

STATE OF MINNESOTA
IN SUPREME COURT
ADM10-8049



**ORDER PROMULGATING AMENDMENTS
TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE**

In *State v. Lufkins*, we observed that district courts continued to have difficulties in applying the three-step process announced in *Batson v. Kentucky*, 476 U.S. 79, 95–98 (1986), for evaluating objections to peremptory challenges in jury selection. 963 N.W.2d 205, 214 n.6 (Minn. 2021). We also noted that there was a growing body of research showing that racial discrimination is not always purposeful. *Id.* Based on those observations, we directed the Supreme Court Advisory Committee on the Rules of Criminal Procedure (“Advisory Committee”) to review the procedure specified in Minn. R. Crim. P. 26.02, which currently incorporates the three-step *Batson* process, and make recommendations to our court on appropriate and necessary amendments to it. *Lufkins*, 963 N.W.2d at 214 n.6. We renewed that directive in June 2023. *In re the Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure*, No. ADM10-8049, Order at 1–2 (Minn. filed June 30, 2023).

In a report filed in June 2024, the Advisory Committee recommended amendments designed to simplify Rule 26.02 and more effectively address implicit racial discrimination. Report and Proposed Amendments to the Minnesota Rules of Criminal Procedure, No. ADM10-8049, at 2–5 (filed June 28, 2024) (“Committee Report”). To address implicit racial bias more effectively, the Advisory Committee has proposed subdivision 7(3)(c)(iv),

which provides a nonexclusive list of circumstances the court should consider in determining whether to sustain or overrule an objection to a peremptory challenge. The Committee Report also acknowledged that a minority of the Advisory Committee requested that the factors listed in subdivision 7(3)(c)(iv) be deemed presumptively invalid because they are frequently used as pretext for race-based peremptory challenges, while a separate minority of the Advisory Committee requested that “previously being a victim of a crime” be added to the list of relevant factors a district court must consider in subdivision 7(3)(c)(iv). Committee Report at 3–4.

We established a period for the public to file written comments in response to the recommended amendments to Rule 26.02. Order Establishing Public Comment Period on Proposed Amendments to the Minnesota Rules of Criminal Procedure, No. ADM10-8049, Order at 2 (Minn. filed July 16, 2024). One comment was filed during the comment period by the Office of the Minnesota Appellate Public Defender. Comments of the Office of the Minnesota Appellate Public Defender Regarding Proposed Amendments to Rules of Criminal Procedure 18, 22, and 26, No. ADM10-8049 (filed Sept. 12, 2024) (“OMAPD Comments”). In its written comments, the Office of the Minnesota Appellate Public Defender renewed the request that the factors listed in subdivisions 7(3)(c)(iv) be deemed presumptively invalid because they are frequently used as pretext for race-based peremptory challenges. OMAPD Comments at 3–4.

We largely agree with the Advisory Committee’s proposed changes to Rule 26.02. Like the majority of the Advisory Committee, we conclude that making the factors listed in subdivisions 7(3)(c)(iv) presumptively invalid would undermine the effort to streamline and

simplify the jury-selection process and that a less categorical approach would allow the district court to weigh all relevant arguments and circumstances when coming to its decision. We also conclude that excluding “previously being a victim of a crime” from the list of relevant factors a district court must consider in subdivision 7(3)(c)(iv) makes sense at this time because other states have not uniformly included crime-victim status as a circumstance to be considered in assessing an objection to a peremptory challenge.

We have, however, made two changes to the language proposed by the Advisory Committee. First, in Rule 26.02, subdivision 7(3)(c), we have changed the words “the circumstances the court *should* consider . . .” to “the court *must* consider the following . . .” and added the phrase “The court may consider other circumstances it deems relevant in evaluating the reasons given to justify the peremptory challenge” to the end of subdivision 7(3)(c). (Emphasis added.) This change clarifies that a district court is required to consider the relevant factors in subdivision 7(3)(c)(iv) before sustaining or overruling an objection to a peremptory challenge.

Second, we have changed the first sentence of subdivision 7(3)(c)(iv) to remove the language which read “whether *excusing a juror* for the reason articulated by the party *results in* the disproportionate exclusion of a particular race, ethnicity, or gender, such as . . .” (Emphasis added.) In its place, we substitute the phrase “the *reason* articulated by the party is commonly associated with the disproportionate exclusion of a particular race, ethnicity, or gender, such as . . .” (Emphasis added.) This substitution places the focus on the suspect reason for the peremptory challenge (i.e., potential implicit bias) as opposed to the result of the exclusion.

Having carefully considered the Advisory Committee's recommendations and the public comment, we adopt the proposed amendments as modified for the reasons discussed above.

Based on all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendments to Rule 26.02, subdivision 7, of the Minnesota Rules of Criminal Procedure are prescribed and promulgated as shown below. The amendments are effective as of March 1, 2025.

Dated: December 20, 2024

BY THE COURT:

A handwritten signature in black ink, appearing to read "Natalie E. Hudson". The signature is written in a cursive style with a large initial "N".

Natalie E. Hudson
Chief Justice

AMENDMENTS TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words, and additions are indicated by a line drawn under the words.]

Rule 26.02 Jury Selection

* * *

Subd. 7. Objections to Peremptory Challenges.

- (1) Rule Purpose. ~~No party may purposefully discriminate on the basis of race or gender in the exercise of peremptory challenges.~~ The purpose of this rule is to eliminate the unfair exclusion of potential jurors based on race, ethnicity, or gender.
- (2) Procedure. Any party, or the court, at any time before the jury is sworn, may object to a peremptory challenge on the ground of ~~purposeful racial or gender discrimination~~ appearance of bias based on race, ethnicity, or gender. The objection and all arguments must be made out of the hearing of all prospective or selected jurors. All proceedings on the objection must be on the record. The objection must be determined by the court as promptly as possible, and must be decided before the jury is sworn. The court must explain its decision on the record.
- (3) Process and Determination.
 - (a) Upon objection to the exercise of a peremptory challenge under this rule, the party exercising the peremptory challenge must articulate the reasons that the peremptory challenge has been exercised.
 - (b) The court must give the objecting party an opportunity to respond.
 - (c) The court must then evaluate the reasons given to justify the peremptory challenge based on the totality of the circumstances. In making its determination, the court must consider the following:
 - (i) the number and types of questions posed to the prospective juror, which may include consideration of whether the party exercising the peremptory challenge failed to question the prospective juror about the alleged concern or the types of questions asked about it;

- (ii) whether the party exercising the peremptory challenge asked significantly more questions or different questions of the potential juror against whom the peremptory challenge was used in contrast to other jurors;
- (iii) whether other prospective jurors provided similar answers but were not the subject of a peremptory challenge by that party;
- (iv) the reason articulated by the party is commonly associated with the disproportionate exclusion of a particular race, ethnicity, or gender, such as:
 - (a) having prior contact with or a distrust of law enforcement;
 - (b) living in a high-crime area;
 - (c) not being a native English speaker; or
 - (d) having a close relationship with people who have been stopped, arrested, charged, or convicted of a crime;

and

- (v) whether the party has used peremptory challenges disproportionately against a particular race, ethnicity, or gender in the present case or in past cases.

The court may consider other circumstances it deems relevant in evaluating the reasons given to justify the peremptory challenge.

- (d) If the court determines that race, ethnicity, or gender could reasonably be viewed as a factor in the use of the peremptory challenge, then the court must sustain the objection and deny the peremptory challenge.

~~The trial court must use a three-step process for determining whether a party purposefully discriminated on the basis of race or gender:~~

- ~~(a) First, the party making the objection must make a prima facie showing that the responding party exercised its peremptory challenges on the basis of race or gender. If the court raised the objection, the court must determine, after any hearing it deems appropriate, whether a prima facie showing exists. If no prima facie showing is found, the objection must be overruled.~~
- ~~(b) Second, if the prima facie showing has been made, the responding party must articulate a race or gender neutral explanation for~~

~~exercising the peremptory challenge(s). If the responding party fails to articulate a race or gender neutral explanation, the objection must be sustained.~~

~~(c) Third, if the court determines that a race or gender neutral explanation has been articulated, the objecting party must prove that the explanation is pretextual. If the court initially raised the objection, it must determine, after any hearing it deems appropriate, whether the party exercised the peremptory challenge in a purposefully discriminatory manner on the basis of race or gender. If purposeful discrimination is proved, the objection must be sustained; otherwise the objection must be overruled.~~

- (4) Remedies. If the court overrules the objection, the prospective juror must be excused. If the court sustains the objection, the court must — based upon its determination of what the interests of justice and a fair trial to all parties in the case require — either:
- (a) Disallow the ~~discriminatory~~ peremptory challenge and resume jury selection with the challenged prospective juror reinstated on the panel; or
 - (b) Discharge the entire jury panel and select a new jury from a jury panel not previously associated with the case.