ADVANCE SHEET HEADNOTE
February 20, 2024

2024 CO 10

No. 08SA402, *Owens v. People*—Examination of Jurors—Peremptory Challenges—Misconduct Evidence—Remarks by Witnesses—Cross-examination and Impeachment.

In this case, the supreme court considers whether (1) a trial court constitutionally erred in preventing the defendant from conducting voir dire on racial issues and in prohibiting him from informing the jury of the race of one of the victims; (2) the trial court reversibly erred in rejecting the defendant's challenges under *Batson v. Kentucky*, 476 U.S. 79 (1986), after the prosecution consecutively struck two death-qualified prospective Black jurors; (3) the trial court abused its discretion in admitting, under the res gestae doctrine and CRE 404(b), allegedly excessive evidence of prior, related shootings; (4) the trial court erroneously refused to declare a mistrial following a witness's outbursts and her repeated declarations from the stand that the defendant was guilty; (5) the trial court's exclusion of extrinsic evidence to impeach that same witness constituted an abuse of discretion and prevented the defendant from presenting a complete

defense; and (6) the defendant was denied a fair trial under the cumulative error doctrine.

The court now concludes that the trial court (1) did not prevent the defendant from conducting voir dire on potential racial bias and did not constitutionally err in declining to inform the jury of the race of one of the victims; (2) properly overruled the defendant's *Batson* challenges; (3) properly admitted evidence of the prior, related shootings under CRE 404(b) and CRE 401–403; (4) properly denied the defendant's mistrial motions; and (5) allowed sufficient cross-examination and impeachment of the prosecution's key witness while reasonably excluding extrinsic evidence of collateral matters. Having thus determined that the defendant did not establish any individual errors warranting reversal, the court further concludes that he has not established reversible cumulative error.

Accordingly, the court affirms the judgment of conviction.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 10

Supreme Court Case No. 08SA402
Certiorari to the District Court
Arapahoe County District Court Case No. 06CR705
Honorable Gerald J. Rafferty, Judge

Plaintiff-Appellee:

The People of the State of Colorado,

v.

Defendant-Appellant:

Sir Mario Owens.

Judgment Affirmed
en banc
February 20, 2024

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT**, **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE HART**, and **JUSTICE BERKENKOTTER** joined.
JUSTICE SAMOUR did not participate.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 Pursuant to the capital defendants' unitary review process then in effect, Sir Mario Owens directly appealed to this court his convictions of two counts of first-degree murder after deliberation, one count of conspiracy to commit first-degree murder after deliberation, three counts of witness intimidation, and one count of accessory to a crime, which convictions resulted in a death sentence. Thereafter, our General Assembly abolished the death penalty, and Governor Jared Polis commuted Owens's sentence to life in prison without the possibility of parole. Although we consequently determined that the unitary review process no longer applied in this case, we chose to retain jurisdiction over this appeal.

¶2 Owens now presents six issues for our determination: (1) whether the trial court constitutionally erred in preventing him from conducting voir dire on racial issues and in prohibiting him from informing the jury of the race of one of the victims; (2) whether the trial court reversibly erred in rejecting his challenges under *Batson v. Kentucky*, 476 U.S. 79 (1986), after the prosecution consecutively struck two death-qualified prospective Black jurors; (3) whether the trial court abused its discretion in admitting, under the res gestae doctrine and CRE 404(b), allegedly excessive evidence of prior, related shootings that occurred in Lowry Park; (4) whether the trial court erroneously refused to declare a mistrial following a witness's outbursts and her repeated declarations from the stand that Owens

was guilty; (5) whether the trial court's exclusion of extrinsic evidence to impeach that same witness constituted an abuse of discretion and prevented Owens from presenting a complete defense; and (6) whether Owens was denied a fair trial under the cumulative error doctrine.

¶3 We now conclude that the trial court (1) did not prevent Owens from conducting voir dire on potential racial bias and did not constitutionally err in declining to inform the jury of the race of one of the victims; (2) properly overruled Owens's *Batson* challenges; (3) properly admitted evidence of the Lowry Park shootings under CRE 404(b) and CRE 401–403; (4) properly denied Owens's mistrial motions; and (5) allowed sufficient cross-examination and impeachment of the prosecution's key witness while reasonably excluding extrinsic evidence of collateral matters. Having thus determined that Owens has not established any individual errors warranting reversal, we further conclude that he has not established reversible cumulative error.

¶4 Accordingly, we affirm the judgment of conviction.

I. Facts and Procedural History

¶5 To address the issues that Owens raises in this appeal, we must first describe the Lowry Park shootings, which Javad Marshall-Fields, one of the victims in this case, had witnessed. Marshall-Fields intended to testify to what he had witnessed, but he was shot and killed to prevent him from doing so. Vivian Wolfe,

Marshall-Fields's girlfriend, was with him at the time and was also shot and killed. These later shootings, which the parties refer to as the Dayton Street shootings, resulted in the charges and convictions now before us.

A. The Lowry Park Shootings

¶6 On July 4, 2004, Owens fatally shot Gregory Vann following an altercation at a concert in Lowry Park. Owens tried to flee by getting into the passenger seat of his best friend's, Robert Ray's, Suburban. Ray had also attended the concert and had been part of the melee that resulted in Vann's death. When Elvin Bell, who was Vann's brother, and Marshall-Fields tried to pull Owens out of the vehicle, Ray exited and walked around to the passenger side and shot them. (Both Bell and Marshall-Fields survived these shootings.) Owens and Ray then left the park in Ray's vehicle.

¶7 After leaving the park, Ray yelled at Owens for shooting Vann and asked why he did not just shoot in the air. Owens apparently did not respond.

¶8 Thereafter, Owens and Ray sought to conceal their involvement in these shootings, and with the help of Ray's wife, Latoya Sailor Ray ("Sailor"), they disposed of certain evidence (e.g., the Suburban, guns, and clothes) that might have connected them with the shootings.

¶9 Over the days following the shootings, Owens and Ray hid in motels and in friends' houses. During this period, the two learned from television broadcasts

that several witnesses had provided descriptions of them and of Ray's vehicle. At least some of these descriptions also noted Owens's braids. Owens thus changed his appearance by shaving his head.

¶10 In the meantime, with the help of Askari Martin, who had recognized Ray from high school, and Marshall-Fields, the police identified Ray as the driver of the Suburban. The police thus arrested Ray, charged him as an accessory to the Lowry Park shootings, and continued looking for the second shooter.

¶11 Ray was eventually released on bond, and while he was preparing for his trial, he was able to review a discovery packet that his attorney had provided to him. He, Sailor, and Owens went through this packet and learned that it was Martin and Marshall-Fields who had given statements to the police identifying Ray as the driver. Owens and Ray further learned that neither witness had identified Owens by name. Owens then told Ray that he was going to take care of Marshall-Fields so that Ray would not go to prison. Owens also told Sailor, or said in her presence, "Snitches, shit, they need to die."

¶12 Several months later, Sailor saw Marshall-Fields at a club in downtown Denver. When Sailor informed Owens that she had seen Marshall-Fields, Owens asked why she did not set him up or get him alone so that Owens could come down and "do something to him." Owens told Sailor to call him the next time that she saw Marshall-Fields.

¶13 Although Owens wanted to confront Marshall-Fields in person, Ray took a different approach. Ray told one of his friends, Jamar Johnson, that he was trying to offer Martin and Marshall-Fields $10,000 to prevent them from testifying but if that did not work, then Ray would pay Johnson $10,000 to kill them. Several months later, Ray again offered Johnson $10,000, this time to kill only Marshall-Fields, because by that time, Ray believed that Martin "ain't no more" or "was gone."

¶14 Ray's belief that he no longer had to worry about Martin appears to have derived from (or, at least, was confirmed by) a conversation that Ray had with Martin after a court hearing that Martin had attended. During this conversation, Martin told Ray that he did not want to "snitch" and that although the prosecution was attempting to force him to do so, he was not going to do it. After this interaction, Ray told Sailor that he was not too worried about Martin's testifying anymore, and Martin never appeared in court again.

¶15 Ray continued to be concerned, however, about Marshall-Fields's identifying him as the driver, and in June 2005, while Sailor was attending a barbecue, Ray called her to ask if she had seen Marshall-Fields there. Sailor responded that she had. Ray arrived shortly thereafter, and Johnson met him there. The two saw Marshall-Fields leave, and Ray told Johnson that he (Ray)

believed that Marshall-Fields was still planning to testify against him and that he would "take things into his own hands."

¶16 At some point after that, Sailor received a call telling her that Owens had been arrested and later released. After Owens was released, he told Sailor that the police had seized from the backseat of the car that he was driving t-shirts that Owens and Ray had purchased after the Lowry Park shootings. These t-shirts said, "[S]top snitching, rest in peace."

¶17 Apparently the same day that Owens was released, an acquaintance of his, Percy Carter, approached Marshall-Fields at a sports bar and told him, "[T]hey looking for you on the street homey." The next day, which was a week before Ray's Lowry Park trial was to begin, Marshall-Fields and Wolfe were killed in a drive-by shooting on Dayton Street in Aurora.

¶18 In the weeks that followed, witnesses identified Owens as the person who had shot and killed Vann at Lowry Park. Witnesses also provided the police with information about the Dayton Street shootings. With this information, the People charged Owens in connection with the Lowry Park shootings and separately in connection with the Dayton Street shootings.

¶19 Owens went to trial for the Lowry Park shootings first, and he was convicted and sentenced to life plus sixty-four years in prison. He then faced trial on, as pertinent here, two counts of first-degree murder after deliberation, one count of

conspiracy to commit first-degree murder after deliberation, three counts of witness intimidation, one count of accessory to a crime, and one count of aggravated intimidation of a witness arising from the Dayton Street shootings.

B. The Dayton Street Trial

¶20 Before the Dayton Street trial began, Owens filed two motions in which he sought (1) extended individual voir dire on the issues of hardship, bias, exposure to publicity and other community commentary, race-related issues (including racial bias), and opinions concerning capital punishment (including death qualification of the jury); and (2) individually sequestered voir dire. In these motions, Owens argued, among other things, that he was entitled to know if his "ethnicity or race or that of the victim [was] an issue with or source of bias for any prospective juror," citing *Turner v. Murray*, 476 U.S. 28 (1986).

¶21 The prosecution agreed that questioning concerning exposure to publicity, hardship, and views on the death penalty should be done individually and outside the presence of other jurors. The prosecution did not agree, however, that the questioning of all jurors on all issues needed to be conducted outside the presence of the other jurors. For example, although the prosecution did not oppose Owens's request to question prospective jurors on racial issues, it did not believe that such questioning necessarily had to be done individually.

¶22 During a subsequent pre-trial hearing, Owens clarified that his above-described motions sought individual voir dire on the life and death qualification issue, any hardship issue, publicity, and "issues of bias that arise from the questionnaires," specifically, "things that may be inappropriate to discuss in front of the whole panel such as personal experiences or specific bias issues that come to light from the questionnaire itself." The court responded that it did not think that it had heard anyone disagree with that. The court then characterized Owens's last request as concerned with "unusual responses on the questionnaire." Owens's counsel replied, "I think that's a fair way to characterize it," and the prosecution stated that it did not disagree. The court thus ruled that the issue was "moot by agreement" and stated that everyone understood that "we're going to do that individual sequestered voir dire on those topics," i.e., life and death qualification, possible hardship, publicity, and unusual responses on the juror questionnaires related to personal experiences or specific bias issues.

¶23 Thereafter, both Owens and the prosecution presented draft jury questionnaires to the court. Owens's draft questionnaire included only one question on race, which asked prospective jurors to state their racial or ethnic background "for purposes of obtaining a fair cross section of the community." When the trial court later inquired as to the purpose for this question, Owens explained that it was to make a record as to the racial makeup of the venire itself,

as well as of the jury that would ultimately be seated, and also to make a record of the prospective jurors' race or ethnicity, in the event that *Batson* challenges might arise in which the parties disagreed on the jurors' race or ethnicity.

¶24 The court responded:

> I anticipate[d] that's why you wanted it but I am not going to ask that question in the questionnaire. . . . I do not believe [injecting] race is appropriate in the questionnaire. If there is a *Batson* challenge based on someone's name or on their skin color, we will have to sort that out with the particular juror. I do not believe the questionnaire should be used to force the person to identify race.

¶25 Ultimately, the jury questionnaire contained no questions directly addressing race or racial biases. As pertinent here, however, in prospective Juror C.W.'s jury questionnaire, he responded to the question, "Have you ever had a pleasant or unpleasant experience involving law enforcement?" by circling "Yes" and writing, "DWB (Driving while Black)." In addition, he responded to the question asking whether he had ever witnessed a crime by indicating that he had witnessed "the illegal firing of U.S. Attorneys by the current administration." He further listed the news programs that he watched on television or listened to on the radio. And he indicated that he believed that the death penalty was appropriate in some cases of first-degree murder and that he could return a verdict of death if he believed it to be the appropriate penalty in this case.

¶26 Based on the foregoing responses, the court allowed individual voir dire of Juror C.W. During this voir dire, the parties and the court focused primarily on

Juror C.W.'s views regarding the death penalty. Specifically, in response to questioning by the court, Juror C.W. stated that he followed the death penalty "quite some bit" and that he was concerned about reports that he had read regarding people who had been convicted and served lengthy prison terms, after which it turned out that they were actually innocent. Juror C.W. said that if he were to hear something like that, he was on a jury, and he was borderline on his decision as to guilt, then that could sway him and he could not say that he would be certain to vote for a death sentence. He stated, however, that he would be able to turn off media coverage concerning criminal cases during the trial of this case and that he could be fair to both sides. The court then allowed the parties to question Juror C.W.

¶27 Among other things, the prosecution addressed Juror C.W.'s experience with law enforcement, asking whether Juror C.W.'s unpleasant experience with police officers related to a specific agency or to police officers in general. Juror C.W. replied, "In general." The prosecution also asked Juror C.W. how he had witnessed the "illegal firing of the U.S. Attorneys by the current administration." Juror C.W. clarified that he had simply seen news reports on television. And the prosecution inquired further regarding Juror C.W.'s ability to impose the death penalty in an appropriate case. After initially indicating that he could do so if there were a video, Juror C.W. indicated that the strength and weight of the

evidence could convince him beyond a reasonable doubt that the death penalty is appropriate.

¶28 Owens's counsel then questioned Juror C.W. Counsel's examination focused principally on Juror C.W.'s views of the beyond a reasonable doubt standard and his ability to consider all of the factors determining whether a death sentence would be proper in a given case.

¶29 Another prospective juror, Juror J.C., had indicated in her jury questionnaire that although she believed that the death penalty was appropriate in some cases, because of her "religious background," she could never vote to impose it herself. In light of this response, the court allowed individual voir dire of her, as well.

¶30 During this individual voir dire, Juror J.C. changed her position on the death penalty somewhat, stating, in response to questioning by the court, that she could consider the two possible punishments, life in prison without the possibility of parole and the death penalty, and make her own decision about what she thought was the correct punishment.

¶31 The court again allowed the parties to inquire, and in response to questioning by Owens's counsel regarding the death penalty, Juror J.C. stated that she would lean toward a life sentence, stating, "I just don't agree with the death penalty." She further stated, however, that she could consider both a life and a death sentence, although she did not want to impose a death sentence unless she

really had to do so, and it would be "very, very difficult" for her to make that decision.

¶32 The prosecution followed up regarding Juror J.C.'s ability to vote for a death sentence, and Juror J.C. continued to express her hesitancy, although she also said that she could conceive of a circumstance in which a death sentence was appropriate and that she could so vote in such a case.

¶33 The prosecution then indicated that it had another question, which it "sincerely hope[d] . . . [would] not be offensive in any way":

> Over the years talking to lots of jurors of various races, genders, defendants of different races, different genders, et cetera, it's been interesting to me that people in the black community have a wide variety of attitudes and feelings when it comes to the prosecution of a case of a black defendant. I've talked to some jurors who feel that they are biased against the defendant and in favor of the prosecution because they think that a black defendant engaging in criminal behavior is an embarrassment to the community. Keeps the negative image, things of that nature. I've had other jurors who voiced a bias in favor of the defendant because they feel that the black community is not treated fairly by the system. There are some unproportionate [sic] number of blacks who are convicted of crimes, and things of that nature. And then there are people who are all over in the middle.
>
> Do you have any concerns for yourself, or do you have any feelings one way or another about the fact that Mr. Owens is a young black man charged with a very serious crime looking at a very significant penalty? We're asking for the death penalty in this case. Do you have any feelings about that?

Juror J.C. responded that she "could still be fair."

¶34 Upon completion of the individual questioning of Juror J.C., the prosecution made a record of what it perceived to be Juror J.C.'s demeanor while she was being questioned. The prosecution noted that when Owens's counsel asked Juror J.C. if she could vote for the death penalty, "she crinkled up her face. There was a very long pause, and then she said I guess there would be some hesitation for me, or words to that effect." The prosecution further noted that when it had asked a similar question, there was again a long hesitation, after which Juror J.C. "shook her head back and forth in the negative" before giving an answer that the prosecution characterized as "reluctant."

¶35 The court acknowledged that it saw the same reactions, but the court interpreted them as indicating that Juror J.C. had changed her view during voir dire and that she stated that she could sign the death certificate.

¶36 Thereafter, the court entertained peremptory challenges. As pertinent here, the prosecution exercised a peremptory strike on Juror C.W., and the court immediately dismissed him, without giving Owens a chance to raise a *Batson* objection, which Owens promptly did. Apparently recognizing its erroneous haste, the court sent a law clerk to search for Juror C.W. In the meantime, the prosecution replied to the *Batson* objection, stating:

> This is a gentleman when asked if he had any experiences with law enforcement, he said, yes, driving while black. He believes that he has witnessed the firing of the US [sic] Attorneys. That's something

that he's seen on television not witnessed. He thinks that's a crime and that is not a crime. That's perhaps a civil matter.

In addition he has done reading on the death penalty. He told the court he has read the two most recent reports about [the] death penalty so he has recent information about the topic. He told us he is aware of wrongful[ly]-accused defendants in jail for many, many years before they're finally freed and that if he read about something like that close in time to which he was trying to make a decision that would sway him and plus lead towards [a] not guilty verdict leaving aside the fact that the court asked him and he agreed not to do any reading and research during the trial.

The reality is that is part of his knowledge and experience in life. And so it is for those reasons having absolutely nothing to do—the driving while black has a racial overtone. That indicated a distrust of police and police are wrongfully targeting people of that race and obviously Mr. Owens' race. And the other issues are issues that we would challenge any juror notwithstanding race, gender, religion.

¶37 The court asked Owens's counsel to respond, and counsel stated:

On the—as far as the research of the death penalty, I don't believe that was [Juror C.W.]. I believe that was a different juror that the court instructed not to do the research on.

. . . .

As far as the driving while black, he is black. He's an African American. He's one of the few on the panel that would bring that aspect to this case. He doesn't indicate that he would vote against the prosecution or the police, and we don't believe it's a sufficient reason—sufficient neutral reason.

¶38 The court then rejected Owens's *Batson* challenge. The court began by noting that it was required to evaluate the prosecution's credibility regarding its reasons for the peremptory challenge and that the prosecution had listed a number

of issues that raised concern and that the court found to be race neutral because they were circumstances that would give a prosecutor "some cause." Regarding the "Driving while Black" issue, the court agreed that it had "a racial overtone to it," but that statement also gave the prosecution a reason to be concerned.

¶39 After the court had ruled, the prosecution provided two additional reasons, for purposes of the record. First, the prosecution observed that Juror C.W. had said that he could be convinced to vote for the death penalty, but only if the prosecution presented irrefutable proof of the crime. Second, Juror C.W. listened to "a very liberal talk radio show."

¶40 Immediately after the foregoing challenge and ruling, the prosecution struck Juror J.C. Owens again raised a *Batson* challenge, noting that Juror J.C. was the second Black person in a row that the prosecution had struck. The court asked the prosecution to explain its challenge, and the prosecution responded that it had struck Juror J.C. because she had stated in her questionnaire that she could not impose the death penalty. On this point, the prosecution acknowledged that Juror J.C. had had a change of heart and that the court had found this change of heart to be genuine and credible, but the prosecution observed that it was not bound by that finding for peremptory strike purposes.

¶41 The parties then argued as to whether the prosecution had been consistent in striking jurors who had indicated on their questionnaires that they would have

difficulty imposing the death penalty. Owens's counsel argued that the prosecution had not struck white jurors who had expressed that concern, but the prosecution responded that it had struck every juror who had said on their questionnaires that they could not impose the death penalty and then changed their position.

¶42 The court ultimately found that the prosecution's explanation was credible and race-neutral and overruled Owens's objection.

¶43 After jury selection was complete, the trial proceeded to opening statements and the presentation of evidence. The prosecution's theory of the case was that Ray planned to kill Marshall-Fields to prevent him from testifying against Ray at the Lowry Park trial and that Ray convinced Owens and Carter to carry out the murder. To support this theory, the prosecution moved to admit, as res gestae, evidence of (1) the facts and circumstances of the Lowry Park shootings; (2) Owens's and Ray's flight from the scene of those shootings; (3) Owens's and Ray's efforts to avoid detection and apprehension; (4) the police investigation of those shootings; and (5) the filing of charges against Owens and Ray arising from the Lowry Park shootings, as well as the court hearings and dates relating to that case.

¶44 Owens objected to most of this proffered evidence, arguing that it was not admissible as res gestae, not relevant, and inadmissible under CRE 403 and

CRE 404(b). The court overruled Owens's objections and determined that the Lowry Park evidence was, in general, admissible as res gestae. The court, however, ordered the prosecution to advise the court when this type of evidence was about to be introduced so that, if Owens so requested, the court could give a limiting instruction.

¶45 At trial, Owens again raised concerns regarding the Lowry Park evidence that the prosecution sought to admit, asserting that the prosecution was not introducing the evidence as res gestae, as it said it would do, but that it was introducing the evidence as CRE 404(b) evidence, despite not having provided notice or complying with the other procedural prerequisites for admitting evidence under that rule. The court found, however, that the evidence was admissible as res gestae and, after conducting a CRE 404(b) analysis, under that rule as well, concluding that the evidence met the four-prong test set forth in *People v. Spoto*, 795 P.2d 1314, 1318 (Colo. 1990), for determining the admissibility of other acts evidence under CRE 404(b). In accordance with this ruling, the court agreed to give a limiting instruction before the introduction of evidence regarding the Lowry Park shootings, stating that the evidence was "being offered for the purpose of establishing background, motive, relationships between individuals and identification of the defendant" and that the jury was only to consider the evidence "for those purposes." The limiting instruction further advised the jury,

"The defendant is entitled to be tried for the crimes charged in this case and no other. Mr. Owens is not charged in this trial with any offenses at Lowry Park on July 4, 2004."

¶46 The prosecution thereafter spent over a week of the approximately ten-week trial presenting evidence of the Lowry Park shootings, including a thirty-three-minute video of the altercations leading up to the Lowry Park shootings, photos of the crime scene (including photos of Vann's deceased body and gunshot wounds), nearly a dozen 911 calls, and extensive evidence regarding the investigation into the Lowry Park shootings. The court read the above-quoted limiting instruction approximately thirty times during the presentation of this evidence.

¶47 During the second week of the evidentiary portion of the trial, Ray's wife, Sailor testified as one of the prosecution's key witnesses. (Notably, Sailor had pleaded guilty to being an accessory to Vann's murder, had received a deferred judgment in connection with that plea, and had agreed to make herself available for interviews, to honor subpoenas at subsequent hearings, and to testify truthfully at those hearings.) Sailor had substantial knowledge of Owens's and Ray's actions leading up to the Dayton Street shootings, given her role in protecting Owens and Ray after the Lowry Park shootings and her close relationship with the two men.

¶48 As pertinent to the issues now before us, during the prosecution's direct examination of Sailor, one of the jurors requested an urgent break, apparently for medical reasons. The court called a recess, and as the jurors were exiting through the backdoor of the courtroom, Sailor bolted out of that same door, slammed the door against the wall in the hallway, became verbally emotional, and threw her handbag against the wall in frustration, which caused a bracelet that she was wearing to break, scattering beads throughout the hallway. Sailor then sat on the steps leading to the bench and sulked, all apparently in front of the jurors.

¶49 After this outburst, Owens expressed concern as to whether Sailor's conduct could affect the jury's ability to be unbiased and impartial. Owens thus asked the trial court to conduct an individual inquiry of each juror and moved for a mistrial. The court denied Owens's motion, principally reasoning that Sailor's emotional outburst went to her credibility. The court nonetheless ordered the prosecution to ask Sailor, when her testimony resumed, what had happened and why she had reacted as she had, and the court indicated that Owens would be permitted to inquire further on cross-examination. The trial court then recessed the trial until the next morning.

¶50 The next morning, pursuant to the court's order of the prior afternoon, the prosecution began by asking Sailor if she could explain why she had become upset or emotional the previous day. Sailor replied, "This is just hard for me, you know,

I'm just tired of all this," and, "I just blame myself for a lot of stuff and it's just hard for me."

¶51 Given Sailor's importance to the prosecution's case, Owens's counsel conducted a vigorous cross-examination of her. Among other things, counsel questioned Sailor's credibility by suggesting that she had a motive for testifying against Owens because she blamed Owens for what had happened to her family. Counsel also showed Sailor photos taken at her and Ray's wedding and at her baby son's funeral, apparently in order to show their familial relationships. On seeing these photos, Sailor again became emotional and asked why counsel was showing them to her.

¶52 Thereafter, defense counsel questioned Sailor about uncorroborated statements that she had made to the police regarding things that Owens had allegedly told her implicating himself in the Lowry Park shootings. Counsel asked, "The truth of the matter is that you're lying . . . and that [Owens] never said those statements, did he?" Sailor replied:

> You know what, this is your job to do this. [Owens] knows. I know. [Ray] knows. He killed them kids, and we know he did. So what, he ain't come straight out and tell me, "I killed them kids." It all points to him. I was around him the whole time.

Counsel pressed on, asking Sailor, "You have no problem with telling—not telling the truth, do you?" Sailor responded, "No, I got no problem." And counsel continued, "You got no problem with lying to people?" Sailor replied, yelling:

> But I ain't going to just lie to get somebody sent to jail for life or in prison. I'm not going to do that. . . . And I sure won't sit up here and lie for [Owens], and never talk to my family. And you need to stop making it seem like that. . . . You need to quit defending somebody who's guilty, and you know he's guilty. You need to quit that.

¶53 Counsel then sought to impeach Sailor's testimony that she would not lie on the stand and never talk to her family by asking whether she said the same thing when she had testified against her cousin, Sheneekah White, in a trial in Michigan. Sailor again became emotional, denying that she had testified against her cousin and calling counsel an "ass hole" [sic] for bringing that up. Sailor then volunteered, "He's [i.e., Owens's] a guilty ass person. You know he's guilty," after which the trial court called a recess.

¶54 In light of the foregoing testimony, Owens again moved for a mistrial. The court denied the motion, however, reasoning that Sailor's testimony included several long diatribes, which included her statements about Owens's guilt, and that these statements, like her earlier outburst, went to her overall credibility, which the jury would need to assess. The court did, however, instruct the jury to disregard Sailor's opinions as to the guilt or innocence of anyone involved in this matter, her opinion not being evidence.

¶55 During the recess that followed, the court asked defense counsel for a proffer as to what the Michigan matter was about. Counsel explained that before Sailor had moved to Colorado, she was involved in a case in Michigan concerning

the death of a child. In that case, Sailor's cousin, White, was charged with the death of her infant child. White said that she had left Sailor alone in the apartment with the baby and that when she returned, Sailor was gone, and the baby was dead. In contrast, when interviewed by the police, Sailor said that she had left White alone in the apartment with the baby. During the Michigan trial, a witness named Michelle Harris, with whom Sailor had been incarcerated, told the police that Sailor had told her that she (Sailor) had been left alone with the child, that she dropped the child, and that when the child would not move, Sailor fled. White was subsequently acquitted.

¶56 After providing that background, counsel explained that he wanted to use the foregoing to impeach Sailor's testimony that she would not testify against a family member and that she would not lie in a matter of this importance.

¶57 The court ultimately allowed Owens to ask Sailor three questions regarding the Michigan trial: (1) did you testify against a family member? (2) did you testify that the family member was responsible for the baby's injury? and (3) have you ever said anything contrary to what you testified at the trial? The court cautioned Owens's counsel, however, that if Sailor denied saying anything contrary to what she had testified to at the Michigan trial, then Owens could show Sailor the testimony that Harris had given at that trial but if Sailor denied talking to Harris, then Owens was stuck with her answer. The court also prohibited Owens from

asking whether Sailor became a suspect in the Michigan case after White was acquitted, noting that such evidence would violate CRE 404(b).

¶58 Sailor's cross-examination proceeded, and she admitted to testifying against her cousin and to stating that she was not present when the baby was injured and that White was the only adult remaining in the home when Sailor had left. When asked about Harris's testimony, Sailor denied talking to, or even knowing, Harris, and she added that she had passed three lie detector tests regarding this accusation. Defense counsel then tried to present Sailor with Harris's statements, but Sailor responded that she did not want to see the statements and that she had not spoken to Harris.

¶59 Counsel then sought leave to impeach Sailor's statement that she had taken three lie detector tests and passed them all. He proffered that Sailor had taken only one lie detector test and that the results were, in fact, inconclusive. The court determined that, in fairness, it had to let counsel ask that, but it made clear that after that line of inquiry, the questioning needed to stop.

¶60 Counsel inquired consistent with the court's ruling, and Sailor maintained that she had passed the test and that "[o]f course" the police were going to say things like "[t]he results were inconclusive." The court then prohibited further inquiry.

¶61 A week later, the prosecution called White as a witness, and Owens's counsel was permitted to establish on cross-examination that White had grown up with Sailor, that Sailor was a "drama queen," and that she, and a lot of the family, thought that Sailor was a liar. Counsel also established that White had been charged with a serious crime in Michigan and that Sailor had testified against her in that case.

¶62 Ultimately, the jury found Owens guilty of two counts of first-degree murder after deliberation, one count of conspiracy to commit first-degree murder after deliberation, three counts of witness intimidation, and one count of accessory to a crime, and Owens was subsequently sentenced to death. Thereafter, Owens appealed his conviction and sentence under our capital defendants' unitary review process, §§ 16-12-201 to -210, C.R.S. (2023); Crim. P. 32.2. While this appeal was pending, however, our General Assembly repealed the death penalty in Colorado, and Governor Polis commuted Owens's sentence to life in prison without the possibility of parole. In light of these developments, we subsequently concluded that the unitary review process no longer applied to this case. Nonetheless, we retained jurisdiction over Owens's direct appeal, and the direct appeal is now before us.

II. Analysis

¶63 We address Owens's six contentions in turn. For each contention, we begin by setting forth the applicable standards of review and pertinent legal principles, and then we apply those principles to the facts before us.

A. Inquiry Into Race-Related Issues During Voir Dire

¶64 Owens first contends that the trial court unconstitutionally abused its discretion by preventing him from inquiring into prospective jurors' attitudes on race and by failing to do the same on its own during voir dire. He further argues that the trial court constitutionally erred in declining to inform the jury of Wolfe's race. We are not persuaded.

1. Standard of Review

¶65 We review a trial court's decisions regarding the limits of voir dire of prospective jurors for an abuse of discretion. *People v. Collins*, 730 P.2d 293, 300 (Colo. 1986). A trial court abuses its discretion when its decision is manifestly arbitrary, unreasonable, unfair, or based on an incorrect understanding of the law. *People v. Gutierrez*, 2018 CO 75, ¶ 11, 432 P.3d 579, 581.

¶66 Because parties do not have a constitutional right to voir dire, a court's decision to impose limits on voir dire does not implicate constitutional error. *People v. Rodriguez*, 914 P.2d 230, 255 (Colo. 1996); *see also People v. Garcia*, 2022 COA 144, ¶ 18, 527 P.3d 410, 416 (noting that "voir dire is not itself a constitutional

right"). Accordingly, we review alleged errors in a trial court's decisions imposing limits on voir dire, if preserved, for nonconstitutional harmless error. *Hagos v. People*, 2012 CO 63, ¶ 12, 288 P.3d 116, 119. Under this standard, we will reverse a judgment only if the error substantially influenced the jury's verdict or affected the fairness of the trial proceedings. *Id.*; *see also Rosales-Lopez v. United States*, 451 U.S. 182, 191 (1981) (concluding that a failure to honor a defendant's request to allow inquiry into racial or ethnic prejudice "will be reversible error only where the circumstances of the case indicate that there is a reasonable possibility that racial or ethnic prejudice might have influenced the jury").

2. Applicable Law

¶67 A criminal defendant has a constitutional right to a trial by an impartial jury. *See* U.S. Const. amend. VI; Colo. Const. art. II, § 16. To ensure that this right is protected, a trial court must excuse prospective jurors if voir dire establishes that they harbor actual bias against a party. *People v. Rhodus*, 870 P.2d 470, 473 (Colo. 1994). Sufficient voir dire is thus essential in ensuring a criminal defendant's right to a fair trial. *See People v. Harlan*, 8 P.3d 448, 462 (Colo. 2000), *overruled in part on other grounds by People v. Miller*, 113 P.3d 743, 748–49 (Colo. 2005); *see also People v. Drake*, 748 P.2d 1237, 1243 (Colo. 1988) ("A defendant in a criminal proceeding has a fundamental right to a trial by jurors who are fair and impartial; to ensure that right is protected, the trial court must exclude prejudiced or biased persons from

the jury."). There is, however, "no constitutional presumption of juror bias for or against members of any particular racial or ethnic groups," although in certain "special circumstances," the constitution requires inquiry into racial bias. *Rosales-Lopez*, 451 U.S. at 189–90.

¶68 Specifically, the Supreme Court has held that "a capital defendant accused of an interracial crime is entitled to have prospective jurors informed of the race of the victim and questioned on the issue of racial bias." *Turner*, 476 U.S. at 36–37. In addition, when racial issues are inextricably bound up with the conduct of a trial and there are "substantial indications of the likelihood of racial or ethnic prejudice affecting the jurors in a particular case," a trial court abuses its discretion if it denies a defendant's request to examine the jurors' ability to deal with racial or ethnic issues impartially. *Rosales-Lopez*, 451 U.S. at 189–90. When neither of these special circumstances is present, trial courts retain their discretion to determine the need for such inquiry, *id.* at 190, as well as the form and number of questions on the subject and whether to question the venire individually or collectively, *Turner*, 476 U.S. at 37.

3. Application

¶69 As an initial matter, we address and reject the People's argument that Owens waived or invited the error about which he complains and is therefore precluded from raising this issue on appeal. Waiver is the intentional

relinquishment of a known right or privilege, whereas the invited error doctrine prevents a party from complaining on appeal of an error that the party invited or injected into the case. *People v. Rediger*, 2018 CO 32, ¶¶ 34, 39, 416 P.3d 893, 901–02. Here, Owens specifically requested extended individual voir dire on, among other issues, race and bias, and he construes the trial court's ruling as having rejected that request, at least in part. In these circumstances, we perceive neither a waiver nor invited error.

¶70 Turning to the merits, we will assume without deciding that racial issues were inextricably bound up with the conduct of the trial in this case such that racial and ethnic prejudice could possibly have affected the jurors. We, however, reject Owens's contention that the trial court prevented him from inquiring into prospective jurors' attitudes on race. Although the court precluded Owens from asking prospective jurors in the jury questionnaire to identify their race (a question that Owens acknowledged was intended to make a record of the racial composition of the venire, not to ferret out potential racial bias), the court in no way precluded group voir dire on the issue of racial bias. Moreover, to the extent that Owens requested individual voir dire on issues of racial bias arising from the prospective jurors' jury questionnaires, the court clarified (and Owens agreed) that Owens sought individual voir dire on "unusual responses on the questionnaire," including issues of racial bias, and the court indicated that it would *allow* such

individual voir dire. Indeed, the record reflects that the court, in fact, allowed such individualized inquiry, as the questioning of Juror C.W. shows. Owens points to no questioning on race during voir dire that he was precluded from pursuing, and our review of the record reveals none.

¶71 We likewise are unpersuaded by Owens's argument that the court should independently have raised the issue of racial bias during its voir dire of prospective jurors. Owens does not develop this argument; the Supreme Court has imposed no such obligation, *Turner*, 476 U.S. at 37 n.10 ("[W]e in no way require or suggest that the judge broach the topic [i.e., of racial prejudice] *sua sponte*."); and the two cases on which Owens relies do not support his claim, as the courts in those cases discussed the parties', not the court's, obligations, *see Maes v. Dist. Ct.*, 503 P.2d 621, 625 (Colo. 1972) (noting that it was counsel's duty to make diligent inquiry into the existence of potential racial prejudice); *People v. Baker*, 924 P.2d 1186, 1191 (Colo. App. 1996) (noting that under the Colorado Constitution, defense counsel had a right and obligation to inquire into the racial views of the prospective jurors in the interest of ensuring a fair and impartial jury).

¶72 Lastly, for several reasons, we perceive no reversible error in the trial court's preventing Owens from informing the prospective jurors of Wolfe's race. First, because *Turner*'s holding that a defendant accused of an interracial crime is entitled to have the prospective jurors informed of the victim's race was limited to

capital cases and this case is no longer a capital case (even though it was at the time of trial), it is unclear that *Turner* still applies. *See Turner*, 476 U.S. at 36–37. Second, it is likewise unclear that this case would satisfy the *Turner* court's definition of an interracial crime because, of the two victims, one was the same race as Owens and the other partially shared Owens's race. In other words, it is unclear whether this case would satisfy the *Turner* court's definition of an interracial crime. Finally, even if the trial court here erred in refusing to inform the prospective jurors of Wolfe's race, Owens presents no persuasive argument as to how this error might possibly have contributed to his conviction. Thus, any error in this regard was harmless beyond a reasonable doubt. *See Hagos*, ¶ 11, 288 P.3d at 119.

¶73 Accordingly, we conclude that the trial court properly permitted Owens to conduct voir dire on racial bias, did not err in not raising issues of racial bias itself, and did not reversibly err when it did not inform the jury of Wolfe's race.

B. *Batson* Challenges

¶74 Owens next contends that the trial court reversibly erred when it overruled his *Batson* challenges to the prosecution's use of back-to-back peremptory strikes on Juror C.W. and Juror J.C., two death-qualified prospective Black jurors. We disagree.

1. Standard of Review and Applicable Law

¶75 The Equal Protection Clause of the Fourteenth Amendment prohibits purposeful discrimination in the selection of a jury. *Batson*, 476 U.S. at 86. In *Batson*, the Supreme Court outlined a three-step process for determining whether a peremptory challenge was purposefully discriminatory. *Id.* at 95–98.

¶76 First, the objecting party must make a prima facie showing that the striking party exercised a peremptory challenge based on race or gender. *Foster v. Chatman*, 578 U.S. 488, 499 (2016); *People v. Beauvais*, 2017 CO 34, ¶ 21, 393 P.3d 509, 516. To establish such a prima facie case, the objecting party may rely on all of the relevant circumstances, including, for example, any pattern of strikes against a cognizable racial group (a pattern of strikes is not necessary, however, to establish a prima facie case because the Constitution forbids striking even a single prospective juror for a discriminatory purpose). *People v. Ojeda*, 2022 CO 7, ¶ 22, 503 P.3d 856, 862.

¶77 Second, if the objecting party establishes a prima facie case, then the striking party must offer a non-discriminatory (here, a race-neutral) reason for the strike. *Foster*, 578 U.S. at 499; *Beauvais*, ¶ 21, 393 P.3d at 516; *see also Ojeda*, ¶ 24, 503 P.3d at 862 ("All the striking party must do is provide any race-neutral justification for the strike, regardless of implausibility or persuasiveness."). The trial court may not, however, provide "its own plausible reasons behind the peremptory strikes at issue." *Valdez v. People*, 966 P.2d 587, 592 n.11 (Colo. 1998). A neutral

explanation in this context is "an explanation based on something other than the race of the juror." *Hernandez v. New York*, 500 U.S. 352, 360 (1991); *accord Ojeda*, ¶ 24, 503 P.3d at 862. An explanation is not race-neutral, however, when, for example, the striking party attempts to rebut the objecting party's prima facie case "by stating merely that he challenged jurors of the defendant's race on the assumption—or his intuitive judgment—that they would be partial to the defendant because of their shared race." *Batson*, 476 U.S at 97.

¶78 Third, after the objecting party has been given an opportunity to rebut the striking party's race-neutral explanation, the trial court must decide whether the objecting party has established purposeful discrimination. *Id.* at 98; *accord Ojeda*, ¶ 27, 503 P.3d at 863. A peremptory strike is purposely discriminatory for purposes of step three if the strike was "motivated in substantial part by discriminatory intent." *Flowers v. Mississippi*, 139 S. Ct. 2228, 2244 (2019) (quoting *Foster*, 578 U.S. at 513); *accord Ojeda*, ¶ 27, 503 P.3d at 863. At this step, the persuasiveness of the proffered justification becomes pertinent. *Purkett v. Elem*, 514 U.S. 765, 768 (1995). Other evidence that may be relevant to a *Batson* third-step determination includes (1) a prosecutor's use of peremptory strikes against Black, as compared to white, prospective jurors; (2) disparate questioning and investigation of Black and white jurors in a case; (3) side-by-side comparisons of Black prospective jurors who were struck and white prospective jurors who were

not; and (4) misrepresentations of the record in defending strikes during a *Batson* hearing. *See Flowers*, 139 S. Ct at 2243.

¶79 The three steps of a *Batson* analysis are subject to separate standards of review on appeal. *People v. Rodriguez*, 2015 CO 55, ¶ 13, 351 P.3d 423, 429. In step one, we review de novo whether the objecting party has established a legally sufficient prima facie case. *Id.* Step two addresses the facial validity of the reasons articulated by the striking party, and the reviewing court likewise reviews de novo the trial court's determination at this step. *Id.* Finally, the trial court's step-three determination presents an issue of fact to which an appellate court defers, reviewing only for clear error. *Id.*

¶80 If a reviewing court establishes that a *Batson* violation has occurred, then the remedy is automatic reversal. *Weaver v. Massachusetts*, 582 U.S. 286, 301 (2017).

2. Juror C.W.

¶81 Beginning with Owens's contentions regarding Juror C.W., we initially address and reject the People's argument that Owens did not properly preserve his *Batson* claim because his counsel's challenge occurred after Juror C.W. had exited the courtroom.

¶82 Notwithstanding the People's assertions to the contrary, Owens did not improperly delay in raising his *Batson* challenge here, and *People v. Valera-Castillo*, 2021 COA 91, 497 P.3d 24, on which the People rely, is distinguishable. There, the

defendant waited to raise a *Batson* challenge until after the court had read the names of the selected jurors and sent home the rest of the venire, including the juror whose strike the defendant was challenging. *Id.* at ¶¶ 19–20, 497 P.3d at 32.

¶83 Here, in contrast, the court excused Juror C.W. as soon as it ruled on the prosecution's peremptory strike without giving Owens an opportunity to raise a *Batson* challenge. Owens nonetheless asserted a *Batson* challenge immediately following Juror C.W.'s dismissal, and the court, seemingly realizing its erroneous haste in excusing Juror C.W., informed the parties that it had already sent a clerk to retrieve him. Although the record is unclear as to whether Juror C.W. returned to the courtroom, on these facts, we conclude that Owens properly preserved his *Batson* challenge.

¶84 Turning then to the merits of Owens's *Batson* challenge regarding Juror C.W., Owens contends that the prosecution did not satisfy its obligation to offer a race-neutral reason at step two of *Batson* because, under *Ojeda*, ¶¶ 46–49, 503 P.3d at 865–66, the prosecution's partial reliance on Juror C.W.'s "Driving while Black" comment made its justification overtly race-based. Owens further asserts that even if the prosecution's justification could be deemed race-neutral, the peremptory strike failed step three of *Batson* under both the so-called "*per se* approach"—which a division of the court of appeals followed in *People v. Johnson*, 2022 COA 118, ¶¶ 23–24, 523 P.3d 992, 1001–02, *cert. granted in part*, No. 22SC852,

2023 WL 3587455 (May 22, 2023), and which provides that a discriminatory explanation for a strike cannot be saved by an accompanying non-discriminatory explanation—and the above-described substantial motivating factor test set forth in *Flowers*. We are unpersuaded.

¶85 As to Owens's first point, we note that the prosecution offered a number of reasons supporting its peremptory strike, namely, Juror C.W.'s reading and views about the death penalty and wrongfully convicted defendants who had spent many years in prison, his allegedly having "witnessed" the firing of U.S. Attorneys (which he erroneously viewed as a crime), and his distrust of the police. Owens does not contend that the first and second reasons were inappropriate or unsupported by the record. Accordingly, the prosecution offered several indisputably race-neutral reasons for its strike of Juror C.W.

¶86 We need not—and do not—decide whether merely quoting a prospective juror's own statement that he had had an unpleasant experience with law enforcement, which the juror deemed, "DWB (Driving while Black)," necessarily violates *Batson*'s step two. On the specific facts now before us, we conclude that the prosecution offered sufficient race-neutral reasons for its peremptory strike of Juror C.W.

¶87 *Ojeda*, on which Owens relies, is distinguishable. In *Ojeda*, ¶ 12, 503 P.3d at 860, the prosecution attempted to justify its peremptory strike of a Hispanic juror

by stating, among other things, that "the defendant is a Latino male"; the juror at issue, as a Hispanic male, had discussed his concerns about being racially profiled; and the juror thus might "steer the jury towards a race-based reason why" the defendant had been charged in the case. We concluded that this justification was "overtly race-based" and amounted to a suggestion that the juror at issue might not be fair to the prosecution because of his race. *Id.* at ¶¶ 46–47, 503 P.3d at 865–66. Here, in contrast, the prosecution offered several race-neutral explanations to strike Juror C.W. and did not advance an overtly race-based challenge.

¶88 We likewise are unpersuaded by Owens's argument that, by simply referring to Juror C.W. as a "news junky," the trial court had offered its own race-neutral explanation for the prosecution's strike, thereby undermining a conclusion that the prosecution's proffered justification was not race-neutral. When read in context, the trial court appears to have used that description to refresh its own recollection of Juror C.W.'s responses during individual voir dire. Moreover, the court's reference to Juror C.W. as a "news junky" appears to have been connected to the prosecution's concerns regarding Juror C.W.'s reading about the death penalty and wrongfully convicted defendants and to his statement that he had "witnessed" the improper firing of U.S. Attorneys, which he clarified

he had "witnessed" through the news media. Accordingly, we do not agree that the court's comment reflected an independent race-neutral justification.

¶89 For these reasons, we conclude that the prosecution provided race-neutral justifications for striking Juror C.W., and we proceed to the trial court's application of *Batson*'s step three, which Owens challenges on both procedural and substantive grounds.

¶90 As a threshold matter, Owens claims that the court's ruling was procedurally insufficient because it was based solely on a finding that the prosecutor was credible and lacked any reference to the credibility of the prosecutor's explanation. Because Owens raised this argument only in his reply brief and it is well-settled that an appellate court will not consider arguments raised for the first time in a reply brief, we need not address it here. *See People v. Czemerynski*, 786 P.2d 1100, 1107 (Colo. 1990), *abrogated in part on other grounds by Rojas v. People*, 2022 CO 8, ¶¶ 32, 41, 504 P.3d 296, 305, 307. Even were we to do so, however, the record shows that in ruling at step three of *Batson*, the trial court stated that it did not question the prosecutor's credibility *and* that the reasons the prosecution had proffered to justify the strike were race-neutral because they included "a number of issues that raise concern" and that "would give a prosecutor some cause." Accordingly, the record does not support Owens's contention that the trial court did not make a proper ruling at *Batson*'s step three.

¶91 Substantively, Owens asserts that the trial court clearly erred in overruling his *Batson* objection because the prosecution's peremptory strike of Juror C.W. failed both the *per se* and the substantial motivating factor tests. We address only the substantial motivating factor test because Owens raised the applicability of the *per se* approach only in his reply brief, and, again, we will not consider arguments raised for the first time in a reply brief. *Id.*

¶92 Owens contends that the prosecution (1) did not question white jurors who had expressed negative experiences with law enforcement; (2) provided post hoc justifications, namely, Juror C.W.'s consumption of what the prosecution labeled very liberal media and his position on the death penalty, to justify the strike of Juror C.W.; and (3) misrepresented Juror C.W.'s position on the death penalty. In Owens's view, these purported facts demonstrate that the prosecution's strike of Juror C.W. was substantially motivated by race. For three reasons, we disagree.

¶93 First, the jury questionnaire asked all jurors to state whether they had ever had "a pleasant or unpleasant experience involving law enforcement" and, if so, to describe that experience. We perceive no suggestion of bias in the fact that the prosecution questioned Juror C.W. regarding his asserted negative experience with law enforcement. Moreover, Owens's reliance on side-by-side comparisons of white jurors who reported negative experiences with law enforcement is unpersuasive. The prospective jurors on whom Owens relies reported receiving

traffic tickets, which would likely be a negative experience for most people. Such experiences obviously are not comparable to Juror C.W.'s response, "DWB (Driving while Black)," and thus, they do not support a claim of disparate treatment by the prosecution. *See Beauvais*, ¶ 56, 393 P.3d at 524 (noting that isolated similarities between and among prospective jurors do not automatically render the jurors similarly situated for *Batson* purposes and that trial courts are better positioned to credit or ignore individual reasons in conducting comparisons).

¶94 Second, we perceive nothing in the prosecution's alleged post hoc justifications for striking Juror C.W. that suggests a racial motivation for the strike. To the contrary, the prosecution's concerns regarding jurors' views of the death penalty (as potentially influenced by the media that they consume) comprised much of the prosecution's voir dire, not just of Juror C.W. but of all of the prospective jurors.

¶95 Finally, although mischaracterization of a prospective juror's voir dire testimony can suggest pretext, we see no basis for concluding that the prosecution's asserted justifications were pretextual here. As an initial matter, although Owens asserts that the prosecution mischaracterized Juror C.W.'s view regarding the death penalty when it asserted that he had expressed the need for irrefutable proof before he would vote for such a sentence, as noted above, at one

point during voir dire, Juror C.W. said that he could vote for the death penalty if there were a video. It is not clear to us that construing such a statement as expressing a need for irrefutable proof was, in fact, a mischaracterization of what Juror C.W. said. Even if the prosecution's statement could arguably be construed as a mischaracterization, however, in light of the prosecution's indisputably and record-supported race-neutral reasons for its strike, which the trial court credited, we cannot conclude that the trial court clearly erred in finding that the strike at issue was not substantially motivated by race.

3. Juror J.C.

¶96 Owens also asserts that the prosecution peremptorily struck Juror J.C. based on her race and that the prosecution's justification for striking Juror J.C. was pretextual in violation of *Batson*'s step three. In support of this argument, Owens points to (1) the trial court's finding that Juror J.C.'s change of heart was credible and genuine; (2) the prosecution's failure to scrutinize white prospective jurors who expressed the same level of hesitation as Juror J.C.; (3) the prosecution's racially-charged questioning about the Black community's perception of Black defendants facing the death penalty; (4) the fact that the prosecution struck Juror C.W. and Juror J.C. back-to-back; and (5) the prosecution's remark that Owens had struck Black prospective jurors as well. We address and reject each of these arguments in turn.

¶97 With respect to the trial court's finding that Juror J.C.'s change of heart was credible and genuine, we note that this finding came in the context of the prosecution's attempt to make a record of Juror J.C.'s demeanor after she had answered the parties' and the court's questions about her change of heart. Owens cites no law suggesting that the trial court's finding in that context is binding on a party for purposes of a subsequent peremptory challenge. To the contrary, a party exercising a peremptory strike may do so for any non-discriminatory reason or combination of non-discriminatory reasons that further the party's litigation strategy. *Beauvais*, ¶ 57, 393 P.3d at 524.

¶98 Owens does not dispute that a juror's inability to impose, or strong aversion to, the death penalty constitutes a valid, race-neutral reason to exercise a peremptory strike in what was, at the time, a capital case. Here, Juror J.C. initially indicated that she could never impose the death penalty because of her religious background. Although she changed her position somewhat during individual voir dire and stated that she could impose the death penalty in certain circumstances, her responses still consistently suggested an aversion to the death penalty. In our view, this provided a proper basis for a peremptory strike, notwithstanding the trial court's finding that the change of heart was credible and genuine, which would arguably have foreclosed a challenge for cause.

¶99 With respect to Owens's contention that the prosecution did not scrutinize white jurors who had expressed hesitation about imposing the death penalty as strongly as it did Juror J.C., the record shows otherwise. Specifically, the record reveals that the prosecution engaged in a thorough voir dire of those jurors, and any differences in the questioning was attributable to the extent and nature of those jurors' hesitation to impose the death penalty. Moreover, the record shows that the prosecution consistently struck jurors who had expressed opposition to the death penalty or difficulty in imposing it. Accordingly, we perceive no error, much less clear error, in the trial court's determination that race was not a substantial motivating factor in striking Juror J.C.

¶100 As for the prosecution's questioning about the Black community's perception of Black defendants facing the death penalty, the prosecution did not rely on that colloquy in exercising a peremptory strike on Juror J.C., and we cannot say that the fact that the prosecution asked a non-race neutral question necessarily rendered its record-supported, race-neutral reason for its strike pretextual.

¶101 For similar reasons, we do not agree that the prosecution's back-to-back strikes of prospective Black jurors established pretext. Although, standing alone, such facts can, depending on the circumstances, suggest pretext, we cannot consider the back-to-back strikes in isolation, but rather we must examine the record as a whole. Doing so here, we perceive no grounds that would allow us to

conclude that the trial court clearly erred in finding that the prosecution's strike of Juror J.C. was not substantially motivated by race.

¶102 Lastly, Owens does not cite, nor have we seen, any persuasive authority to support his contention that a prosecutor's remark that the defense also struck Black jurors establishes pretext.

¶103 For the foregoing reasons, we conclude that the trial court did not err in rejecting Owens's *Batson* challenges as to Juror C.W. and Juror J.C.

C. Lowry Park Evidence

¶104 Owens next contends that the trial court reversibly erred by allowing the prosecution to present excessive evidence of the Lowry Park shootings under both the res gestae doctrine and in violation of CRE 404(b). We are not persuaded.

1. Standard of Review

¶105 We review a trial court's evidentiary rulings for an abuse of discretion. *Rojas*, ¶ 16, 504 P.3d at 302. As noted above, a trial court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, unfair, or based on an incorrect understanding of the law. *Gutierrez*, ¶ 11, 432 P.3d at 581.

2. Applicable Law

¶106 In *Rojas*, ¶ 41, 504 P.3d at 307, we abolished the res gestae doctrine. Under that doctrine, evidence of other acts that were not extrinsic to the charged offense but were part of the criminal episode or transaction with which the defendant was

charged was admissible to give the fact finder "a full and complete understanding of the events surrounding the crime and the context in which the charged crime occurred." *People v. Quintana*, 882 P.2d 1366, 1373 (Colo. 1994), *abrogated in part by Rojas*, ¶¶ 32, 41, 504 P.3d at 305, 307. In *Rojas*, ¶¶ 19, 24, 37, 504 P.3d at 303–04, 306, however, we observed that, over time, res gestae had morphed from what was primarily a hearsay exception to "a catchall for admitting all sorts of misdeeds and character evidence—no matter how attenuated in time, place, or manner—without carefully considering whether it was intrinsic or extrinsic to the charged crime." Noting that the res gestae doctrine thus had created grounds for confusion, inconsistency, and unfairness, we concluded that the adoption of the Colorado Rules of Evidence rendered that doctrine obsolete and that the Rules would govern the admissibility of evidence, with uncharged misconduct evidence that meets certain requirements being addressed in accordance with CRE 404(b). *Id.* at ¶ 3, 504 P.3d at 300–01.

¶107 We then turned to the question of how to decide when CRE 404(b) applies, and we ultimately adopted a framework that turned on whether the proffered evidence was intrinsic or extrinsic. *Id.* at ¶¶ 42–52, 504 P.3d at 307–09. Specifically, we held:

> [I]n evaluating whether uncharged misconduct evidence triggers Rule 404(b), a trial court must first determine if the evidence is intrinsic or extrinsic to the charged offense. Intrinsic acts are those (1) that directly prove the charged offense or (2) that occurred

> contemporaneously with the charged offense and facilitated the commission of it. Evidence of acts that are intrinsic to the charged offense are exempt from Rule 404(b) because they are not "other" crimes, wrongs, or acts. Accordingly, courts should evaluate the admissibility of intrinsic evidence under Rules 401–403. If extrinsic evidence suggests bad character (and thus a propensity to commit the charged offense), it is admissible only as provided by Rule 404(b) and after a *Spoto* analysis. Conversely, if extrinsic evidence does not suggest bad character, Rule 404(b) does not apply and admissibility is governed by Rules 401–403.

Id. at ¶ 52, 504 P.3d at 309.

¶108 Evidence is relevant and admissible if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." CRE 401–402. Relevant evidence may nevertheless be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." CRE 403.

¶109 Under CRE 404(b)(1), evidence of other crimes, wrongs, or acts is "not admissible to prove a person's character in order to show that on a particular occasion the person acted in conformity with the character." Such evidence may be admissible, however, if it is offered for another purpose, "such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." CRE 404(b)(2).

¶110 To determine whether evidence is admissible for a permitted purpose under CRE 404(b), we apply the four-part test that we outlined in *Spoto*, 795 P.2d at 1318. First, the evidence must relate to a material fact, that is, "a fact 'that is of consequence to the determination of the action.'" *Id.* (quoting CRE 401). Second, the evidence must be logically relevant, meaning that it must have some tendency to make the existence of a material fact more or less probable than it would be without the evidence. *Id.* Third, the logical relevance must be "independent of the intermediate inference, prohibited by CRE 404(b), that the defendant has a bad character, which would then be employed to suggest the probability that the defendant committed the crime charged because of the likelihood that he acted in conformity with his bad character." *Id.* Finally, the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice. *Id.*

¶111 Notably, CRE 404(b)(3) requires that in criminal cases, a prosecutor seeking to introduce CRE 404(b) evidence must generally provide pretrial written notice of any such evidence, so that a defendant has a fair opportunity to address it, and this notice must specify the permitted purpose for which the prosecution intends to offer the evidence and the reasons supporting that purpose. *See also People v. Rath*, 44 P.3d 1033, 1039 (Colo. 2002) (requiring the prosecution to articulate a "precise evidential hypothesis" as a condition to admissibility under CRE 404(b)).

In addition, if the trial court determines that the evidence proffered under CRE 404(b) is admissible, then the court must, on request, "contemporaneously instruct the jurors of the limited purpose for which the evidence may be considered." *Rojas*, ¶ 27, 504 P.3d at 305; *see also* CRE 105 ("When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.").

3. Application

¶112 Turning to the merits, we initially note that on direct appeal, we generally apply the law in effect at the time of appeal, absent manifest injustice. *Henderson v. United States*, 568 U.S. 266, 271 (2013); *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110 (1801); *Martinez v. Angel Expl., LLC*, 798 F.3d 968, 977 n.5 (10th Cir. 2015); *see also People v. Stellabotte*, 2018 CO 66, ¶ 3, 421 P.3d 174, 175 (holding that ameliorative, amendatory legislation applies to convictions pending on direct appeal, unless the amendment contains language indicating that it applies only prospectively). (We note that the *Henderson* court went on to conclude that an appellate court assesses plain error at the time of appeal, *Henderson*, 568 U.S. at 279, an issue that we have yet to decide and that is pending before us in another case. By citing *Henderson* for a different point here, we express no opinion on the plain error question.) Accordingly, although we cannot fault the trial court for not

foreseeing that we would abolish the res gestae doctrine long after the trial in this case, we are bound to conclude that the trial court erred to the extent that it admitted any of the Lowry Park evidence under the res gestae doctrine.

¶113 Notwithstanding the foregoing, as noted above, the court performed a *Spoto* analysis and ultimately admitted much of the Lowry Park evidence in accordance with most of the procedural protections required by CRE 404(b), including a limiting instruction. On this point, although we acknowledge that the prosecution did not strictly comply with CRE 404(b)'s notice requirement, the record demonstrates that Owens was fully on notice of this evidence. We thus perceive no prejudice from any failure of the prosecution to provide the advance written notice that CRE 404(b) requires.

¶114 The question thus becomes whether the trial court reversibly erred in admitting the Lowry Park evidence under CRE 404(b).

¶115 In answering this question, we begin by rejecting the People's argument that the Lowry Park evidence was intrinsic and, thus, exempt from CRE 404(b). The Lowry Park shootings did not directly prove, nor did they occur contemporaneously with, the Dayton Street shootings. *Rojas*, ¶ 52, 504 P.3d at 309. Accordingly, we believe that CRE 404(b) applied to much of the evidence at issue here.

¶116 Having so determined, we further conclude that the trial court acted well within its discretion in admitting evidence of the Lowry Park shootings to establish motive and identity under CRE 404(b). The court performed a complete *Spoto* analysis on the record. Specifically, the court determined that the Lowry Park evidence was relevant to motive and identification, which the court deemed material facts, and that without a contextual understanding of why Owens had targeted Marshall-Fields, the jury would be left with the impression that his killing was simply a random act of violence. The court further concluded that motive and identification were important purposes for the prosecution and that the probative value of the evidence was strong enough to overcome any bad inference as to Owens's propensity to commit bad acts.

¶117 We cannot say that these conclusions were manifestly arbitrary, unreasonable, or unfair. Although the Lowry Park evidence was, to some degree, prejudicial, it was not unfairly prejudicial because a good amount of this evidence was necessary to establish the prosecution's theory of its case. And although we might have reached a different conclusion than the trial court were we deciding in the first instance how much of the Lowry Park evidence to admit, the trial court had substantial discretion to decide this issue, and we perceive no abuse of discretion in its determination.

¶118 This leaves the evidence that the trial court admitted to show "background" and "relationships between individuals"—purposes not expressly permitted under CRE 404(b). Such evidence, however, was not other acts evidence falling within the ambit of CRE 404(b). Rather, it was simply evidence that the court determined was relevant under CRE 401 and 402 and not excluded by CRE 403. As to the court's decision to admit such evidence, we perceive no abuse of discretion, particularly given that on appeal, we must afford such evidence "the maximum probative value attributable by a reasonable fact finder and the minimum unfair prejudice to be reasonably expected." *Rath*, 44 P.3d at 1043.

¶119 For these reasons, we conclude that the trial court did not abuse its discretion in admitting the evidence of the Lowry Park shootings here at issue.

D. Denial of Mistrial

¶120 Owens contends that the trial court erroneously denied his two mistrial motions, which were based on Sailor's outbursts and her repeated declarations that Owens was guilty. Again, we disagree.

1. Invited Error

¶121 As an initial matter, we reject the People's contention that Owens had invited the error about which he now complains, thus precluding our review.

¶122 As noted above, under our invited error doctrine, parties are prevented from complaining on appeal of errors that they have invited or injected into the

case because parties must abide the consequences of their acts. *Rediger*, ¶ 34, 416 P.3d at 901.

¶123 Here, the alleged error is the refusal of the trial court to grant Owens's mistrial motions after Sailor's outbursts. Owens did nothing to invite what he contends were erroneous rulings on his mistrial motions. Nor did he do anything to invite Sailor to state repeatedly in front of the jury that he was guilty. It is not uncommon for witnesses to be emotional in response to cross-examination. Vigorous cross-examination, however, does not justify improper conduct by a witness, and we reject the People's contention that Owens is responsible for Sailor's conduct here.

¶124 Accordingly, we see no invited error, and we will proceed to the merits of Owens's contentions.

2. Standard of Review

¶125 A trial court has broad discretion to grant or deny a mistrial motion, and an appellate court will not disturb its decision absent a gross abuse of discretion and prejudice to the defendant. *Collins*, 730 P.2d at 303. "A mistrial is the most drastic of remedies." *Id.* Accordingly, it is warranted only when the prejudice to the defendant is too substantial to be remedied by other means. *Id.*

3. Applicable Law

¶126 Whether a mistrial is required following a witness's emotional outburst depends, in part, on whether the outburst was unexpected, the steps taken by the trial court to address the outburst, and how quickly those steps were undertaken. *See People v. Ned*, 923 P.2d 271, 276 (Colo. App. 1996) (perceiving no error in the trial court's ruling denying a mistrial after a witness had an emotional outburst during cross-examination, given that the trial court had removed the witness from the courtroom approximately thirty seconds after her outburst began, called a recess, and found that the outburst was not "necessarily out of place" or provoked by anything other than the circumstances surrounding the death of her son).

¶127 In addition, under Colorado law, "a witness cannot testify that he believes that the defendant committed the crime at issue." *People v. Penn*, 2016 CO 32, ¶ 31, 379 P.3d 298, 305. A mistrial is not always required when a witness so testifies, however, because, in general, "an error in the admission of evidence may be cured by withdrawing the evidence from the jury's consideration and instructing the jury to disregard it." *Vigil v. People*, 731 P.2d 713, 716 (Colo. 1987).

¶128 We presume that the jury understands and will follow a trial court's curative instructions, absent evidence to the contrary. *Bloom v. People*, 185 P.3d 797, 805 (Colo. 2008). A curative instruction is inadequate only when the evidence at issue "is so highly prejudicial . . . it is conceivable that but for its exposure, the jury may

not have found the defendant guilty." *People v. Goldsberry*, 509 P.2d 801, 803 (Colo. 1973).

4. Application

¶129 Here, Owens maintains that the trial court abused its discretion in denying his mistrial motions because, in his view, Sailor's emotional outbursts and repeated declarations that he was guilty rendered the trial fundamentally unfair. Owens further asserts that because the curative instruction provided by the trial court was insufficient to remove the prejudice of Sailor's declarations, the trial court's denial of his mistrial motions was not harmless.

¶130 Owens, however, does not show sufficient prejudice to support a determination that the trial court grossly abused its discretion when it denied his motions for a mistrial. The trial court, which was in the best position to judge the potential prejudice of Sailor's outbursts and declarations, determined that her conduct did not unduly prejudice Owens so as to warrant a mistrial because her outbursts were part of several long diatribes that went to her overall credibility. Moreover, the court employed several curative measures, including recessing the proceeding for the remainder of the afternoon, ordering the prosecution to ask Sailor the next morning to explain why she had been emotional, allowing Owens to cross-examine her on that issue, and instructing the jury to disregard Sailor's opinions as to Owens's guilt. Although Owens claims that these remedies were

insufficient, he has not presented any evidence of specific prejudice or that the jury did not follow the court's instruction.

¶131 The division's opinion in *Ned*, 923 P.2d at 276, is instructive on these points. In *Ned*, the defendant's ex-wife, who was the victim's mother, cried, thrashed about on the witness stand, screeched, screamed, and stamped her feet during cross-examination. *Id.* The trial court removed the witness from the courtroom approximately thirty seconds after her outburst began, called a recess, and subsequently found that the outburst was not "necessarily out of place" or provoked by anything other than the circumstances surrounding the death of her son. *Id.* The court thus denied the defendant's motion to declare a mistrial due to the witness's outburst. *Id.*

¶132 The defendant was convicted, and he appealed, arguing that the trial court had abused its discretion in not declaring a mistrial. *Id.* The division, however, disagreed, reasoning that the defendant had pointed to no specific prejudice resulting from the witness's outburst, and the division's review of the record revealed none. *Id.* The division further observed that it could not speculate as to how the witness's outburst may have affected the jury, and the division would not second-guess the trial court's determination regarding the prejudice, if any, resulting from the witness's outburst. *Id.* at 276–77.

¶133 In our view, the same reasoning applies here. Like the division in *Ned*, we will not second-guess the trial court's determination regarding the prejudice, if any, from Sailor's outbursts, particularly given the court's prompt actions to cure any such prejudice, its curative instruction, and the absence of any specific prejudice identified by Owens or disclosed by the record.

¶134 Accordingly, we conclude that the trial court acted within its discretion when it denied Owens's mistrial motions.

E. Impeachment of Sailor

¶135 Owens argues that he was denied his constitutional rights to confrontation and a complete defense when the trial court precluded him from impeaching Sailor with extrinsic evidence arising from the prosecution of her cousin, White, for the death of White's baby in Michigan, a case in which Sailor was a witness and, it appears, eventually a suspect. Owens specifically contends that the trial court abused its discretion in excluding (1) the testimony of Harris, with whom Sailor had been incarcerated in Michigan, about Sailor's role in the baby's death; and (2) the results of a lie detector test that Sailor took regarding her involvement, which Owens claims were admissible to show specific contradiction, bias, and prior inconsistent statements.

¶136 We discern no abuse of discretion by the trial court.

1. Standard of Review

¶137 "[T]rial courts have broad discretion in controlling the mode and extent of the presentation of evidence," *People v. Cole*, 654 P.2d 830, 832 (Colo. 1982), and we will not disturb a trial court's evidentiary rulings absent an abuse of discretion, *Davis v. People*, 2013 CO 57, ¶ 13, 310 P.3d 58, 61–62. Again, a court abuses its discretion when its ruling is manifestly arbitrary, unreasonable, unfair, or based on an incorrect understanding of the law. *Gutierrez*, ¶ 11, 432 P.3d at 581.

2. Applicable Law

¶138 The Sixth Amendment guarantees to criminal defendants the right to confront the witnesses against them. U.S. Const. amend. VI. To protect this right, a defendant must be given an opportunity for effective cross-examination. *Merritt v. People*, 842 P.2d 162, 166 (Colo. 1992). Effective cross-examination, however, does not mean unlimited cross-examination. *Id.*; *accord Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). A trial court thus has wide latitude to place reasonable limits on cross-examination, based on concerns regarding, among other things, harassment, prejudice, confusion of the issues, waste of time, and marginal relevance. *Van Arsdall*, 475 U.S. at 679; *Merritt*, 842 P.2d at 166. Nonetheless, "it is constitutional error to limit excessively a defendant's cross-examination of a witness regarding the witness' credibility, especially cross-examination

concerning the witness' bias, prejudice, or motive for testifying." *Merritt*, 842 P.2d at 167.

¶139 The Constitution also guarantees to criminal defendants "a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). We have stated that this guarantee entitles a criminal defendant to "all reasonable opportunities to present evidence that might tend to create doubt as to the defendant's guilt." *People v. Elmarr*, 2015 CO 53, ¶ 26, 351 P.3d 431, 438. The right to present a defense, however, is not absolute. *People v. Salazar*, 2012 CO 20, ¶ 17, 272 P.3d 1067, 1071. The Constitution requires only that the defendant be allowed to introduce all relevant and admissible evidence. *Id.*

¶140 As noted above, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." CRE 401. Relevant evidence may nevertheless be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." CRE 403.

¶141 Criminal defendants are denied their constitutional right to call witnesses and present a complete defense only when they were denied virtually their "only

means of effectively testing significant prosecution evidence." *Krutsinger v. People*, 219 P.3d 1054, 1062 (Colo. 2009).

3. Application

¶142 Here, Owens contends that the trial court deprived him of his constitutional rights to confront the witnesses against him and to present a complete defense when it prohibited him from introducing extrinsic evidence from the Michigan trial to impeach Sailor, one of the prosecution's key witnesses. Owens maintains that the trial court "gutted" his defense by preventing him from introducing Harris's statements and the results of the lie detector tests to (1) contradict Sailor's testimony from the Michigan trial and thus undermine her credibility and (2) show her motivation and bias. He further argues that the trial court's error was not harmless.

¶143 Contrary to Owens's assertions, the trial court did not prohibit him from presenting a complete defense because it did not excessively or unreasonably limit his ability to test the prosecution's evidence. Owens impeached Sailor on almost every issue he wished, including Sailor's testimony that she (1) would not lie just to put somebody in jail; (2) would not lie for Owens and never talk to her family; (3) had not testified against her cousin, White, in the Michigan trial; and (4) had not said anything contrary to the testimony that she gave at that trial. Specifically, on cross-examination, Owens established that Sailor did not have a problem with

"not telling the truth" and that, in fact, she had testified against her cousin and had told the jury that her cousin had been alone with the baby when the baby was injured. Similarly, when Sailor testified that she did not know Harris, had never said that she had been the one who had hurt the baby, and had taken and passed three lie detector tests in response to that accusation, the trial court allowed Owens to impeach Sailor by confirming that she had taken only one lie detector test and that the results were inconclusive. And Owens impeached Sailor's credibility with White's testimony that Sailor was a "drama queen" and that White, and a lot of the family, thought that Sailor was a liar.

¶144 In addition to the foregoing, the trial court also gave Owens ample opportunity to question Sailor's motivation and bias. For example, at trial, Owens established that Sailor was the wife of Owens's best friend and co-conspirator, Ray, had protected Owens and Ray from being identified as the Lowry Park shooters, and had testified against Owens in accordance with her plea agreement and deferred sentence.

¶145 Last, although the trial court placed some limits on how far it would allow Owens to go in re-litigating the Michigan case, which was collateral to the issues presented here, we conclude that in imposing such limits, the trial court properly exercised its discretion in order to avoid a substantial detour into facts having nothing to do with this case.

¶146 Accordingly, we conclude that the trial court did not abuse its discretion in determining the extent to which it would allow Owens to cross-examine Sailor regarding the Michigan trial. Nor did it abuse its discretion in precluding Owens from admitting certain extrinsic evidence from the Michigan case to impeach her. To the contrary, the trial court struck a reasonable balance between Owens's right to confront the witnesses against him and to put on a complete defense, on the one hand, and the court's duty to avoid substantial detours into collateral matters, confusion of the issues, misleading the jury, and undue delay and waste of time, on the other.

F. Cumulative Error

¶147 Finally, Owens argues that, when viewed in the aggregate, the foregoing errors deprived him of a fair trial.

¶148 Under the cumulative error doctrine, although an individual error, when viewed in isolation, may be harmless, reversal is required when the cumulative effect of multiple errors and defects substantially affected the fairness of the trial or the integrity of the fact-finding process. *Howard-Walker v. People*, 2019 CO 69, ¶ 24, 443 P.3d 1007, 1011.

¶149 Here, because we have determined that the trial court did not commit any individual errors, we conclude that Owens has not established cumulative error requiring reversal.

III. Conclusion

¶150 For these reasons, we conclude that the trial court (1) did not prevent Owens from conducting voir dire on potential racial bias, nor did it act unconstitutionally in not informing the jury of Wolfe's race; (2) properly overruled Owens's *Batson* challenges; (3) properly admitted evidence of the Lowry Park shootings under CRE 404(b) and CRE 401–403; (4) properly denied Owens's mistrial motions; and (5) allowed sufficient cross-examination and impeachment of Sailor, while reasonably excluding extrinsic evidence of collateral matters. Having so determined, we further conclude that Owens has not established reversible cumulative error.

¶151 Accordingly, we affirm the judgment of conviction.