduct," double jeopardy does not arise.

Jenkins, 759 So. 2d at 1234 (¶17) (citations omitted). "Only where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion." *Oregon*, 456 U.S. at 676.

¶13. After examining the context of the entire record, we find it is proper to review this case as an order of mistrial resulting from the defendant's request for mistrial. *See Jenkins*, 759 So. 2d at 1234 (¶17). Notably, the trial court's order does not specifically state whether the mistrial was ordered in response to Miles's renewed motion for mistrial, based on a request from the State, or entered sua sponte. The evidence that is available in the record shows that Miles moved for mistrial twice. Transcripts from Miles's first trial indicate that

it was actually Miles who initially moved for mistrial. After the trial court denied his initial motion for a mistrial, Miles again requested a mistrial the following day. The timeline indicates that a mistrial was ordered sometime after Miles's second request, but the record is unclear as to whether the trial court granted or denied Miles's second motion for a mistrial.

¶14. Nonetheless, since Miles "ha[d] elected to terminate the proceedings against him" by requesting a mistrial twice, "the 'manifest necessity' standard has no place in the application of the Double Jeopardy Clause" or mistrial analysis here. *Oregon*, 456 U.S. at 672. Instead, under the standard announced in *Jenkins*, Miles has been "barred from later complaining of double jeopardy" unless he "show[s] that error occurred and that it was committed by the prosecution purposefully to force [Miles] to move for a mistrial." *Jenkins*, 759 So. 2d at 1234 (¶17).

¶15. The transcripts from August 26, 2014, during Miles's first trial, show that Miles's attorney acknowledged there were valid grounds for ordering a mistrial. Throughout the trial Miles's attorney stated:

> Your Honor, about an hour, possibly an hour and a half ago, the [a]ssistant [d]istrict [a]ttorney's [o]ffice informed us that one of the witnesses was killed last night with two bullet wounds to the head up on the Hill. This particular witness, Your Honor, [whose] name was Perry Hollins[,] was talked about during voir dire that he would be a witness. . . . Some of the jurors knew Mr. Hollins. And as a result, Your Honor, based on that fact that they knew him, then we move for a continuance or in effect a mistrial.
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> . . . .
>
> We feel that if the [trial c]ourt even attempts to voir dire the jury as to what happened about Mr. [H]ollins last night[,] that this will again be highly

prejudicial in putting into the minds of the jurors what is going on.

. . . .

[U]nder the constitution, we have to move for a mistrial at this time, Your Honor, both under the [f]ederal as well as the [s]tate constitution, so that we can get a fair trial[.]

. . . .

[W]e don't know what's in the jurors' minds or anybody else's mind, what's been circulating in the community. . . . [Miles] has nine witnesses at least, we're told, of where he was. But the jurors may not know that and the jurors could easily be influenced and think, well, maybe our client had something to do with it[.]

. . . .

[W]hat is relevant to all 12 jurors that are in this box and the alternates is the fact that they will have heard that Mr. Hollins[,] who was announced by the State that he was a witness for them[,] . . . they have now heard he got shot on the Hill twice in the head. You can't take that out of their mind. . . . There's no way you can not say that's not gonna be prejudicial, that a fair-minded jury would know - - would be able to try this case.

. . . .

We don't know what effect this killing last night will have on this witness . . . or any other witness. It's just too soon, Your Honor[,] . . . and we don't know how they're gonna react. And to put us into the stress right now of going forward with this trial based on what all has brought out and what has occurred would be a violation of Mr. Miles' constitutional rights to a fair and impartial jury[.]

¶16. In regard to purposeful interference by the prosecution, Miles's attorney specifically denied any wrongdoing by the State when he declared, "We're not saying the State did anything wrong, but we don't know what would be in the minds of the jurors[.]" Moreover,

the only evidence suggesting the State was involved in the decision to order a mistrial is found in the transcripts from the April 23, 2019 hearing, when Miles's attorney argued:

> [I]t was discussed in Your Honor's chamber, if you recall, at that time, that when Mr. Rogillio . . . the assistant DA, which he asked for the mistrial. . . . And in fact the Court said that you would talk to the police chief of the City of Yazoo before you made your decision[s] and you came back out after that time, ten or fifteen minutes later and made a decision to grant [a mistrial]. . . . Mr. Rogillio . . . asked for the mistrial based on the fact that he claims that a witness was killed and that he was scared and that he did not feel that he could go forward with the trial.

¶17. Based on the record before us, it is clear that Miles twice requested a mistrial, and whether due solely to his second request or sua sponte, the trial court thereafter ordered a mistrial. The record here "shows clearly that [Miles] did not want to be tried by the jury seated at the first trial and obtained a ruling in his favor to that end." *Jenkins*, 759 So. 2d at 1233-34 (¶15). We conclude the record does not support a finding that the State acted with "bad faith prosecutorial misconduct" or that the trial court committed "judicial error prejudicing [Miles]." *Id*. at 1234 (¶17). Miles was provided the relief he specifically requested, and as a result, he was barred from claiming there was not a need for the relief. Therefore, Miles has not met his burden to overcome the bar preventing him from claiming double jeopardy protection, and his appeal as to this issue lacks merit.

B. Manifest Necessity for Ordering a Mistrial

¶18. Even if the trial court ordered a mistrial sua sponte, we still affirm the trial court's order upon finding a "manifest necessity" for mistrial. Where a "mistrial is granted upon the court's motion[,] . . . a second trial is barred . . . unless . . . there was a 'manifest necessity'

for the mistrial." *Id*. at 1234 (¶18). Our supreme court has held:

> [T]here is no simple rule or formula defining the standard of "manifest necessity" or when exceptional circumstances exist justifying a declaration of mistrial by the trial court. The question is not easily answered. There are obvious cases of manifest necessity, e.g., a hopelessly hung jury, or a tainted jury.

Jones v. State, 398 So. 2d 1312, 1318 (Miss. 1981); *see also Edwards v. State*, 305 So. 3d 1186, 1190 (¶12) (Miss. Ct. App. 2020). "The trial court is in the best position to assess the prejudicial impact of the improper evidence and decide whether a mistrial is necessary." *Reed v. State*, 764 So. 2d 511, 514 (¶12) (Miss. Ct. App. 2000). On appeal, we review the existence of manifest necessity under an abuse-of-discretion standard and give the trial court's view "the greatest weight and respect." *Jenkins*, 759 So. 2d 1235-36 (¶¶24, 28).

¶19. As stated previously, Miles alleges that the order of mistrial was "due mainly to the death of [Hollins,] one of the State's witnesses," and he argues that Hollins's unavailability was not a reason of "manifest necessity." However, Miles's claims contradict the evidence in the record. The trial court's order of mistrial included more than one basis for the ruling and explicitly stated that a mistrial was ordered:

> [D]ue to the circumstances outside the confines of the trial including a State's witness having been the victim of a homicide during the trial and a dwelling at which the Defendant was allegedly residing was shot several times the following day. F[urther], the Court finds that it cannot [e]nsure the Jury had no knowledge of such facts as the Jury was not sequestered.

The transcripts from Miles's first trial on August 26, 2014, indicate that it was actually Miles who specifically raised the unexpected unavailability of a witness as a ground for a mistrial.

Miles's attorney claimed,

> we need Mr. Hollins. Of course, he's now dead. But this changes our entire strategy further, Your Honor, that we need time now to regroup on our strategy as to what really did happen that night. . . . I can't emphasize enough, to our case and which we ask for this mistrial and continuance based on the fact that [Hollins] was killed[.]

The transcripts from the trial court hearing on April 23, 2019, further show that Miles's attorney previously admitted that the loss of testimony resulting from Hollins's death was not the only ground for a mistrial.

¶20. After thorough review, we find the record indicates that the trial court ordered a mistrial for the following reasons: the death of a witness, concern for the safety of witnesses or jurors, and belief that the jury was tainted. Based upon supreme court precedent, we find the evidence here established an "obvious case[ ] of manifest necessity" for mistrial. *Jones*, 398 So. 2d at 1318.

C. Alternatives to Declaring a Mistrial

¶21. Miles also asserts double jeopardy bars his second trial because the record is unclear as to whether the trial court considered other alternatives before declaring a mistrial. The supreme court has declared, however, that a trial judge is not required to "explicitly state there was 'manifest necessity' to declare a mistrial" or "expressly state that he considered alternatives and found none to be superior." *Montgomery v. State*, 253 So. 3d 305, 311-12 (¶28) (Miss. 2018). However, there is one exception that requires the trial court to consider "any reasonable alternative to a mistrial," and under such circumstances, the "strictest

scrutiny" standard applies. *Id*. at 311 n.3. The "strictest scrutiny" standard applies only when "a mistrial [is] based on 'the unavailability of critical prosecution evidence.'" *Id*. at 311 (¶25) (quoting *Washington*, 434 U.S. at 508). The record in this case indicates that the mistrial was not ordered solely because of "the unavailability of critical prosecution evidence" resulting from Hollins's death. *Id*. Thus, because there were other grounds for the mistrial, the "strictest scrutiny" test did not apply, and the trial court was not required to consider "any reasonable alternative to a mistrial." *Id*. The trial court acted within its discretion when it ordered a mistrial, and the April 2019 trial did not violate Miles's right against double jeopardy. We therefore find this assignment of error lacks merit.

II. Whether the denial of Miles's peremptory strikes was error.

¶22. Miles argues the trial court improperly conducted the three-step reverse-*Batson* analysis and committed reversible error by failing to assess whether the reasons given for three of his strikes were pretextual. Miles used seven peremptory strikes during jury selection. The State challenged the strikes on reverse-*Batson* grounds and alleged that all seven of Miles's strikes were used against jurors of the same race. Miles then offered reasons for each of the strikes, and the trial court accepted four of the seven reasons for his strikes as race neutral. However, the trial court denied three of the strikes and allowed those jurors to serve on the jury.

¶23. "When the State challenges the defense's use of a peremptory challenge[ ] as racially discriminatory, [the supreme court] refers to it as a 'reverse-*Batson*' challenge." *Hartfield*

v. State, 161 So. 3d 125, 137 (¶18) (Miss. 2015) (quoting *Hardison v. State*, 94 So. 3d 1092, 1097 (¶17) (Miss. 2012)). In *Batson*, the Supreme Court held that "[t]he privilege to use peremptory strikes 'is subject to the commands of the Equal Protection Clause,'" and "[t]he Equal Protection Clause prohibits using peremptory strikes to engage in racial discrimination." *H.A.S. Elec. Contractors Inc. v. Hemphill Const. Co.*, 232 So. 3d 117, 122-23 (¶13) (Miss. 2016) (quoting *Batson*, 476 U.S. at 89). A reversal of a court's decision regarding a *Batson* challenge will only occur if the trial court's factual findings are "clearly erroneous or against the overwhelming weight of the evidence." *Tanner v. State*, 764 So. 2d 385, 393 (¶14) (Miss. 2000) (quoting *Stewart v. State*, 662 So. 2d 552, 558 (Miss. 1995)). We give great deference to the trial court when determining whether the explanation given by the striking party in each case is a race-neutral reason. *Walters v. State*, 720 So. 2d 856, 865 (¶28) (Miss. 1998).

¶24. A proper analysis according to *Batson* or, as in this case, a reverse-*Batson* analysis, has three prongs. *Payne v. State*, 207 So. 3d 1282, 1285 (¶9) (Miss. Ct. App. 2016). This procedure provides an important safeguard to prevent discrimination within the jury-selection process. *See Pitchford v. State*, 45 So. 3d 216, 224 (¶¶13-14) (Miss. 2010). "The harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community." *Batson*, 476 U.S. at 87. The first step requires the objecting party to make a prima facie showing that race was the underlying reason for the peremptory strike. *Id.* For the second step, "the party exercising the [strike must] provide

a race-neutral reason for doing so." *Payne*, 207 So. 3d at 1285 (¶10). Under step three, "once 'the [striking] party offers a valid race-neutral reason, the trial judge must allow the strike unless the [objecting] party demonstrates that the valid race-neutral reason was pretext for discrimination.'" *H.A.S.*, 232 So. 3d at 124 (¶19) (quoting *Hardison*, 94 So. 3d at 1100 (¶28)). However, if a valid race-neutral reason is not provided, there is no need to consider the third step. *Hardison*, 94 So. 3d at 1100 (¶¶25-26).

¶25. In support of his claim on appeal, Miles cites the supreme court's opinion in *Hardison*. While this Court is bound to follow supreme court precedent, the facts of *Hardison*, which implemented an automatic reversal for *Batson* violations, are distinguishable from the instant case. *See Hardison*, 94 So. 3d at 1092 (¶1). Instead, we find the supreme court's decision in *H.A.S.* is more analogous and provides authority to remand the instant case for the limited purpose of allowing the trial court to conduct a proper analysis of the final *Batson* steps and to make on-the-record findings specific to that analysis. *See H.A.S.*, 232 So. 3d at 120 (¶1). It is important to note that our supreme court decided *H.A.S.* in 2016, approximately four years after *Hardison* was handed down, but did not overrule *Hardison*. *Id*. Instead, the *H.A.S.* court diverged from *Hardison* and allowed remand for the limited purpose of allowing the trial court to conduct a *Batson* hearing and to make additional findings to complete the trial record. *Id*. at 125 (¶27).

¶26. Similar to Miles, H.A.S. argued that the trial court erred by failing to methodically complete all three *Batson* steps, which indicates the nature of H.A.S.'s claim was a

procedural error. *Id*. at 124 (¶10). Based on Miles's grounds for appeal and the context of the errors he alleges, *H.A.S.* is therefore more comparable to this case than *Hardison*. Miles specifically argues the procedural point that the trial court committed reversible error by denying his reasons for striking the jurors without proceeding to the third step of the *Batson* analysis.

¶27. By contrast, the record in *Hardison* clearly separates the trial court's findings on each of the three separate steps of the *Batson* analysis. *Hardison*, 94 So. 3d at 1107-10 (¶¶51-57). The trial court in Miles's case floated among the steps and was not as precise with its findings as the court in *Hardison*. Rather, as noted in *H.A.S.*, here "the proceedings drifted . . . [among the] stage[s] of a *Batson* analysis." *H.A.S.*, 232 So. 3d at 127 (¶33) (Randolph, P.J., concurring). At the beginning of the *Batson* proceedings here, the trial court explicitly stated it found "a prima facie case of a *Batson* violation" and pointedly told Miles to give reasons for his strikes, thereby satisfying the first step of the *Batson* analysis. However, the trial court's subsequent rulings were imprecise and provided an unclear record as to steps two and three of its analysis, including inconsistently allowing opportunities for rebuttal by the State without explanation. Therefore, it is more logical to apply *H.A.S.* to Miles's case than *Hardison*.

¶28. This Court cannot adequately ascertain from the record whether the trial court's decision to include the three jurors was based on a finding of pretext for discriminatory intent or on a failure to assess pretext. First, the record is unclear due to the trial court's inconsistent

pattern of responses to Miles's proffered reasons for his strikes. At the time of the State's reverse-*Batson* objection, Miles had used all seven of his peremptory strikes on white jurors and had only accepted one white juror. For the first two challenged jurors, the trial court immediately found Miles's reasons to be race neutral and accepted the strikes without giving the State an opportunity to rebut.

¶29. Next, the trial court found Miles's offered reasons for Jurors 23 and 32 were not race neutral, denied his strikes, and placed the jurors back on the panel. Subsequently, Miles struck Juror 35 and stated one of the reasons for the strike was that the man's wife worked for the county. The trial court allowed the State to respond, and the State pointed out that Miles had kept other jurors who worked for the county. Thereafter, the trial court denied the strike.[2]

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[2] As the separate opinion notes, Miles's proffered reasons for striking the jurors were as follows: Juror 23 worked for an insurance company; Juror 32 worked for the United States Fishing and Wildlife Services and for a church and had previously served on a jury in a criminal case; and Juror 35 had a spouse employed by the Yazoo County Board of Supervisors. As support for its argument that we should reverse and remand, the separate opinion cites *Lockett v. State*, 517 So. 2d 1346, 1356 (Miss. 1987), which includes an appendix created by the supreme court that lists various "racially neutral reasons upheld by other courts." But as the *Lockett* court explicitly stated, "[O]ur opinion should not be construed . . . to hold these reasons to be automatically race-neutral in any other case. . . . [W]e emphasize that these are merely illustrative examples." *Id*. at 1352-53. Thus, we cannot assume Miles's reasons for striking the jurors here are automatically race neutral.

Instead, the striking party "must articulate a neutral explanation related to the particular case to be tried." *Batson*, 476 U.S. at 98. A party "ordinarily is entitled to exercise permitted peremptory challenges 'for any reason at all, as long as that reason is related to his view concerning the outcome' of the case to be tried." *Id*. at 89 (quoting *United States v. Robinson*, 421 F. Supp. 467, 473 (Conn. 1976)). In *Batson*, the Supreme Court also cited *Swain v. Alabama*, 380 U.S. 202 (1965), and stated "[i]t was impermissible

¶30. Prior to this point in the record, the trial court had found that two of Miles's proffered reasons were race neutral and that two reasons were not race neutral. Regardless of its findings as to the race neutrality of the proffered reasons, the trial court had not given the State an opportunity to rebut any of the four reasons. Suddenly, however, the trial court gave the State an opportunity to rebut Juror 35 without any on-the-record explanation for the deviation. The record then became even less clear after this deviation when the trial court subsequently accepted two more of Miles's offered reasons for the final two challenged strikes without providing the State an opportunity for rebuttal.

¶31. The trial court also failed to acknowledge the correlating shifts in the applicable burdens through each step of the *Batson* process. Step one places a burden of production on the objecting party, and if a prima facie case is shown, the burden shifts to the proponent of the strike. *Hardison*, 94 So. 3d at 1100 (¶28); *see also H.A.S.*, 232 So. 3d at 123 (¶14). At step two, the proponent has the burden to show a race-neutral reason to support the strike. *Hardison*, 94 So. 3d at 1099-1100 (¶25); *see also H.A.S.*, 232 So. 3d at 123 (¶14). If the

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for a prosecutor to use his challenges to exclude blacks from the jury 'for reasons wholly unrelated to the outcome of the particular case on trial.'" *Batson*, 476 U.S. at 91.

The separate opinion's explanation of Miles's race-neutral reasons does not incorporate important context from the record. When discussing Juror 23, Miles's attorney stated, "I don't like anybody that works for insurance companies on my juries in criminal cases." Regarding Juror 32, Miles's attorney stated, "I'd rather have people on [the jury] that [have] not serve[d] on criminal cases before if possible." As stated, precedent requires the proffered reasons to relate particularly to the case to be tried and to relate to Miles's view concerning the outcome of his specific case. Because the record in this case is unclear and undeveloped, this Court cannot ascertain whether Miles's proffered reasons were sufficient to withstand the scrutiny of a proper *Batson* analysis.

proponent satisfies this burden, the objecting party then has the burden to prove the articulated reason given was pretext for discrimination. *H.A.S.*, 232 So. 3d at 123-24 (¶¶14, 21). But if the proponent is not able to provide a race-neutral reason for the strike, then he has not met his requisite burden, and the *Batson* challenge ends with a finding of racial discrimination. *Id*. at 123-24 (¶¶18-19); *see also Hardison*, 94 So. 3d at 1100 (¶28).

¶32. Additionally, the trial court here failed to acknowledge that as part of its determination in step three, it had to examine pretext. *See H.A.S.*, 232 So. 3d at 125 (¶24); *see also Hardison*, 94 So. 3d 1099-1100 (¶¶24-29). Specifically, if the striking party offers a valid race-neutral reason, the court must assess whether the objecting party has proved that the offered reason is merely a pretext for discrimination. *H.A.S.*, 232 So. 3d at 124-25 (¶¶19, 24). The objecting party should be provided an opportunity to respond with a rebuttal argument to the proffered reasons to prove pretext. *Id*. at 126 (¶31) (Randolph, P.J., concurring). When there is no rebuttal given, the trial court may only consider the reasons stated by the striking party to determine discriminatory intent. *Id*. at 125 (¶24). Upon review, we find the record is unclear on the ultimate question the trial court was tasked with deciding under the three-step *Batson* procedure.

¶33. For these reasons, we remand this case for the limited purpose of allowing the trial court to conduct a hearing to separate and complete the second and third steps of the *Batson* analysis for Jurors 23, 32, and 35. On remand, should the court move beyond step two, the State should be allowed "the opportunity to prove purposeful discrimination." *Id.* at 125

(¶27). Further, Miles would then be allowed to defend his previously stated reasons for the strikes. *Id*. However, consistent with *H.A.S.*, he would be "restricted from giving any new, race-neutral reasons to justify the strike." *Id*. In accordance with the precedent in *H.A.S.*, both sides would be "limited to using the record as it existed at the time of the original *Batson* hearing." *Id*.

III. Whether admission of Hollins's recorded statement was error.

¶34. Hollins gave a recorded statement to Detective Clifton on October 11, 2011, in which Hollins named Miles as the shooter. Hollins was then murdered the day before his scheduled testimony in August 2014. Over Miles's objection, the trial court admitted Hollins's recorded statement. On appeal, Miles argues the trial court erroneously admitted Hollins's recorded interview because (1) Hollins was not subject to cross-examination in violation of the Confrontation Clause as guaranteed by the Sixth Amendment; and (2) the recording was inadmissible hearsay to which Rule 804(b)(5) was improperly applied.

¶35. "A violation of the Confrontation Clause is a violation of a 'fundamental, substantive right' which seriously affects the 'fairness, integrity or public reputation of judicial proceedings.'" *Corbin v. State*, 74 So. 3d 333, 337-38 (¶11) (Miss. 2011). We review an assignment of error based on a violation of the Confrontation Clause de novo. *Smith v. State*, 986 So. 2d 290, 296 (¶18) (Miss. 2008). Because our analysis of the Confrontation Clause is dispositive of this issue, we decline to address the hearsay issue. *See Corbin*, 74 So. 3d at 337 (¶9).

¶36. The State admits that Hollins's statement was allowed at trial in violation of the Confrontation Clause but argues no reversible error occurred because the information in the statement was cumulative. "To affirm despite a Confrontation Clause violation, a reviewing court must find from a consideration of all the evidence that the error was harmless beyond a reasonable doubt." *Bufford v. State*, 191 So. 3d 755, 761 (¶26) (Miss. Ct. App. 2015). In evaluating whether an error is harmless, we consider "the importance of the witness'[s] testimony in the [State's] case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the [State's] case." *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986).

¶37. Review of the record shows there was other testimony given during trial that also implicated Miles as the shooter. First, Washington testified that Miles was the perpetrator. Further, while on the witness stand, Moore identified Miles as the shooter and pointed him out in the courtroom. Finally, Miles then cross-examined Detectives Hubbard, Clifton, and Davis, and testimony from the three detectives indicated that no other suspects were named in the course of the investigation.

¶38. The fact that the trial court here allowed Hollins's statement to be admitted into evidence plainly constitutes a Sixth Amendment violation. Despite this error, however, multiple trial witnesses testified that Miles was the shooter. The testimony given in Hollins's recorded statement was therefore cumulative and corroborated by multiple witnesses. *See*

Clark v. State, 891 So. 2d 136, 141 (¶19) (Miss. 2004) (citing *Brown v. State*, 411 U.S. 223, 231 (1974)). Thus, we conclude that allowing the evidence to be admitted in violation of the Confrontation Clause constituted harmless error beyond a reasonable doubt.

IV. Whether the trial court erred as to Detective Davis's examination.

¶39. Near the end of the trial, Miles called Detective Davis as a witness, and the trial court ultimately ruled that Miles could treat him as hostile. Miles attempted to pose leading questions to Detective Davis, however, the trial court did not allow some of the leading questions and overruled Miles's objections. Miles now alleges that the trial court's failure to allow all his leading questions "distort[ed] the evidentiary presentation" and denied him a fair trial.

¶40. Mississippi Rule of Evidence 611(c) states that "the court should allow" the use of leading questions during cross-examination and "when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party." Whether a party may ask leading questions "rests within the sound discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion." *Parks v. State*, 930 So. 2d 383, 387 (¶9) (Miss. 2006); *see also Hughes v. State*, 735 So. 2d 238, 278 (¶191) (Miss. 1999). But we note that "[t]rial courts are given great discretion in permitting the use of such questions," and we will not reverse unless the complaining party suffers injury. *Whitlock v. State*, 419 So. 2d 200, 203 (Miss. 1982). "This is because the harm caused is usually inconsiderable and speculative, and only the trial court was able to observe the demeanor of the witness to

determine the harm." *Id.*

¶41. Here, although the State listed Detective Davis as its witness, Miles called him to testify. It is clear that for purposes of Rule 611(c)(2), Detective Davis should have been identified with the State. The State alleges no error occurred regarding the trial court's rulings to allow Miles to treat Detective Davis as a hostile witness and ask Detective Davis leading questions. The State maintains that despite the fact Miles was not allowed to ask all the leading questions he wanted, he was not injured, and no reversible error occurred.

¶42. The trial court here was initially reluctant to permit Miles to treat Detective Davis as hostile because Detective Davis exhibited no hostility. The trial court also noted that Detective Davis's inability to recall facts about Washington's statement from years earlier did not render him a hostile witness. After a review of the transcript of Washington's statement failed to refresh Detective Davis's memory, the trial court allowed Miles to treat him as a hostile witness with the warning that Miles could not use leading questions to "testify for [Detective Davis]." The record shows that the trial court exercised discretion by sustaining some objections to leading questions while overruling other objections.

¶43. Miles contends that the trial court's failure to allow all his leading questions prevented him from presenting evidence to show that Washington told investigators he could not identify the shooter and that he did not see anyone with a gun because he was crouched behind a car. Miles argues that testimony about Washington's statement to Detective Davis would have supported the "defense's theory that investigators failed to investigate all

potential perpetrators of this crime and that Washington did not see [Miles] with a gun on [the night of the shooting]." We find that Miles was able to elicit responses from Detective Davis that pointed to this theory. Detective Davis answered questions about the investigation, and he testified that Washington (1) identified Miles as the shooter and (2) said he did not see the shooter because he was ducking behind a car. This is consistent with Washington's original statement. Miles asked Detective Davis if Washington had ever mentioned that there was more than one shooter, and Detective Davis responded, "Not to my knowledge." The fact that Washington gave two different accounts in his statement to Detective Davis was clear and was presented to the jury for them to take into account after hearing all testimony and weighing the evidence.

¶44. It is questionable whether Detective Davis was actually a hostile witness or just a witness with limited recollection, and we fail to see how permission to ask additional leading questions would have further assisted Miles. Miles did not suffer substantial injury as a result of the trial court not allowing Miles to ask all the leading questions he desired. The record shows that through his examination of Washington and Detective Davis, Miles presented his theory that Washington was unable to identify the shooter. We therefore find no reversible error.

CONCLUSION

¶45. Accordingly, after thoroughly considering Miles's allegations of error, we remand for the limited purpose of allowing the trial court to conduct a separate and complete analysis

of *Batson* steps two and three for Miles's peremptory strikes to Jurors 23, 32, and 35. As for Miles's assignments of error regarding double jeopardy, the Confrontation Clause, and leading questions, we find no error and affirm.

¶46. **AFFIRMED IN PART; REMANDED IN PART.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, LAWRENCE, McCARTY AND EMFINGER, JJ., CONCUR. McDONALD, J., CONCURS IN RESULT ONLY WITHOUT SEPARATE WRITTEN OPINION. WESTBROOKS, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION, JOINED IN PART BY McDONALD AND McCARTY, JJ.

WESTBROOKS, J., CONCURRING IN PART AND DISSENTING IN PART:

¶47. I agree with the majority's holding regarding the mistrial, admission of the unavailable witness's statement, and the disposition of the issues related to the use of leading questions. I disagree with the majority's holding that the case should be remanded to the trial court for a hearing on the "reverse-*Batson*" challenge on three peremptory strikes. Instead, Miles's murder conviction should be reversed and remanded for a new trial because of the denial of the peremptory strikes.

¶48. The trial court rejected the following explanations from Miles as not being race neutral: (1) one juror was struck because she worked for an insurance company; (2) one juror was struck because he worked for the United States Fishing and Wildlife Service and for a church, and he had served as a juror in a criminal case before; and (3) one juror was struck because his wife worked for the Yazoo County Board of Supervisors. Without a doubt, these explanations are race neutral. *See Lockett v. State*, 517 So. 2d 1346, 1352-53 (Miss. 1987)

(Employment history, educational background, arrest of a family member, and demeanor are only a few examples of race neutral reasons that have been upheld by courts.). At this point, the trial court should have moved to the third step of the *Batson* analysis. To allow the rejection of Miles's explanation in step two "violates the principle that the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." *Purkett* v. *Elem*, 514 U.S. 765, 768 (1995). The State was not given the opportunity to make a rebuttal for the first two jurors listed above because the trial court immediately made a ruling after Miles gave his explanation for the strikes. The State did make a rebuttal in support of its objection to the third juror listed above, and the court denied the strike as not being race neutral. The trial court conducted no analysis prior to making its decision regarding any of the three jurors. All three of the objectionable jurors were seated on the panel that convicted Miles.

¶49. *Batson* did not specify that a specific process be employed to accomplish the third step in its required analysis. *Batson v. Kentucky*, 476 U.S. 79, 98 (1986). But it is apparent that some type of analysis must occur. Based on the dialogue below, the trial court clearly made no analysis under the third *Batson* prong regarding the first two strikes at issue here:

> MR. MCRAE: She works for CNA insurance company. I don't like anybody that works for the insurance companies on my juries in criminal cases.
>
> THE COURT: The Court – the Court does not find a race neutral reasons on Brittany Lipsey and will deny D-3 on Ms. Lipsey. And we'll put her in the panel.
>
> . . . .

> MR. MCRAE: This is one that works for the US Government – US Fishing Wildlife Services and a Christian church. And the combination of those two – and he served on a jury before criminal case primarily.
>
> MS. MALONE-OLIVER: Are we talking about 32?
>
> THE COURT: Thirty-two.
>
> MR. MCRAE: Served on a criminal case before. And I'd rather have people on there that does not serve on criminal cases before if possible. And for those reasons, Your Honor, we struck him.
>
> THE COURT: The Court does not find a race neutral reason on 2 and will put him back in the panel and strike D-4.

Even though the State was given the opportunity to rebut the explanation given for the third strike, the trial court still made no analysis of "how this particular strike compared to others; that is whether the defense had accepted other venire members." *Watts v. State*, 281 So. 3d 873, 878 (¶15) (Miss. Ct. App. 2019).

¶50. Our recent decision in *Watts* is instructive in this instance.

> Watts assert[ed] that the trial court erroneously denied his constitutional right to a jury of his peers when it sustained the State's objection to his peremptory strike. Watts maintain[ed] that the trial court did not complete a full *Batson* analysis and that the facts in this case are analogous to the facts in *Hardison v. State*, 94 So. 3d 1092 (Miss. 2012). In *Hardison*, the Supreme Court found that "[a] trial judge committed clear and reversible error by denying Hardison's right to a peremptory strike," and the case was remanded for a new trial. *Id.* at 1102 (¶37). "During voir dire [in that case], [a] juror had expressed regret that the jury was unable to reach a verdict" after previously serving on a jury in a criminal case. *Id.* at 1095 (¶1). Hardison's trial counsel struck the juror based on his response, and "the State raised a *Batson* challenge." *Id.* at (¶2). "The trial judge required Hardison's counsel to provide a race-neutral reason for the strike." *Id.* After reiterating the juror's statement as the reason for exercising the strike, the trial court found that Hardison's reason was not a valid race-neutral reason and denied the peremptory strike.

Id. at 876 (¶6).

¶51. Following the Supreme Court's decision in *Hardison*, we ultimately reversed and remanded the case for a new trial, holding that

> the erroneous denial warrants automatic reversal if the trial court does not properly conduct a *Batson* analysis prior to denying a defendant's peremptory strike. The supreme court went on to add that the question "is whether the erroneous denial of a peremptory challenge can ever be harmless when the objectionable juror actually sits on the panel that convicts a defendant." *Hardison*, 94 So. 3d at 1101-02 (¶34). The supreme court held it cannot. *Id.* at 1102 (¶34). This holding repelled the notion that such an error can ever be "good faith error or mistake" under Mississippi law. *Id.*

Id. at 879 (¶16).

¶52. The State admits that "in accordance with the holding in *Hardison* and *Watts*, it is possible that, based on the judge's on-the-record rulings, Miles's conviction must be reversed, and the case remanded for a new trial." Based on our analysis of the current case, the State is correct. The trial court's failure to consider the third step of the *Batson* analysis in denying peremptory challenges requires automatic reversal. *See Watts*, *supra*. As in *Hardison*, the explanations given by Miles were facially race neutral, and the trial court should have gone on to consider whether the reasons were pretext for discrimination. *Hardison*, 94 So. 3d at 1100-01 (¶¶20-30). This is not harmless error. "The erroneous denial of a peremptory challenge can[not] ever be harmless when the objectionable juror actually sits on the panel that convicts the defendant." *Id.* at 1101 (¶34).

¶53. The State also presents an alternate argument relying on the Supreme Court's decision in *H.A.S. Electrical Contractors Inc. v. Hemphill Construction Company*, 232 So. 3d 117

(Miss. 2016). The State maintains that pursuant to *H.A.S.*, the case can be remanded to the trial court for a full *Batson* hearing without reversal. I disagree with the State and the majority in finding that *H.A.S.* applies in this instance. In *H.A.S.*, the strike that was sent back to the trial court was returned because the judge mistakenly required proof of a pattern of discrimination instead of finding purposeful discrimination in the form of a pretextual reason. *Id.* at 124 (¶20). The trial court made no such error here.

¶54. *H.A.S.* was issued in June 2016. It did not overrule *Hardison* but was sent back to clear up the confusion in the record created by the trial court. *H.A.S.* has not been applied again by either the Supreme Court or this Court to remand a case for a *Batson* hearing. In fact, since the *H.A.S.* decision, the only reversal by a Mississippi appellate court based on *Batson* occurred in *Watts*, which followed *Hardison* and reversed and remanded the case for a new trial. *Watts*, 281 So. 3d at 879 (¶¶16-17).

¶55. The facts surrounding the *Batson* challenge in this case more closely track *Hardison* and *Watts*, rather than *H.A.S.* Notably, in *Hardison* (and the instant case with regard to two strikes), the State was given no opportunity to respond in order to show that the defense's race-neutral reasons were pretext, and the third step of the *Batson* analysis was not addressed. *Hardison*, 94 So. 3d at 1099-1100 (¶¶28-31). In *Watts*, there was a brief response by the State but no meaningful exchange or analysis. *Watts*, 281 So. 3d at 877-79 (¶¶11, 15). In *H.A.S.*, the opponent of strike was given the chance to respond, thus providing a record for use upon remand for a *Batson* hearing. *H.A.S.*, 232 So. 3d at 123-24 (¶¶18-21). Unlike

H.A.S., in which the final step of the Batson analysis was confusing or incorrect but was still actually undertaken, the utter lack of analysis of Miles's strikes under the third step of *Batson* provides an incomplete record from which no proper *Batson* hearing can be conducted.

¶56. The Court in *H.A.S.* remanded the case for a hearing only on the *Batson* issues, stating:

> On remand, the trial court should conduct the third step of [the] *Batson* analysis for Juror 7. HAS should be allowed the opportunity to prove purposeful discrimination[,] . . . [b]ut Hemphill is restricted from giving any new, race-neutral reason to justify the strike. Further, to support their arguments, both parties are limited to using the record as it existed at the time of the original *Batson* hearing.

Id. at 125 (¶27). Despite the fact that Miles gave race-neutral reasons for the strikes, the trial court failed to allow the parties to advance arguments that would have allowed it to make a proper analysis under the third prong of *Batson*. The record in our case, to the extent it exists, fails on two fronts with regard to *Batson*: it contains no arguments for or against pretext, and it contains no analysis by the trial court specifying how or why it arrived at its decision to deny the strikes. In other types of hearings where a decision is made based on what is in the record at the time, any rehearing is truly retrospective because no new material or argument is submitted and no party gets a second bite at the apple.[3] But a *Batson* hearing in this instance would differ from other hearings and from *H.A.S.*, as the majority is giving

[3] For example: (1) hearings on motions to suppress evidence; and (2) mental competency hearings in which evidence and records are submitted at the time of the initial hearing.

the trial court the opportunity to create a race-neutral reason for striking the subject jurors based on a limited and incomplete record, rather than modifying a previous ruling. The instant case cannot be sent back for a *Batson* hearing, as there is no adequate record on which the parties and the trial court can rely.

¶57. To allow the trial court and the State the benefit of nearly two years in which to develop arguments to overcome Miles's race-neutral reasons for his strikes would clearly be prejudicial to Miles. *See Miller-El v. Dretke*, 545 U.S. 231, 233, 252 (2005) ("A *Batson* challenge does not call for a mere exercise in thinking up any rational basis. If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false."); *United Rentals N. Am. Inc. v. Evans*, 608 S.W. 3d 449, 494 (Tex. App. 2020) ("[N]either counsel nor courts are permitted to add or think up reasons afterwards to justify a strike under *Batson*; the only reasons to justify a strike are the ones stated in explanation of the strike during the *Batson* hearing."). As there is no record on which to base a new hearing, the only remedy available in this situation is to reverse and remand the case for a new trial.

¶58. Despite a litigant's right to fundamental fairness, there are very real differences between civil and criminal trials.[4] A civil litigant often risks losing money or a property interest, but in the criminal context, the stakes much are higher. A defendant's freedom and

[4] I acknowledge that the logic set forth by the Supreme Court in *H.A.S.* applies in both civil and criminal cases, but I must still stress the implications of seating an objectionable juror in a criminal case.

possibly even his life are hanging in the balance. Even if a criminal defendant's conviction is later overturned, the stigma associated with the conviction remains and his life is irrevocably changed. Our Supreme Court could not have stated more clearly that "[w]hen a trial judge erroneously denies a defendant a peremptory strike by failing to conduct the proper *Batson* analysis, prejudice is automatically presumed, and we will find reversible error." *Hardison*, 94 So. 3d at 1102 (¶34). In this instance, failure to follow *Hardison* would run afoul of the clear mandate from the United States Supreme Court to provide criminal defendants with an impartial jury; as well as our own Supreme Court's edict that when *Batson* is not adhered to, denial of a criminal defendant's peremptory strike is prejudicial and is reversible error. *Id*.

¶59. It is well-settled that "discrimination on the basis of race in selecting a jury in a civil proceeding harms the excluded juror no less than discrimination in a criminal trial." *Edmonson v. Leesville Concrete Co. Inc.*, 500 U.S. 614, 619 (1991). I concede that point. Additionally, when discrimination is present in the selection of the jury, the litigants are harmed by the risk that the prejudice that motivated the discrimination will infect the proceedings as a whole. And when jury selection is compartmentalized from the rest of a trial, it makes sense that *Batson* applies in both civil and criminal matters. However, when juxtaposing this concept with the insight provided by the Supreme Court in *Hardison* (that the erroneous denial of a peremptory challenge is never harmless when the objectionable juror actually sits on the panel that convicts the defendant), I cannot marginalize the fact that

the consequences of having an objectionable juror render a verdict are drastically different in a criminal trial than a civil one. From my vantage point, this adds another distinction between *H.A.S.* and the case sub judice.

¶60. I believe that Miles provided the trial court with a race-neutral reason for all three of the strikes currently at issue, requiring the trial court to proceed to the third step of the *Batson* analysis. The court erred in denying these peremptory strikes without conducting a full *Batson* analysis. Thus, following the Supreme Court's edict in *Hardison* as discussed above, we cannot simply order a new *Batson* hearing, but Miles's conviction must be reversed and his case remanded for a new trial.

McDONALD AND McCARTY, JJ., JOIN THIS OPINION IN PART.