[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 23-11386

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN RANGEL-RUBIO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 4:18-cr-00274-LGW-BWC-2

Before ROSENBAUM, JILL PRYOR, and BRANCH, Circuit Judges.

PER CURIAM:

Appellant Juan Rangel-Rubio ("Rangel-Rubio") was charged and convicted of conspiring to conceal, harbor, and shield undocumented persons, in violation of 18 U.S.C. § 1324(a)(1)(A)(v)(I); conspiring to commit money laundering, in violation of 18 U.S.C. § 1956(h); conspiring to kill a witness, in violation of 18 U.S.C. § 1512(k); and conspiring to retaliate against a witness for providing testimony or documents in an official proceeding conducted by the Equal Employment Opportunity Commission ("EEOC"), in violation of 18 U.S.C. § 1513(f). Rangel-Rubio appeals those convictions and seeks a new trial, arguing that the district court improperly overruled his *Batson*[1] challenge regarding a particular juror. After careful consideration, we affirm.

I.

A summary of the facts as alleged in the indictment is helpful. Rangel-Rubio and his brother Pablo Rangel-Rubio ("Pablo") worked for the Davey Tree Expert Company. Pablo helped undocumented individuals gain employment there by providing them with assumed identities. Pablo paid the undocumented persons in cash, but with the help of Rangel-Rubio, he diverted the paychecks to Rangel-Rubio's bank account for their own financial gain. Eventually, Eliud Montoya, who worked for a subsidiary of the

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

Davey Tree Expert Company, reported the scheme to the EEOC. Later, Rangel-Rubio and Pablo conspired to kill Montoya for reporting them, and Pablo paid someone to help Rangel-Rubio murder Montoya. On August 19, 2017, Montoya was shot near his home in Georgia. Rangel-Rubio was charged with the four counts set forth above, and the case proceeded to trial.

During voir dire, each of the potential jurors answered prepared questions. The juror at issue here, Juror 31,[2] is a Black female, who said she was single, had a young daughter, was self-employed as a hair stylist, had never served in the military, had never served on a jury before, and had obtained an associate's degree. At the conclusion of voir dire, the parties exercised their peremptory strikes, with the government using only five of its six strikes, including one to strike Juror 31.

When the district court asked if there was any reason to believe that the jury was not fairly and impartially impaneled, the government responded in the negative, but Rangel-Rubio raised a *Batson* challenge. During a sidebar on the *Batson* challenge, Rangel-Rubio argued that the government used all but one of its peremptory strikes to strike potential jurors who were either Black or Hispanic. And counsel argued that the seated jury had only two Black individuals, even though the jury pool was more diverse. When the district court asked Rangel-Rubio to establish a prima facie case under *Batson*, counsel pointed out that the government struck one

[2] At trial Rangel-Rubio raised concerns over the fact that various potential jurors were struck. But in this appeal, only Juror 31 is at issue.

Black man, one Hispanic man, three Black women, and one white woman. Juror 31 was one of the Black women the government struck. But counsel agreed that each side gave up a strike voluntarily.

The district court concluded that Rangel-Rubio produced sufficient evidence to draw the conclusion that an inference of discrimination occurred. So it asked the government to provide non-discriminatory reasons for the strikes. The government went through the jurors and provided a reason for each particular strike. As for Juror 31, the government said that she did not have stable employment and did not have strong ties to the community, and other jurors had longer and stronger ties to the community. The government also noted that during the second phase of the selection process, it observed Juror 31 (who was sitting "right behind" counsel), and it appeared she was not paying attention. In the government's view, that raised concerns about her ability to remain engaged and focused during the proceedings. Finally, the government voiced concern over what it thought was an inconsistency in Juror 31's responses: in the written summary she answered before voir dire, Juror 31 claimed to be unemployed, but when questioned during void dire, she said she was self-employed as a hair stylist.

Following this explanation, the district court determined that the government provided legitimate, non-discriminatory reasons to support the peremptory strikes. It concluded, based on counsel's demeanor and its observation of the potential jurors' demeanor, the proffered reasons were sufficiently race- and gender-

neutral for all five peremptory strikes, including the one used on Juror 31. With respect to Juror 31 specifically, the district court voiced its own observation that she "was not paying attention for a good bit of the jury selection." In sum, the jurors' demeanor along with counsel's demeanor led the district court to conclude that the *Batson* challenge should be overruled.

The trial proceeded, and the jury found Rangel-Rubio guilty of all counts. Rangel-Rubio moved for a new trial based on the alleged *Batson* violation. In that filing, he argued, among other things, that the race-neutral reasons that the government provided were not sufficient because the government failed to strike potential white jurors with the same attributes. The district court denied the motion for new trial, rejecting Rangel-Rubio's argument that the government did not strike similarly situated white potential jurors. The court also noted that the government had a strike remaining and opined that the government could have used that strike to remove one of the two seated Black jurors if removing minorities had been its goal. Based on its own observations and the government's proffered reasons, the district court concluded Rangel-Rubio failed to show purposeful discrimination in the jury-selection process.

Rangel-Rubio now appeals the district court's ruling on his *Batson* challenge, claiming he is entitled to a new trial.

II.

When a defendant alleges a *Batson* violation, we review jury selection de novo but review the district court's underlying factual

findings for clear error. *United States v. Campa*, 529 F.3d 980, 992 (11th Cir. 2008). A district court's ruling on the issue of discriminatory intent involves credibility determinations, so we must sustain it unless it is clearly erroneous. *United States v. Gamory*, 635 F.3d 480, 495-96 (11th Cir. 2011).

III.

Under the Equal Protection Clause, a criminal defendant is entitled to "be tried by a jury whose members are selected pursuant to nondiscriminatory criteria." *Batson*, 476 U.S. at 85-86. Accordingly, the purposeful and deliberate denial of a member of a minority group to participate as a juror in the administration of justice, on account of race, violates the Equal Protection Clause. *Id.* at 84. A defendant may challenge the government's exercise of peremptory challenges when it believes they reveal a pattern of purposeful racial discrimination in the selection of the jury. *Id.* at 94-97.

Batson and its progeny established a three-step framework for evaluating race-discrimination claims in jury selection. The Supreme Court summarized this test in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), as follows:

> First, a defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race. Second, if that showing has been made, the prosecution must offer a race-neutral basis for striking the juror in question. Third, in light of the parties' submissions, the trial court must determine

> whether the defendant has shown purposeful discrimination.

Id. at 328-29 (internal citations omitted).

Here, the district court found that the defendant satisfied step one—Rangel-Rubio made a prima facie showing that the government struck Juror 31 on the basis of race. Neither party challenges this finding. Because Rangel-Rubio made a prima facie showing, the burden shifted to the government to articulate a race-neutral reason for the strike.

At step two, we ask whether the reasons the government tendered for striking a juror are nondiscriminatory on their face. *United States v. Folk*, 754 F.3d 905, 914 (11th Cir. 2014). *Batson*'s second step does not demand an explanation that is persuasive. *Id.* Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race-neutral. *Id.* (citing *Purkett v. Elem*, 514 U.S. 765, 767-68 (1995)). In the district court, among other things, the government pointed to Juror 31's inattentiveness as one of the reasons for its use of a peremptory strike. We have held that inattentiveness is a valid race-neutral reason for using a peremptory strike. *United States v. Cordoba-Mosquera*, 212 F.3d 1194, 1197 (11th Cir. 2000) (per curiam). So here, the government satisfied step two.

At step three, the burden then shifts to the defendant to prove purposeful discrimination. *United States v. Tokars*, 95 F.3d 1520, 1533 (11th Cir. 1996). The district court must evaluate the persuasiveness of the government's proffered reason and

determine whether, considering all relevant circumstances, the defendant has carried his burden of proving purposeful discrimination. *United States v. Ochoa-Vasquez*, 428 F.3d 1015, 1039 (11th Cir. 2005). The defendant may show evidence of purposeful discrimination through side-by-side comparisons confirming that the reasons for striking a Black panelist also apply to similar non-Black panelists who were permitted to serve. *See United States v. Houston*, 456 F.3d 1328, 1338 (11th Cir. 2006). If the government's reason for striking Black venire members applies equally to white venire members who were not struck, that provides evidence supporting purposeful discrimination at *Batson*'s third step. *Id.* But the failure to strike similarly situated jurors is not pretextual when relevant differences exist between the struck and comparator jurors. *United States v. Novaton*, 271 F.3d 968, 1004 (11th Cir. 2001).

The critical question at this final stage is whether the trial court finds the proffered race-neutral explanations credible. *Miller-E*, 537 U.S. at 338-39. "Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." *Id.* at 339. The best evidence of discriminatory intent typically will be the demeanor of the attorney who exercises the challenge. *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008).

In cases when race-neutral reasons for peremptory challenges invoke a juror's demeanor, though—such as the individual's nervousness or inattentiveness—the district court "must evaluate

not only whether the prosecutor's demeanor belies a discriminatory intent, but also whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the prosecutor." *Id.* These determinations of credibility and demeanor lie within a district court's province. *Id.* In fact, the district court's decision on this "ultimate question of discriminatory intent" is a finding of fact that we "accord[] great deference on appeal." *Folk*, 754 F.3d at 914 (citation and internal quotation marks omitted). Finally, although the presence of a Black juror on the jury does not dispose of the allegation of a race-based peremptory challenge, under our precedent, it is a factor that tends to moderate against a finding of discriminatory intent. *United States v. Puentes*, 50 F.3d 1567, 1578 (11th Cir. 1995).

We conclude that the district court did not clearly err when it accepted the government's reasons for striking Juror 31 as nondiscriminatory. First, Rangel-Rubio does not challenge the district court's finding about the government's demeanor in exercising its strikes. That unchallenged finding weighs in favor of affirming the district court's decision to overrule the *Batson* challenge. Second, contrary to Rangel-Rubio's assertion, the record was sufficiently developed to support a finding that Juror 31 was inattentive, and that is enough on its own to affirm the district court's ruling.

In *United States v. Diaz*, we noted that a potential juror's inability to pay attention is race-neutral reason for a peremptory strike. 26 F.3d 1533, 1544 (11th Cir. 1994). Still, we recognized that when explanations are based on the juror's demeanor, a greater

chance of abuse exists. So we explained that, in such a case, the district court must develop the record to allow for meaningful appellate review. *Id.* at 2543. We said that to do so, the district court should confirm that the stricken juror's demeanor was different than that of other potential jurors. *Id.* In *Diaz*, like here, the government's proffered reason for using a peremptory strike was the inattentiveness of the juror. *Id.* This Court concluded that the district court did not clearly err in finding that the prosecutor offered a race-neutral reason for the strike because the record reflected that the juror directed her attention to the defendants rather than the prosecution during jury selection. *Id.* This behavior allowed us to infer that the juror's behavior was different than other venirepersons. *Id.*

Likewise, in *Cordoba-Mosquera*, a district court determined that a peremptory strike was not intentionally discriminatory when the potential juror's demeanor was the reason for the strike. 212 F.3d at 1197-98. The prosecution pointed to the fact that the juror shrugged his shoulders and did not answer audibly as a race-neutral reason for the strike. *Id.* We determined that the proffered reason was clear and reasonably specific because the government explained that the juror's body language and mannerisms indicated that he did not want to be a juror. *Id.* We inferred that the juror was "more inattentive" than other seated jurors. *Id.* at 1198. And we deferred to the district court where it made an "on-the-spot interpretation" of the juror's behavior. *Id.*

Here, the government asserted that Juror 31 was inattentive during jury selection and that it had personally observed her since she was sitting "right behind" counsel. The district court also expressly noted its own observation that Juror 31 "was not paying attention for a good bit of the jury selection." Although Rangel-Rubio asserts otherwise, the statements by the government and the district court are sufficiently specific to allow for appellate review. *See Diaz*, 26 F.3d at 1543 and *Cordoba-Mosquera*, 212 F.3d at 1198. And as in *Diaz* and *Cordoba-Mosquera*, the statements that both the government and district court made are sufficient to allow us to infer that Juror 31 was more inattentive than other seated jurors. Significantly, when given the opportunity to rebut the reason related to inattentiveness, Rangel-Rubio failed to do so. He did not identify any other potential jurors who were inattentive, other than those who were struck. Accordingly, the district court did not clearly err in finding that Juror 31 was inattentive, and her inattentiveness alone was a race-neutral reason to support striking her.

But even if we consider Rangel-Rubio's argument that seated white jurors were similarly situated to Juror 31, that argument fails because he did not identify a seated juror who had the same characteristics as Juror 31.[3] The government stated that Juror 31 was struck because she was single, did not have stable employment, did not have strong ties to the community, was inattentive, and had inconsistent answers with respect to her employment

[3] We assume without deciding that Rangel-Rubio adequately raised this issue with the district court in his motion for new trial.

status. Of the twelve seated jurors, none had all the characteristics that Juror 31 had and about which the government complained, and only five had more than one shared characteristic. The only potential juror who was single and unemployed (or underemployed), who had discrepancies between her questionnaire and answers in court, who had minimal ties to the community, and who was inattentive was Juror 31. Most importantly, all other potential jurors identified as inattentive were struck.

Given that none of the seated jurors had all the characteristics of Juror 31 (or even a majority of the characteristics), the seated jurors were not similarly situated to Juror 31. *See Novaton*, 271 F.3d at 1004. Rangel-Rubio therefore failed to show that the district court clearly erred in accepting the government's proffered reasons for striking Juror 31.

Finally, under our precedent, we must consider the fact that the government did not attempt to exclude as many Black individuals as it could have from the jury. As the record reflects, the government chose not to use one of its peremptory challenges and the jury as seated included two Black jurors. Although the presence of Black individuals on the jury is not dispositive, that fact under our precedent supports the district court's determination that no *Batson* violation occurred. *See Campa*, 529 F.3d at 998 and *Gamory*, 635 F.3d at 496 (citing *Puentes*, 50 F.3d at 1578) ("Although the presence of African–American jurors does not dispose of an allegation of race-based peremptory challenges, it is a significant factor tending to prove the paucity of the claim.")).

IV.

For the foregoing reasons, we conclude that the district court did not err in overruling Rangel-Rubio's *Batson* challenge.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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April 25, 2024

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-11386-GG
Case Style: USA v. Juan Rangel-Rubio
District Court Docket No: 4:18-cr-00274-LGW-BWC-2

Opinion Issued
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing
The time for filing a petition for panel rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing is timely only if received in the clerk's office within the time specified in the rules. **A petition for rehearing must include a Certificate of Interested Persons and a copy of the opinion sought to be reheard.** See 11th Cir. R. 35-5(k) and 40-1.

Costs
No costs are taxed.

Bill of Costs
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or

cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

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OPIN-1 Ntc of Issuance of Opinion

APPENDIX B

94:6. Specifically, the United States exercised five peremptory strikes to strike one black male, one Hispanic female, and three black females. Id. at 94:8-96:1; Dkt. No. 706 at 2. There were two black jurors who remained on the jury, and the Government declined to exercise its remaining strike. Dkt. No. 715 at 94:12-14.

After hearing from Defendant, the Court found that Defendant had produced sufficient evidence to draw a conclusion that an inference of discrimination occurred. Id. at 96:2-6. In response, the Government provided the following non-discriminatory reasons for striking these potential jurors: (1) Juror # 20 was inattentive and speaks Spanish, id. at 96:12-97:10; (2) Juror # 45 had a husband who worked with a local Longshoremen Association, which has been subject to multiple law enforcement actions, and the potential juror's eyes were closed, id. at 97:12-24; (3) Juror # 5 had a prior negative encounter with law enforcement and was self-employed with less stable employment than other potential jurors, id. at 97:25-98:9; (4) Juror # 31 was unemployed or had unstable employment, was single and inattentive, and there was a factual disparity in documents submitted to the Court and the answers given in court, id. at 98:11-99:9; and (5) Juror # 24 owned and operated a "smoke shop," which, the government noted, is at times associated with illicit activity and subject to regulatory oversight that may make the potential juror disfavor the Government, id. at 99:11-21. Defendant responded that other potential jurors had

connections to the local Longshoremen Association and were inattentive. Id. at 99:22-100:11. However, Defendant was unable to point to any specific juror with such connections or attributes. Id. at 99:22-100:2. The Court then found that, based on the particular facts of the case, the Government had provided sufficient race- and gender-neutral explanations for the strikes—supported by the Court's observations of counsel and the potential jurors' demeanor—and overruled Defendant's Batson objection. Id. at 100:12-101:19.

At the close of the Government's case in chief, Defendant moved for a judgment of acquittal,[1] arguing that the Government had provided insufficient evidence to establish venue. Dkt. No. 717 at 136:13-137:1. The Court overruled the motion and took judicial notice pursuant to Federal Rule of Evidence 201 "that many of the locations that were identified in the course of the trial and in the evidence are cities within the Southern District of Georgia[,]" and that Chatham County, the county in which the death occurred, is within the Southern District of Georgia. Id. at 137:18-19, 138:14-25.

[1] Rule 29 was modified such that what was previously termed a "motion for a directed verdict" is now termed a "motion for judgment of acquittal." Fed. R. Crim. P. 29 advisory committee's notes to 1944 amendment. "The change of nomenclature, however, does not modify the nature of the motion." Id. Thus, when Defendant moved for a directed verdict at trial, dkt. no. 717 at 136:22-37:1, it was properly treated as a motion for judgment of acquittal under Rule 29.

The jury found Defendant guilty on all counts. Subsequently, Defendant filed a motion for new trial under Federal Rule of Criminal Procedure 33 alleging discrimination during jury selection. Dkt. No. 706 at 3. Defendant also renewed his motion for judgment of acquittal under Rule 29 alleging insufficient evidence of venue. Dkt. No. 705.

DISCUSSION

A. Motion for New Trial

Federal Rule of Criminal Procedure 33(a) permits the Court to "vacate any judgment and grant a new trial if the interest of justice so requires." "The decision to grant or deny the new trial motion is within [the] sound discretion of the trial court." United States v. Wilson, 894 F.2d 1245, 1252 (11th Cir. 1990). Here, Defendant contends a new trial is warranted because he alleges a Batson violation occurred. "Batson holds that 'by denying a person participation in jury service on account of his race, the State unconstitutionally discriminate[s] against the excluded juror.'" United States v. Allen-Brown, 243 F.3d 1293, 1297 (11th Cir. 2001) (quoting Batson, 476 U.S. at 87); see also J.E.B. v. Ala. ex rel. T.B., 511 U.S. 127, 129 (1994) ("We hold that gender, like race, is an unconstitutional proxy for juror competence and impartiality.").

Once a party raises a Batson objection,

> (1) the objector must make a prima facie showing that the peremptory challenge is exercised on the basis of race; (2) the burden then shifts to the challenger to articulate a race-neutral explanation for striking the jurors in question; and (3) the trial court must determine whether the objector has carried its burden of proving purposeful discrimination.

Allen-Brown, 243 F.3d at 1297. At Batson's third step, the Court must evaluate the persuasiveness of the Government's justifications. Atwater v. Crosby, 451 F.3d 799, 806 (11th Cir. 2006). The Court must determine whether the Government's race- and gender-neutral explanations are credible, and "'implausible or fantastic justification[]' may be found to be pretextual." Id. (quoting Miller-El v. Cockrell, 537 U.S. 322, 339 (2003)). "In assessing the credibility of the prosecutor's stated reasons, the court may look to, among other things, the prosecutor's demeanor; the reasonableness or the improbability of the explanations; and whether the reason is grounded in acceptable trial strategy." Id. A trial court may also consider "side-by-side comparisons of black prospective jurors who were struck and white prospective jurors who were not struck in the case" when evaluating whether purposeful racial discrimination occurred. Flowers v. Mississippi, 139 S. Ct. 2228, 2243 (2019). "If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at Batson's third

step." Miller-El v. Dretke, 545 U.S. 231, 241 (2005). However, "the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike." Atwater, 451 F.3d at 806 (quoting Purkett v. Elem, 514 U.S. 765, 768 (1995)).

Once Defendant raised his Batson objection, the Court gave Defendant the opportunity to set forth a prima facie case. The Court found that he had presented a prima facie case of discrimination by pointing out that the Government used five strikes against one black male, one Hispanic female, and three black females. Dkt. No. 715 at 94:4-96:1; Dkt. No. 706 at 2. Next, the Court called on the Government to articulate a race-neutral explanation for striking the contested jurors. Dkt. No. 715 at 96:2-99:21. After giving Defendant an opportunity to respond, the Court found that the Government articulated race- and gender-neutral explanations for striking each of the potential jurors in question and determined that Defendant did not carry his burden in proving purposeful discrimination. Dkt. No. 715 at 99:22-101:19.

In his motion, Defendant objects to the Government's proffered explanations, arguing that "there were other potential jurors with similar attributes," including many prospective jurors who "were not attentive, mentioned the Longshorem[e]n as employment, were unemployed, and single." Dkt. No. 706 at 3.

Defendant argues that "when given the option to strike other[] similarly situated potential jurors, but not a minority, the government waived a peremptory strike." Id.

Defendant's argument fails. An examination of the reasons for each strike shows them all to be non-discriminatory. Furthermore, when considering all of the relevant circumstances, it is clear that the selection process was free from discrimination.

First, the Government struck Juror # 20 from the venire for being inattentive and speaking Spanish. Dkt. No. 715 at 96:12-97:10. No other potential juror on the panel spoke Spanish. Id. at 47:6-12; 97:5-7.[2] This case involved a significant amount of evidence in Spanish, as well as a number of Spanish-speaking witnesses. Because the jurors were required to rely upon the official English translations rather than their own interpretation of the evidence and testimony, speaking Spanish is a legitimate race-neutral explanation for exercising a strike in this case. That a potential juror was inattentive constitutes another reasonable race-neutral explanation. While Defendant asserts that other potential jurors who were not struck were also inattentive, dkt. no. 706 at 3, Defendant never specified which other potential jurors were inattentive, id., nor did the Court identify any such

[2] Juror # 55 spoke Spanish, but he was not randomly drawn to sit on the panel. Dkt. No. 47:6-9.

jurors who were not also struck. That is, the Court overruled Defendant's Batson objection based on its own observations of the potential jurors and counselors that supported the conclusion that the strikes were not due to purposeful discrimination. Thus, Defendant has not carried his burden of proving that this strike was improper.

Second, the Government struck Juror # 45. The Government explained that she had ties to the local Longshoremen Association and there have been law enforcement actions with regard to that group. Dkt. No. 715 at 97:12-20. The Government also noted that she had her eyes closed while sitting in the jury box. Id. at 97:21-23. Only one member of the venire mentioned connections to the Longshoremen, the member the Government struck. Id. at 51:3-12 (explaining that both her husband and one of her children work for the local Longshoremen Association); id. at 97:12-23. As the Court noted when ruling on Defendant's initial Batson objection, association with the Longshoremen is a race-neutral explanation. Id. at 101:4-14. According to the Government, the local branch of the Longshoremen have been subject to multiple law enforcement actions. Id. at 97:12-20. The Longshoremen's law enforcement experiences could reasonably raise concerns in a case relying in part on testimony and evidence generated by law enforcement. Additionally, a juror closing their eyes can raise concerns with

that juror's attentiveness, which is another race-neutral reason to strike. Thus, striking the potential juror for her connections to the Longshoremen and having her eyes closed, two race-neutral reasons, does not establish purposeful discrimination.

Third, the Government struck Juror # 5 because he had a prior negative encounter with law enforcement and was self-employed with less stable employment than other potential jurors. Id. at 97:25-98:9. A negative encounter with law enforcement is a sufficient race-neutral reason for a strike based on the specific facts of this case, which relied in significant part on testimony and evidence generated by law enforcement. Having less stable employment is also a reasonable race-neutral rationale because the facts of this case centered in part on an employment dispute. Thus, Defendant has not demonstrated that the Government's strike was actually motivated by purposeful discrimination.

Next, the Government explained that it struck Juror # 31 because she was single, unemployed or had unstable employment, was inattentive, and there was a factual disparity between the documents she submitted to the Court and responses during the selection process. Id. at 98:11-99:9. Several non-minority members of the resulting jury were single, so this weighs in favor of finding purposeful discrimination. Additionally, one white juror who served on the jury was unemployed. Id. at 59:19-22. However,

unlike Juror # 31, the uncontested juror stated that she was married, her husband was employed, and she was raising her children. Id. at 59:21-60:3. Furthermore, while Juror # 31 reported to the Court that she was unemployed, in voir dire she reported that she was self-employed, id. at 99:1-9, a disparity not presented by the uncontested juror, id. at 59:11-60:16. Overall, there is not sufficient evidence to show purposeful discrimination motivated this strike because presenting conflicting information to the Court is a race-neutral explanation that could raise significant concerns in this case, which involved reporting false information to the government. Additionally, inattentiveness is a race-neutral reason for striking this potential juror for the reasons explained above. The Government also offered all its explanations simultaneously, rather than offering additional rationales after the defense pointed out any flawed reasoning. Cf. Dretke, 545 U.S. at 245-46 (finding "pretextual timing" where the defendant corrected the government's misrepresentation about a potential juror's views, prompting the prosecutor to offer a different explanation for striking that juror). Thus, Defendant has not proved purposeful discrimination regarding this strike.

Finally, the Government struck Juror # 24 because she owned and operated a "smoke shop." Dkt. No. 715 at 99:11-21. The government argued that such shops are the focus of certain

regulatory activity that might make an owner less inclined to side with the Government, and they are at times associated with illicit activities. Id. No other potential juror was involved in a similar business, and this is a sufficient race-neutral explanation.

At bottom, Defendant has not shown that the Government used its strikes based on purposeful discrimination. In addition to the considerations discussed above, it is important to note the overall context of the selection. The Government did not strike all minority members of the panel. To the contrary, there were two black jurors on the panel. Moreover, the Government had a strike remaining that it elected not to use. If removing minorities from the panel had been a goal, then utilizing the strike to remove one of the two remaining jurors would have been a clear way to advance it. This was not done. These factors, combined with the Court's own observations of the venire and counsel during voir dire, demonstrate that the Government did not act with purposeful discrimination when it struck these potential jurors. Therefore, Defendant's motion for new trial, dkt. no. 706, is **DENIED**.

B. Motion for Judgment of Acquittal

Defendant contends acquittal is necessary because there was insufficient evidence of venue. Dkt. No. 705 at 2-3. That is, he contends the government failed to prove the crimes occurred in the Southern District of Georgia. Id. The Defendant is wrong. Federal

Rule of Criminal Procedure 29(a) requires "the court on the defendant's motion [to] enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." When evaluating the sufficiency of the evidence, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979).

Venue is proper in any district in which the offense was committed. Fed. R. Crim. P. 18; 18 U.S.C. § 3237(a). "[T]he offense of conspiracy is 'committed' in any district in which an overt act is performed in furtherance of the conspiracy." United States v. Lewis, 676 F.2d 508, 511 (11th Cir. 1982). Venue can be proved through direct or circumstantial evidence. Nicholson, 24 F.4th at 1350. The Court may take judicial notice of facts pertaining to venue. United States v. Greer, 440 F.3d 1267, 1272 (11th Cir. 2006) (taking judicial notice "that Cusseta, Georgia is the county seat of Chattahoochee County which is within the Columbus Division of the Middle District of Georgia").

Defendant argues that the prosecution failed to prove its case because "[t]he names of the roads, landmarks, neighborhood, and cities referred to by the [G]overnment are common." Dkt. No. 705 at 3. This argument fails. The Government presented a multitude

of direct and circumstantial evidence showing that the charged offenses occurred in Chatham and Effingham counties, which are in the Southern District of Georgia. See Dkt. No. 714 at 9–10, 13–14 (detailing the evidence that shows venue is proper in the Southern District of Georgia). For example, the Government presented evidence such as phone records, cell site location data, and witness testimony indicating that Eliud Montoya was killed in Chatham County due to complaints he filed in Chatham County about work conditions he experienced in Chatham County. Id. at 9–10. Additionally, Pablo and Juan Rangel-Rubio, who lived in Effingham County, issued paychecks with Chatham County and Effingham County addresses to illegal aliens. Id. at 9.

Further, the Court took judicial notice under Federal Rule of Evidence 201 that many of the locations identified during trial occurred in cities within the Southern District of Georgia and that Chatham County is in the Southern District of Georgia. Dkt. No. 717 at 137:18–19, 138:14–25. Although overkill, the Court now takes judicial notice that Effingham County is in the Southern District of Georgia. 28 U.S.C. § 90(c)(3) ("The Savannah Division comprises the counties of Bryan, Chatham, Effingham, and Liberty."); Greer, 440 F.3d at 1272; United States v. Males, 715 F.2d 568, 570 n.2 (11th Cir. 1983) (taking judicial notice that Miami is in Dade County, Florida on direct appeal of defendant's

conviction and the denial of his motion for acquittal). Therefore, Defendant's motion for judgment of acquittal, dkt. no. 705, is **DENIED.**

CONCLUSION

Because the Government articulated legitimate race-neutral explanations for striking the potential jurors in question and Defendant did not prove purposeful discrimination, Defendant's motion for new trial, dkt. no. 706, is **DENIED.** The Government provided overwhelming evidence that the crimes and attendant overt acts occurred in Chatham and Effingham Counties in the state of Georgia. A summary of all the testimony and exhibits proving these venue facts spans multiple pages. Dkt. No. 714 at 4-7. The Court properly took judicial notice that Chatham and Effingham Counties are within the Southern District of Georgia. Any proof that the crimes occurred outside the Southern District of Georgia—in, as Defendant posits, Kansas, New York, or Michigan—was, in a word, nonexistent. Defendant's Renewed Motion for Judgment of Acquittal, dkt. no. 705, is **DENIED.**

SO ORDERED this 10th day of April, 2023.

HON. LISA GODBEY WOOD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA