State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 8, 2026 CR-23-2024

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
v MEMORANDUM AND ORDER

GREGORY DUPLESSIS,
Appellant.

Calendar Date: February 18, 2026

Before: Reynolds Fitzgerald, J.P., Ceresia, Fisher, Powers and Mackey, JJ.

Martin J. McGuinness, Saratoga Springs, for appellant.

Robert M. Carney, District Attorney, Schenectady (*Peter H. Willis* of counsel), for respondent.

Fisher, J.

Appeal from a judgment of the County Court of Schenectady County (Traci DiMezza, J.), rendered May 23, 2023, upon a verdict convicting defendant of the crimes of criminal sale of a controlled substance in the third degree (two counts) and criminal possession of a controlled substance in the third degree (two counts).

In March 2023, a jury convicted defendant of two counts of criminal sale of a controlled substance in the third degree and two counts of criminal possession of a controlled substance in the third degree. County Court sentenced defendant to concurrent prison terms of three years, to be followed by three years of postrelease supervision. Defendant appealed, contending that County Court erred in denying his *Batson* challenge.

As County Court failed to render a pretext determination at step three of the *Batson* protocol and, since the issue distilled to a question of fact that could not "be discerned from the record," we withheld decision on the appeal and remitted to County Court "to determine whether the race-neutral reason proffered by the People was pretextual" (248 AD3d 1419, 1422, 1423 [3d Dept 2026] [internal quotation marks and citations omitted]).

Upon remittal, County Court held a conference and afforded the parties an opportunity to present their contentions on the record with regard to the People's peremptory challenges, including the trial prosecutor's challenge to juror No. 95, who the trial prosecutor claimed "had broken English" and "struggled to communicate." At this appearance, County Court stated that it had no independent recollection of the jury selection at issue, and therefore would rely on the transcripts, the court's personal notes made during voir dire and the additional representations of counsel on remittal. Defense counsel, based on his independent recollection, contended that the trial prosecutor did not ask a single question to juror No. 95 and, thus, there was no basis on which to exclude him from serving on the jury except for his race. Defense counsel further argued that juror No. 95's exclusion was improper as, at the time of the challenge, County Court had expressly disagreed with the trial prosecutor's assertion that this juror had difficulty communicating. A different prosecutor than the one who conducted jury selection appeared on behalf of the People, who, relying on his "reading of the transcripts," reasoned that the peremptory challenge was not pretextual because communication is a central issue to serving as a juror and the trial prosecutor had "detected problems with the English language" from juror No. 95.

Thereafter, County Court issued findings upon remittal, ultimately denying defendant's *Batson* challenge. In doing so, County Court recognized that a transcript cannot accurately reflect the tone, accent and the overall manner in which a juror may communicate, but nonetheless concluded that "the record contains no objective facts demonstrating that the [trial prosecutor's] explanation was motivated by race, nor does it identify any similarly situated jurors with comparable communication characteristics who were treated differently." Following this determination, the parties supplemented their positions on appeal, wherein defendant maintains that he is entitled to a new trial because County Court's denial of his *Batson* challenge at the end of step three is unsupported by the record.

Step three of the *Batson* inquiry involves "a question of fact, focused on the credibility of the race-neutral reasons" for a peremptory strike, which "requires the trial court to make an ultimate determination on the issue of discriminatory intent based on all

of the facts and circumstances presented" (*People v Smocum*, 99 NY2d 418, 422 [2003]). The trial court "is accorded great deference on appeal" because it is in the best position "to evaluate both the words and the demeanor of jurors who are peremptorily challenged, as well as the credibility of the prosecutor who exercised those strikes" (*People v Wright*, 42 NY3d 708, 715 [2024] [internal quotation marks and citations omitted]). Such "[d]eference is necessary because a reviewing court, which analyzes only the transcripts from voir dire, is not as well positioned as the trial court is to make credibility determinations" (*People v Hecker*, 15 NY3d 625, 656-657 [2010] [internal quotation marks, emphasis and citation omitted], *cert denied* 563 US 947 [2011]; *see People v Cruz*, 228 AD3d 1019, 1024-1025 [3d Dept 2024]). As we acknowledged in remitting the matter to County Court, "[o]nly where a trial court's decision as to pretext finds no support in the record may that decision be overturned on the cold record of appeal" (*People v Wright*, 42 NY3d at 715).

Here, our review of the record begins at the pretrial proceedings, which reveals that the trial prosecutor used two peremptory challenges on prospective jurors of color, triggering the *Batson* challenge by defense counsel. After offering the reason for striking juror No. 95 as being due to his "broken English," both defense counsel and County Court disagreed – each remarking that they observed no difficulty with his ability to communicate. Nevertheless, County Court then denied the *Batson* challenge without proceeding to step three. In doing so, County Court issued a "warning" to the trial prosecutor, who then asked if he should go look "what the color of the rest of the jurors' skin was at this point" so he could "make sure [he was] not being racist." County Court advised against that action, and the trial prosecutor then withdrew his peremptory challenge to the other prospective juror of color. Jury selection resumed, and the trial prosecutor subsequently used another peremptory challenge on juror No. 87, a person of color, triggering another objection from defense counsel. This time, however, County Court remarked that it had "a very difficult time understanding" that juror No. 87 and defense counsel agreed the preemptory challenge was not premised upon the race of this individual. Based on the foregoing, the trial prosecutor offered a race-neutral explanation for the peremptory challenge to juror No. 95 at step two, which was unsupported by the record and therefore raised a question of fact as to whether the trial prosecutor's explanations were motivated by race.

But despite our remittal because "the issue of pretext is a question of fact for the trial court to assess the prosecutor's credibility against the challenged juror's demeanor and language capabilities, which is an inquiry appellate courts are unable to address at step three" (248 AD3d at 1422), County Court took virtually no steps to assess the

prosecutor's credibility to develop a meaningful record to uphold its *Batson* determination (*see People v Hecker*, 15 NY3d at 657). Rather, on remittal County Court indicated it would rely on its personal notes from jury selection, but did not articulate what those notes indicated in its findings for the record. County Court proceeded to solicit and rely on statements from a new prosecutor who was solely relying on the transcript and had no personal knowledge of the peremptory challenge at issue. Even though the trial prosecutor was unavailable on remittal, the prosecutor's file or notes from jury selection were not offered, requested or otherwise discussed, despite potentially being useful and may even be dispositive for assessing discriminatory intent in a prosecutor's absence (*see Foster v Chatman*, 578 US 488, 513 [2016]; *People v Watson*, 169 AD3d 81, 83 [1st Dept 2019]). Given these points and the fact that County Court lacked an independent recollection of the jury selection at issue, the trial court was in no better of a position to evaluate the trial prosecutor's credibility at step three than this Court.

Evaluating the record, however, becomes problematic in instances where, like here, the nature of the race-neutral explanation given by a prosecutor pertains to a trait – i.e., speech and the ability to communicate – which is not easily captured by the record. Indeed, traits such as accent, dialect, tone, cadence, fluency or manner of speech are not typically represented on a transcript, but nonetheless remain part of the overall calculus as to whether an individual is perceived by others as being able to communicate effectively. This is why it is essential for trial courts, which are in a "unique position to verify . . . [what] is not clearly established in the appellate record" (*People v Cruz*, 228 AD3d at 1024), to create meaningful records for a reviewing court to uphold its determinations – particularly where innate traits such as language are at issue (*see People v Hernandez*, 75 NY2d 350, 356-357 [1990], *affd* 500 US 352 [1991]).

Consequently, we are constrained to agree with defendant that County Court erred in denying his *Batson* challenge at step three. County Court's conclusion that there were no similarly situated jurors with comparable communication characteristics that were treated differently is belied by the record. Unlike the prospective juror who was struck because County Court indicated that it had trouble understanding him, the record reflects that neither County Court nor defense counsel indicated any trouble understanding juror No. 95. Rather, County Court and defense counsel expressly disagreed with that characterization during voir dire (*see People v Aguirre*, 275 AD2d 418, 418 [2d Dept 2000], *lv denied* 95 NY2d 960 [2000]; *People v Colon*, 228 AD2d 609, 609-610 [2d Dept 1996], *lv denied* 88 NY2d 982 [1996]). Thus, there is nothing in the record to otherwise suggest that juror No. 95 had difficulty understanding or answering the limited questions posed by County Court, and the trial prosecutor did not ask any questions of this juror. In

view of the sparseness of the record at trial and on remittal, as well as the comments and conduct of the trial prosecutor, a determination at step three that juror No. 95 *did* have difficulty communicating would, at best, be speculative (*see People v Blocker*, 245 AD2d 567, 568 [2d Dept 1997]). Accordingly, since County Court's determination was unsupported by the voir dire transcript, not based on its recalled observations or the assessment of the prosecutor's credibility, and is otherwise without a basis in the record, we must reverse and remit the matter for a new trial (*see People v Watson*, 169 AD3d at 85; *People v Blocker*, 245 AD2d at 568; *see also People v Colon*, 228 AD2d at 610; *cf. People v Cruz*, 238 AD3d 1327, 1328-1329 [3d Dept 2025], *lv denied* 43 NY3d 1054; *People v Morgan*, 230 AD3d 864, 872 [3d Dept 2024], *affd* 45 NY3d 940 [2025]). We have examined the parties' remaining contentions and have found them to be academic or without merit.

Reynolds Fitzgerald, J.P., Ceresia, Powers and Mackey, JJ., concur.

ORDERED that the judgment is reversed, on the law, and matter remitted to the County Court of Schenectady County for a new trial.

ENTER:



Robert D. Mayberger
Clerk of the Court