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**DISTRICT II**

May 21, 2025

To:

Hon. Gerad T. Dougville  
Circuit Court Judge  
Electronic Notice

Kara Lynn Janson  
Electronic Notice

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Courthouse  
Electronic Notice

David Malkus  
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

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2024AP301-CR

State of Wisconsin v. Juan Rodriguez-Holandez  
(L.C. # 2020CF1489)

Before Gundrum, P.J., Grogan, and Lazar, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Juan Rodriguez-Holandez appeals from a judgment of conviction for repeated sexual assault of a child entered upon a jury verdict. Based upon our review of the briefs and Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup> Rodriguez-Holandez asserts that he is entitled to a new trial because the State struck five potential jurors, all of whom were male, and could not provide a gender-neutral reason for doing so in violation of *Batson*.<sup>2</sup> The State concedes that striking

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

<sup>2</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986).

potential jurors based only on their gender is contrary to law but asserts that the case must be remanded so that the trial court can complete the *Batson* analysis. We agree; we reverse and remand for a hearing on the *Batson* challenge.

Rodriguez-Holandez stood trial after being charged with repeated sexual assault of a 13-year-old girl. Following voir dire, the State exercised all five of its peremptory strikes on men. Defense counsel objected, arguing that it appeared to him that these potential jurors “were struck because they were males.” The following exchange took place after the trial court<sup>3</sup> asked the State for its response:

[Prosecutor]: It’s not a protected class. There is no legal issue that can be raised if I struck all males.

THE COURT: I don’t know. I don’t -- in the climate we are in now, I don’t know the answer to that. Do you have a gender neutral reason why you would have done that? I don’t know if you are legally in error. I do think it is something I really don’t want to get caught up on.

[Prosecutor]: What possible case law can be cited that one -- I mean, I know the basis of race or other protected classes. Striking white males, of course, would be the exact opposite of that. I don’t believe there is any legal way to stop that. I mean, frankly, usually I strike first on criminal records. The only one with a criminal record was struck for cause so I struck mostly based whether I thought they were paying attention, whether they seemed interested in the -- like responsive to my questions.

I mean, you are asking generally about all five of my strikes, not a specific one. I can’t respond individually, but I had no reason to strike any of the -- the one strike I would have had for a criminal record was a female, but she was taken off for cause.... [A]nd I found no reason to strike anyone else besides the five that I struck.

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<sup>3</sup> The Honorable Bruce E. Schroeder presided over the case through the jury trial, and when that court was unavailable, upon agreement of the parties, the Honorable Gerard T. Dougville presided over the sentencing and all subsequent matters.

Defense counsel argued that recent supreme court jurisprudence was expanding the definition of a “protected class,” and then the trial court asked whether he had “any data to suggest that males are less likely to vote one way or another than females,” to which defense counsel responded, “No.” The court then concluded that Rodriguez-Holandez had not properly raised a *Batson* challenge and trial proceeded.<sup>4</sup>

Ultimately, the jury found Rodriguez-Holandez guilty. The trial court sentenced him to 20 years’ initial confinement and 15 years’ extended supervision. Rodriguez-Holandez appeals on the grounds that the court’s overruling of his *Batson* objection was in error.

The parties are right that the trial court (and the prosecutor) erred in failing to appreciate that “[p]urposeful ... gender discrimination in jury selection violates a litigant’s right to equal protection because it denies him ... the protection that a trial by jury is intended to secure.” *State v. Joe C.*, 186 Wis. 2d 580, 585, 522 N.W.2d 222 (Ct. App. 1994); *see also State v. Jagodinsky*, 209 Wis. 2d 577, 579-80, 563 N.W.2d 188 (Ct. App. 1997). Rodriguez-Holandez’s claim of gender discrimination in jury selection should have triggered the same three-step analysis that the United States Supreme Court set forth in *Batson*: (1) after a defendant’s prima facie showing that the State’s peremptory challenges were discriminatory, (2) the State has the burden to articulate a gender-neutral explanation for the strikes, and (3) the court must determine whether the defendant has proven purposeful discrimination. *See Joe C.*, 209 Wis. 2d at 585-86. Although we generally review the court’s conclusions on these three steps with deference, *State v. Lopez*, 173 Wis. 2d 724, 729, 496 N.W.2d 617 (Ct. App. 1992), our review is de novo when

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<sup>4</sup> The final jury was comprised of six men and six women.

the court’s decision is based on the incorrect legal conclusion that **Batson** doesn’t apply in a particular context, *see Joe C.*, 209 Wis. 2d at 588.

Rodriguez-Holandez argues that he is entitled to a new trial because he satisfied Step 1 by making a prima facie showing of a **Batson** violation and the State failed Step 2 by not providing “a clear and reasonably specific explanation of legitimate reasons [for the strikes], related to the particular case” as required by *State v. Lamon*, 2003 WI 78, ¶31, 262 Wis. 2d 747, 664 N.W.2d 607. *See also Jagodinsky*, 209 Wis. 2d at 583 (holding that because the trial court asked the prosecutor for an explanation of each of the challenged peremptory strikes, it had the necessary record to review the second prong of the **Batson** analysis). He contends that the trial court “implicitly found” that he made the prima facie showing of Step 1 because it moved on to Step 2, “twice inquir[ing] into the State’s rationale for its use of peremptory strikes.” He further contends that the State “flatly conceded it could not explain each one of its five strikes” when the prosecutor stated that he “[couldn’t] respond individually” regarding each of the strikes but that they were “‘mostly based’ on whether [he thought the potential jurors] were ‘paying attention.’” This statement, Rodriguez-Holandez says, shows the State’s “fail[ure] to aver that *all* five of its strikes were based on this consideration.” Thus, he argues, “all that remains is defense counsel’s un rebutted claim of discrimination” as in *Jagodinsky*, 209 Wis. 2d at 585.

We disagree that the Record before us is sufficiently developed as it was in *Jagodinsky*. In that case, the trial court erred in finding that the defendant did not make a prima facie claim of a **Batson** violation. *Jagodinsky*, 209 Wis. 2d at 582-83. Nevertheless, it inquired into the prosecutor’s rationale for *each* of his strikes as required by the second step of the analysis. *Id.* at 583-85; *see also State v. Walker*, 154 Wis. 2d 158, 177-79, 453 N.W.2d 127 (1990) (reversing a conviction where the trial court erred in determining there was no prima facie showing of a

*Batson* violation but the prosecutor provided insufficient, pretextual explanation for striking the only black venireperson in a black defendant’s trial), *abrogated on other grounds by State v. Felix*, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775. Here, the trial court also made its decision based on an error of law—but, unlike in *Jagodinsky*, that error completely frustrated the necessary *Batson* analysis. While the court made some attempt at the Step 2 inquiry in an attempt to not “get caught up on” the issue by asking for a gender-neutral reason for the strikes, it never asked for (or got) the State’s specific reasons for *each* of the individual strikes. On the contrary, the court continued to engage with counsel for both sides in a discussion about whether gender discrimination was permissible if it resulted in striking men and whether there were data showing that men are “more likely to vote one way or another.”

As Rodriguez-Holandez points out, the prosecutor stated that he “[couldn’t] respond individually” to the trial court’s request for a gender-neutral reason for his strikes and offered that he “struck mostly based [on] whether [he] thought they were paying attention.” We disagree that this constitutes a concession that the State could not give legitimate, gender-neutral reasons for each of its five strikes or that the strikes were made at least in part based on gender. The prosecutor’s comment about not being able to respond individually immediately followed his acknowledgment that the court was “asking generally about all five of [his] strikes, not a specific one.” And his statement about striking “mostly” based on attention level simply suggests that one of multiple reasons (for an individual strike or for all five) was inattentiveness. This Record is simply devoid of the inquiry required under Step 2 of the *Batson* analysis, and this court cannot make the findings of fact required to determine whether a violation took place. *See Wurtz v. Fleischman*, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155 (1980) (stating that the court of appeals is precluded from making factual determinations where the evidence is in dispute).

For the foregoing reasons, we conclude that the case must be remanded for a hearing to determine whether there was a legitimate gender-neutral reason for the State's peremptory strikes as required by *Batson* and *Joe C.* If the trial court determines that a violation occurred, it shall vacate Rodriguez-Holandez's conviction and conduct a new trial. If it determines that there was no violation, Rodriguez-Holandez's conviction will stand.

IT IS ORDERED that the judgment of the circuit court is summarily reversed and this cause is remanded. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*