IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-250671 TRIAL NOS. 25/CRB/12468/A/B/C
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
BENJAMIN COOPER,	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgments of the trial court are affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 9/23/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer A. Hensley
Administrative Judge

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Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N*
BENJAMIN COOPER,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgments Appealed From Are: Affirmed

Date of Judgment Entry on Appeal: September 23, 2026

Emily Smart Woerner, City Solicitor, *Susan M. Zurface*, Chief Prosecuting Attorney, and *Amber Daniel Jeffrey*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Milton and Charlotte Kramer Law Clinic, Andrew S. Pollis, and *Christopher M. Doyle* and *Hannah Vondra*, Legal Interns, for Defendant-Appellant.

CROUSE, Judge.

{¶1} Defendant-appellant Benjamin Cooper appeals from the trial court's judgments convicting him, following a jury trial, of resisting arrest and two counts of assault. He raises four assignments of error for our review.

{¶2} In Cooper's first assignment of error, he contests the trial court's denial of a *Batson* motion that he made after the State exercised a peremptory challenge on a black juror. He argues that the trial court erred by failing to conduct a proper analysis of whether the State's race-neutral explanations for striking the juror were pretextual, where the court focused on the prosecutors' subjective intent to determine that they did not harbor any racial bias. Cooper further alleges that the State's race-neutral explanations were pretextual because they were not supported by the record and that the State failed to excuse similarly-situated jurors. In his second and third assignments of error, Cooper argues that the trial court improperly admitted other-acts evidence in violation of Evid.R. 404(B). And in his fourth assignment of error, Cooper argues that the cumulative effect of the trial court's evidentiary errors requires reversal.

{¶3} Following our review of the record, we hold that while the trial court's inquiry into the prosecutors' personal beliefs about race was unorthodox, the court did not fail to determine whether the State's race-neutral explanations for the peremptory challenge were pretextual and did not err in finding Cooper's *Batson* challenge to be without merit. And because Cooper failed to raise an Evid.R. 404(B) objection during trial and has not advanced a plain-error argument on appeal, we find no error in the admission of the alleged other-acts evidence that Cooper challenges. We accordingly affirm the trial court's judgments.

I. Factual and Procedural History

{¶4} Defendant-appellant Benjamin Cooper was charged in the Hamilton

County Municipal Court with resisting arrest and two counts of assault. The victims of the assault charges were J.E. and B.H. Cooper elected to be tried before a jury, proceeding under a theory that he had acted in self-defense

{¶5} The evidence presented at trial established that Cooper assaulted J.E. and B.H. at the Hilton Hotel in downtown Cincinnati on July 21, 2025. Cooper was a former hotel employee who was no longer allowed to be on the premises. On the day of the offenses, J.E., director of security for the hotel, was informed that Cooper was in the hotel. Because he was aware that Cooper had been violent in the past, J.E. requested backup before approaching Cooper at the hotel bar. Fellow employees B.H. and D.S. assisted J.E. As the three men escorted Cooper through the lobby and down the staircase that led to the exit, Cooper's demeanor alternated between happy and threatening.

{¶6} After Cooper twice threatened J.E.'s life, J.E. told Cooper that he would be pepper sprayed if he did not leave the premises. When Cooper reached the bottom of the staircase, he jumped up and down, stating, "That's it. I'm fucking off the property. There's nothing you can do. I'm not leaving." J.E. reached into his pocket for pepper spray, but Cooper attacked J.E. before he raised the spray or pointed it at Cooper. Cooper grabbed J.E.'s hand and threw J.E. to the ground. He then placed his knee and full body weight on the center of J.E.'s chest. J.E. struggled to breathe and asked B.H. and D.S. to get Cooper off him.

{¶7} D.S. tried to push Cooper off J.E., while B.H. tried to pull Cooper off by grabbing his hair. When Cooper stood up, he punched B.H. in the head before running out the door.

{¶8} J.E. and B.H. were taken to the hospital. Both offered detailed testimony describing their injuries.

{¶9} Cincinnati police officers responded to the Hilton and subsequently put out a broadcast with Cooper's information. Shortly thereafter, Cincinnati Police Officers Harmon and Barnett spotted Cooper near the Hamilton County Courthouse. After verifying that Cooper was wanted for a "good offense," they approached Cooper and told him that he was under arrest. Cooper refused to comply with the officers' instructions to put his hands behind his back. The officers tried to restrain Cooper, but he repeatedly pulled away, refusing to let go of a vape that was in his hands. To better control Cooper, the officers took him to the ground. When he continued to refuse to put his hands behind his back, Officer Harmon tased him. Cooper was then taken into custody. While being apprehended, Cooper threatened to kill the officers.

{¶10} Cooper testified in his own defense. He stated that he was invited into the Hilton on the day of these offenses, and that while he previously had been prohibited from being on the premises, the prohibition "was thrown out, to [his] knowledge." Cooper testified that he immediately complied with J.E.'s request to leave the premises. He stated that J.E. held the pepper spray in a visible manner the entire time he escorted Cooper out. Cooper explained that he had been pepper sprayed by J.E. on a previous occasion and that he did not want to be sprayed again. He testified that he tried to take the pepper spray from J.E. at the bottom of the stairs, but that J.E. came at him, falling as he did so. Cooper stated that he put his left knee in a bracing position on J.E. and told J.E. to calm down. While he was restraining J.E., Cooper felt someone hit him in the back of the head and another person pull his hair. In reaction to his hair being pulled, Cooper "swung" and then left the premises. He acknowledged that he struck someone when he swung.

{¶11} Cooper testified that after he left the hotel, he stopped to talk to a Jehovah's Witness in front of the courthouse, where he was approached by two officers

and told that he was under arrest. The officers refused Cooper's request to be allowed to put his vape pen in his pocket. According to Cooper, the officers tased him while he was standing up.

{¶12} The jury returned verdicts finding Cooper guilty of resisting arrest and both counts of assault. Cooper now appeals.

II. Batson *Challenge*

{¶13} In his first assignment of error, Cooper argues that the trial court erred by failing to determine whether the race-neutral explanations offered by the State in response to Cooper's *Batson* challenge were pretextual, in contravention of the law set forth in *Batson v. Kentucky*, 476 U.S. 79 (1986).

A. The Law on Batson *Challenges*

{¶14} The State is prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution from "engaging in '[p]urposeful racial discrimination in selection of the venire.'" *State v. Holman*, 2026-Ohio-1793, ¶ 32 (1st Dist.), quoting *Batson* at 89. "Accordingly, the State may not use peremptory challenges to exclude a prospective juror based on that person's race." *Id.*

{¶15} In *Batson*, the United States Supreme Court established a three-part procedure to evaluate claims of racial discrimination in the exercise of peremptory challenges. *See Batson* at 96-98. "'First, the opponent of the strike must make a prima faci[e] showing of discrimination. Second, the proponent must give a race-neutral explanation for the challenge. Third, the trial court must determine whether, under all the circumstances, the opponent has proven purposeful racial discrimination.'" *State v. Trevino*, 2026-Ohio-3526, ¶ 14 (1st Dist.), quoting *State v. White*, 85 Ohio St.3d 433, 436 (1999), citing *Batson* at 96-98.

{¶16} It is the third step of this analysis that is at issue in the case at bar. Under

this step, "the trial court must afford defense counsel 'a sufficient opportunity to rebut the prosecutor's proffered race-neutral reasons for striking' the challenged jurors" before determining if the reasons offered by the prosecutor were pretextual. *Id.* at ¶ 17, quoting *Pitchford v. Cain*, ___ U.S. ___, 146 S.Ct. 1345, 1351-1352 (2026). As the court assesses the plausibility of the prosecutor's stated reason, it must do so "'in light of all evidence with a bearing on it.'" *State v. Garrett*, 2022-Ohio-4218, ¶ 69, quoting *Miller-El v. Dretke*, 545 U.S. 231, 252 (2005).

{¶17} Relevant factors for the court's consideration include the demeanor of the prosecutor, the reasonableness of the offered explanation, and whether the explanation is based on a sound trial strategy. *Id.* at ¶ 69. Also relevant are whether the prosecutor's stated reason for the strike was related to the facts of the case or was factually contradicted by the record, whether the prosecutor failed to meaningfully question the challenged juror during voir dire, whether the prosecutor struck other members of the venire that had the same or similar characteristics as the challenged juror, whether potential jurors were questioned in a disparate fashion based on their race, and whether all remaining racial minorities on the jury were eliminated by the prosecutor's challenge. *Trevino* at ¶ 19. The ultimate determination that the trial court must make "is whether the State was motivated in substantial part by discriminatory intent." (Cleaned up.) *Holman*, 2026-Ohio-1793, at ¶ 35 (1st Dist.).

{¶18} The trial court is not required to make findings when determining if the race-neutral explanation offered by the prosecutor is pretextual. *State v. Thompson*, 2014-Ohio-4751, ¶ 62-63; *Trevino*, 2026-Ohio-3526, at ¶ 18 (1st Dist.). "As long as a trial judge affords the parties a reasonable opportunity to make their respective records, he may express his *Batson* ruling on the credibility of a proffered race-neutral explanation in the form of a clear rejection or acceptance of a *Batson* challenge."

(Cleaned up.) *Thompson* at ¶ 63.

{¶19} A trial court's determination in the third step of the *Batson* analysis is entitled to great deference, and where the court finds no discriminatory intent, the finding will not be overturned unless it is clearly erroneous. *Garrett*, 2022-Ohio-4218 at ¶ 70; *State v. Akins*, 2024-Ohio-1491, ¶ 13 (1st Dist.). But if a trial court errs in applying the procedure set forth in *Batson*, "the error is structural and never harmless." *Akins* at ¶ 13; *accord Garrett* at ¶ 70.

B. Cooper's Batson *Challenge*

{¶20} Having set forth the applicable law, we now discuss in some detail the *Batson* challenge in this case. The following colloquy occurred during voir dire between the State and the juror that it later excused with a peremptory challenge.

> STATE: As a nurse, when you were in the operating room, were you working with other people trying to get the operation and the job done?
>
> PROSPECTIVE JUROR: Yes.
>
> STATE: Okay. What sort of things would you do if you disagreed with somebody or somebody wasn't doing what they were supposed to do? What sort of things would you do to see their point of view, but also make a decision on what had to be done next?
>
> PROSPECTIVE JUROR: Yeah. See their point of view and if it was really an issue. So usually it's like we're going quickly, we've got to get this done. So talk to them later—later on.
>
> STATE: So you kind of move ahead with everything?
>
> PROSPECTIVE JUROR: Right.
>
> STATE: I have here on your questionnaire you indicated, you

thought you would be a good juror because you work well with others, and you're objective and open-minded; what does that mean when you're having a discussion with somebody about something?

PROSPECTIVE JUROR: Being open-minded means a lot to me, especially if somebody is disagreeing with you.

STATE: All right.

PROSPECTIVE JUROR: And I do realize that we're all different. We all see things differently. It might be the same situation, but I see it differently than he saw it. So that's important to realize that.

STATE: And in a situation like that, let's see, you think the other person's wrong, what do you do to reach a decision with that person, whether that's your own, whether it's their wrong? Do you meet in the middle? How do you approach a situation like that?

PROSPECTIVE JUROR: I don't necessarily think they're wrong. It depends on the situation. I think they see it differently than I do. So that's not necessarily wrong.

STATE: Okay. Do you—even when somebody else sees something differently, do you still think you would be able to come to a decision on something?

PROSPECTIVE JUROR: Definitely.

. . .

STATE: Any situation you can think of where a police officer might have to use force to apprehend somebody?

PROSPECTIVE JUROR: Yes.

STATE: Like what?

PROSPECTIVE JUROR: When the person's not cooperating. I mean, it's not like they give you a choice if they are going to arrest you. It's like do you want me to arrest you or not. It's like if I'm going to arrest, okay. Why fight it?

STATE: Okay. Any situations you can think of where it's not okay for police to use force to apprehend somebody?

PROSPECTIVE JUROR: When they go over—and what's the line? When they go over the line. And my understanding it's usually more than one policeman. I guess on traffic stops there can be a single one, but—and so with there being two people, that's really no reason to go over the line.

STATE: Okay. And so we talked about over the line; what is over the line?

PROSPECTIVE JUROR: Physically kicking, beating, just that kind of stuff, fighting, even if the person they're trying to get control of is fighting, I'm sure they've been trained on how to deal with that. Other than like being physically–

STATE: What about using a taser to apprehend somebody? Any situations where you think that's over the line?

PROSPECTIVE JUROR: No, I don't.

STATE: Okay. And we talked about situations where you know, we got one police officer, but also you said sometimes there's multiple officers. Say there's multiple officers and somebody is being arrested, but you know they're being difficult, maybe they are resisting, maybe they're doing something else, in that situation, is it over the line to, you

> know, use something like a taser or like pepper spray or anything like that?
>
> PROSPECTIVE JUROR: If the two policemen, or two, three, how many ever, if they can't get control of the person, then that's the next step.

{¶21} After both the State and Cooper finished questioning this juror, the State requested a conference in chambers, where it exercised a peremptory challenge to excuse the juror. Cooper immediately made a *Batson* challenge, arguing that the challenged juror was the only person of color on the jury and noting that Cooper was also a person of color.

{¶22} The State replied that its concern with the juror was twofold. First, it said, the juror "was talking about kind of maybe not being able to reach a decision if two people are disagreeing." Second, the State claimed that the juror "said something along the lines it would be over the line to me if the police had to fight back somebody who is resisting arrest when we anticipate that the facts will show that."

{¶23} Defense counsel questioned the State's offered race-neutral explanations, stating,

> Judge, I believe the two people who are in disagreement in context was closer to when she was talking about her sister and how her sister was wrong and she's not going to argue with her,[1] I don't think it was in the context, and we can go back and review it, of an eight person group coming to a consensus.

[1] When asked if she could provide an example of how she determined if someone was telling the truth, the challenged juror referenced her sister, stating "[M]y one sister will tell a story, and it's like, no, that's not what happened. It wasn't like that. In her mind, yeah, that's what happened. I just know myself, what I saw, what I believe, so I can't change another person."

> Additionally, Judge, in terms of over the line, while they attempted to elicit more testimony is that she specifically referred to police officers being physical and kicking an individual that they were attempting to arrest, and the defense feels that that does not necessarily rise to the bar of excusing her when she is the only person of color on the jury, and I think she said she can be fair and impartial and open-minded.

{¶24} In considering whether the offered race-neutral explanation was pretextual and whether the prosecutors were motivated by a discriminatory intent, the trial court asked several personal questions of the two prosecutors who were trying the case on behalf of the State.

> THE COURT: Well, I don't have to tell any of you that race is the most sensitive issue in—well, it's one of the most sensitive issues in our society, and it's particularly sensitive in the context of constitutional rights. Unless [Prosecutor A] is wearing a t-shirt that has a State's rights or a Ku Klux Klan symbol on it, you have a white t-shirt on, or do you have another –
>
> PROSECUTOR A: I certainly own no t-shirts of that sort, Your Honor.
>
> THE COURT: Are you part of any organizations that would be considered an anathema to the American system?
>
> PROSECUTOR A: No, sir.
>
> THE COURT: Tell me where you went to high school.
>
> PROSECUTOR A: I went to high school at Mason High School.
>
> THE COURT: Mason High School. Okay.

DEFENSE COUNSEL: The largest in the state.

THE COURT: It is?

DEFENSE COUNSEL: The largest school district.

THE COURT: And where did you get your undergraduate –

PROSECUTOR A: Here at the University of Cincinnati.

THE COURT: What was your major there?

PROSECUTOR A: I was a political science major and then I was an English minor.

THE COURT: Have you ever been charged with any complaints that relate to race or gender?

PROSECUTOR A: I don't believe so, Your Honor. No, no, no.

THE COURT: All right. Do you have—are you able to fairly conduct the trial without any racial prejudice or [anathema]?

PROSECUTOR A: Yes, sir.

THE COURT: Thank you. [Prosecutor B]?

PROSECUTOR B: Yes, sir.

THE COURT: Are you wearing any t-shirts that –

PROSECUTOR B: No, sir, I'm not.

THE COURT: Have you ever belonged to any organization that touch upon Unamerican activities?

PROSECUTOR B: No, sir. I don't believe so.

THE COURT: Or anti African American organizations?

PROSECUTOR B: No, sir. For what this is worth, Your Honor, my aunt is actually—my aunt is black. She's a professor at Kent State University. She's also the head of their equity program. My sister, she's

Chinese American. I have no anathemas of anybody with a racial background.

THE COURT: Let me ask you both, in your private lives are you fair to all citizens without racial bias or –

PROSECUTOR A: Yes, sir.

PROSECUTOR B: Yes, sir.

{¶25} Upon concluding with this line of questioning, the court stated,

I will deny the Batson challenge. I didn't mean to pry, but for the purposes of the Batson issue, without asking the questions if there were later discovery of—of something, based on the questions I asked, it would be—it would be unfair to the defense. Let me say parenthetically that I've dealt with all three of you in Court and in trials, in jury selection, and I've seen never a hint. It is certainly important that we have diverse juries. No question about it. But I didn't see anything in the questioning, or in the reaction, or in the reaction to questions, that would cause the Court to believe that—that the request for the peremptory challenge met the Batson standard. We also have more people of color, it appears to me, in the jury pool that could be used.

C. Application of Law to this Case

1. Did the Court Follow the proper Batson *Procedure?*

{¶26} Cooper first argues that the trial court failed to determine whether the race-neutral explanations offered by the State were pretextual and that it instead substituted an inquiry into the prosecutors' personal beliefs. The State, in response, argues that the trial court's denial of Cooper's challenge reflected its determination that the offered race-neutral explanations were credible.

{¶27} In evaluating a prosecutor's race-neutral explanation in a *Batson* challenge, "[t]he trial judge's assessment of the prosecutor's credibility is often important." *Flowers v. Mississippi*, 588 U.S. 284, 302 (2019). Factors a trial court may consider include "(1) data and statistics about the 'prosecutor's use of peremptory strikes against black prospective jurors as compared to white prospective jurors' in the case; (2) the State's disparate questioning and investigation of prospective jurors by race; (3) a comparison of which prospective jurors the State kept and struck; (4) 'a prosecutor's misrepresentations of the record when defending the strikes,' and (5) the State's historical use of peremptory strikes in prior cases." *Holman,* 2026-Ohio-1793, at ¶ 35 (1st Dist.), quoting *Flowers* at 301-302; *see also Trevino*, 2026-Ohio-3526, at ¶ 19 (1st Dist.) (setting forth similar factors for the trial court to consider when evaluating an offered race-neutral explanation).

{¶28} As discussed above, the court was not required to engage in any discussion about the challenge or the State's race-neutral explanations. Nor was it required to make findings in support of its ruling. *See Thompson*, 2014-Ohio-4751, at ¶ 62-63. The trial court could have summarily denied the *Batson* challenge after hearing both the race-neutral explanations offered by the State and Cooper's response thereto.

{¶29} In this case, after engaging in the questioning of the prosecutors quoted at length above, the trial court denied the *Batson* challenge, stating, "I didn't see anything in the questioning, or in the reaction, or in the reaction to questions, that would cause the Court to believe that—that the request for the peremptory challenge met the *Batson* standard." While the questions that the trial court asked the prosecutors were certainly unconventional, the record reflects that the questions were asked by the court to assist it in determining whether the prosecutors had been

motivated, in whole or part, by a discriminatory intent when exercising the peremptory challenge. *See Holman* at ¶ 35. The court considered the challenge and found that the prosecutors were not motivated by a discriminatory intent.

{¶30} On this record we cannot hold that the trial court failed to follow the procedure set forth in *Batson*.

2. Were the offered race-neutral explanations supported by the record?

{¶31} Cooper next argues that the record contains no support for the race-neutral explanations offered by the State and that the trial court erred in failing to find that the explanations were pretextual.

{¶32} The State offered two race-neutral explanations in support of its peremptory challenge. The first explanation was that the challenged juror indicated that she might be unable to reach a decision if she disagreed with other jurors.

{¶33} We agree with Cooper's assertion that the record contradicts the State's explanation. The record does not indicate that the challenged juror would be unable to reach a decision if she disagreed with another jurist. In fact, the record indicates the opposite. The challenged juror was asked by the State if she thought she would be able to come to a decision if she saw things differently than another juror, and she responded, "Definitely."

{¶34} The second race-neutral explanation offered by the State was its concern regarding statements that the challenged juror made about the use of force by officers. The State told the court, "[The challenged juror] said something along the lines it would be over the line to me if the police had to fight back somebody who is resisting arrest when we anticipate that the facts will show that."

{¶35} This was not an accurate recitation of the statement made by the challenged juror. During questioning by the State, the juror acknowledged that an

officer might need to use force when a suspect does not cooperate, but she indicated that officers could "go over the line" when there is "more than one policeman." She stated, "[W]ith there being two people, that's really no reason to go over the line." The challenged juror elaborated as to what she meant by "going over the line," stating that it included "kicking, beating, just that kind of stuff, fighting, even if the person they're trying to get control of is fighting." The juror further stated that using a taser would not be "over the line."

{¶36} While the State's summary of the challenged juror's statement was not accurate, the record clearly establishes that the State was concerned about the fact that this juror had expressed concern over the use of force by multiple officers when a suspect resists arrest, which is precisely what happened in the underlying case. And the record contains no indication that the State's description of the juror's statement was not made in good faith. In *Aleman v. Uribe*, 723 F.3d 976, 982 (9th Cir. 2013), the court stated,

> There is a fine distinction between a prosecutor's false statement that creates a new basis for a strike that otherwise would not exist and a prosecutor's inaccurate statement that does nothing to change the basis for the strike. A prosecutor's credibility is undermined when he or she offers an explanation for a peremptory challenge that mischaracterizes a juror's testimony in a manner completely contrary to the juror's stated beliefs. On the other hand, if a prosecutor makes a mistake in good faith, such as an innocent transposition of juror information, then that mistake does not support the conclusion that the prosecutor's explanation is clearly not credible.

(Cleaned up.)

{¶37} Here, the prosecutor did not accurately summarize the challenged juror's statement, but the basis of the peremptory challenge remained the same despite the misquote of the juror's statement. *See id.* The challenged juror expressed concern about an officer's use of force being "over the line" when officers outnumbered the suspect. Here, the arrest involved two officers and one suspect. The officers did not "kick" or "beat" Cooper, but they did have to take him to the ground before tasing him. The prosecutor's explanation established that it was the challenged juror's statements about an officer using force to subdue a suspect that caused concern. And this was a reasonable concern, given that this factual scenario was implicated in the underlying case.

{¶38} We accordingly hold that the record supported the second race-neutral explanation offered by the State.

3. Were Similarly-Situated Jurors Treated Differently?

{¶39} Cooper last argues that the State treated similarly-situated jurors differently, demonstrating that the race-neutral explanations offered by the State were merely a pretext. Because we have already determined that the State's first explanation for the challenge was not supported by the record, we limit our analysis of Cooper's arguments to those jurors that he alleges were similarly situated to the challenged juror with respect to the State's explanation regarding officers' use of force.

{¶40} Cooper directs the panel to statements made during voir dire by an alternate juror indicating that she had attended Black Lives Matter protests, that police use of force is subject to a line, and that a taser should only be used as a last resort. Cooper contends that the State acted inconsistently by excusing the challenged juror, but allowing this juror to remain seated as an alternate.

{¶41} While the record does not definitively indicate the race of this alternate

juror, both Cooper and the State represent in their appellate briefs that this allegedly similarly-situated alternate juror was black. In determining whether a race-neutral explanation provided by the State was pretextual because the State did not also excuse another juror who fit within the offered explanation, the "comparative juror" must be "an otherwise-similar *nonminority juror*." (Cleaned up.) *State v. Kirk*, 2019-Ohio-3887, ¶ 24 (8th Dist.); *see Miller-El*, 545 U.S. at 241 ("If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*'s third step."). Because the alternate juror was the same race as the challenged juror, the State's failure to excuse her did not serve as evidence of purposeful discrimination.

{¶42} We accordingly hold that Cooper has failed to demonstrate that the State treated similarly-situated jurors differently, and we overrule Cooper's first assignment of error.

III. Evid.R. 404(B) and Other-Acts Evidence

{¶43} In his second assignment of error, Cooper argues that the trial court improperly allowed J.E. to testify in violation of Evid.R. 404(B) about a prior altercation Cooper had with hotel staff. Cooper specifically challenges the admission of the following exchange.

> STATE: Okay. So you had mentioned you were responding to a radio call from another employee?
>
> J.E.: Correct. We had issues prior to this that he was getting physical. We had to—
>
> DEFENSE: Objection, Judge. Relevance.
>
> STATE: Your Honor, under Evidentiary Rule 401, evidence is

relevant and it makes the matter more or less probable. So if [J.E.'s] state of mind is that the defendant had previously been physical with staff at the hotel, and what I expect his further testimony will be that the defendant was trespassed to the hotel, it would explain his actions there that day, and it would also explain why he took the steps that he took.

THE COURT: Thank you. I will overrule the objection. You may answer.

J.E.: So yes, we had prior experience with him when he was employed with the company. He came to work intoxicated.

DEFENSE: Objection, Judge. Relevance. It's a matter at hand. They are alleging events up to maybe a year ago.

THE COURT: I'll sustain that objection.

. . .

STATE: And why in that situation did you decide to radio additional staff?

J.E.: I've dealt with [Cooper] before, and it was just—he's a problem. He goes to violence.

DEFENSE COUNSEL: Objection, Judge.

STATE: Judge, I think it explains his state of mind and what he's doing at the event, why he's radioing for security, why he's concerned about the defendant being present in the hotel again.

DEFENSE COUNSEL: But throwing out just adjectives and allegations without any foundation is way more prejudicial than probative.

THE COURT: Overruled.

{¶44} Cooper argues that J.E.'s testimony that the hotel had prior issues with Cooper being violent and that Cooper "goes to violence" was improperly admitted. A trial court's admission of evidence is typically reviewed for an abuse of discretion. *State v. Carson*, 2019-Ohio-4550, ¶ 22 (1st Dist.).

{¶45} Although Cooper raises an Evid.R. 404(B) objection to this testimony on appeal, he *did not* object on that ground below. Rather, as the preceding excerpt from trial establishes, Cooper objected on relevancy grounds to J.E.'s testimony that Cooper had been "physical" in the past, and his objection to J.E.'s testimony that Cooper "goes to violence" was based on the State's failure to lay a proper foundation.

{¶46} An "objection on grounds of relevancy does not trigger Evid.R. 404(B)." *State v. Hernandez*, 2018-Ohio-5031, ¶ 5 (8th Dist.). Where a defendant objects to a statement offered at trial on grounds of relevancy or lack of foundation, but does not raise an Evid.R. 404(B) objection, the trial court is not provided with an opportunity to evaluate the statements to determine if they are in contravention of Evid.R. 404(B). *State v. Durbin*, 2025-Ohio-5724, ¶ 55 (1st Dist.). The admission of the testimony in the absence of an Evid.R. 404(B) objection below is accordingly reviewed for plain error. *Id.*

{¶47} Cooper has not advanced a plain-error argument, and we have "repeatedly held that we need not analyze plain error when appellant has failed to make a plain-error argument." (Cleaned up.) *State v. Davis*, 2026-Ohio-2102, ¶ 20 (1st Dist.). We accordingly overrule Cooper's second assignment of error.

{¶48} In his third assignment of error, Cooper argues that the trial court erred by admitting overly prejudicial details about the prior episode of violence involving Cooper in violation of Evid.R. 404(B). He contends that defense counsel "opened the door" to a limited explanation of the prior incident based on her questioning of J.E. on

cross-examination, but that the trial court permitted the State to exceed that narrow opening.

{¶49} On cross-examination, defense counsel asked J.E., "You said you had previous interactions with Mr. Cooper where he had been violent where you had actually previously pepper sprayed him, correct?" J.E. responded, "I had."

{¶50} On redirect examination, the State delved into the details of this prior interaction. J.E. testified that Cooper had "lunged forward to attack my HR Director who was trying to get him off the premises" and that he had suspected Cooper of being under the influence because Cooper "was saying he was Batman, Bruce Wayne, and he owned the hotel and we were all fired." J.E. stated that he pepper sprayed Cooper because he believed that Cooper was going to hit a fellow employee and had threatened J.E. No objection was raised to any of these statements offered by J.E.

{¶51} The State asked J.E. a follow-up question about what substance Cooper had been under the influence of during the prior altercation. Cooper objected on the grounds that the question had been "[a]sked and answered" and was irrelevant. The trial court sustained the objection to the extent that it inquired about a particular substance causing intoxication, but it held that the State could question J.E. about the reason that Cooper was fired. J.E. then testified, "We believed he was under the influence of some substance, and HR—we were going to call for a drug test, breath test, and that's when he got all violent and he had threatened the HR Director and stuff, so he had to go."

{¶52} Cooper then objected "to the characterization of any violence, absent any proof." The trial court overruled Cooper's objection, stating that it would "instruct the jury to treat the—any terms of English in their normal customary usage, so they will determine the term 'violence' within the context of his comments."

{¶53} Cooper argues on appeal that this line of questioning was admitted in violation of Evid.R. 404(B). He concedes that defense counsel opened the door to a limited explanation of the prior incident by specifically asking J.E. if he had previously pepper sprayed Cooper, but he argues that the State elicited more information than was necessary to explain the incident.

{¶54} But Cooper failed to object to these statements below on Evid.R. 404(B) grounds. In fact, no objection was raised to J.E.'s initial statements that Cooper now challenges, and when Cooper did later object to J.E.'s testimony given in response to the State's follow-up question, his objection was based on "the characterization of any violence, absent any proof." Because Cooper failed to raise an Evid.R. 404(B) argument below, he is limited to plain-error review on appeal. *See Durbin*, 2025-Ohio-5724, at ¶ 55 (1st Dist.). And because Cooper has not advanced a plain-error argument and this court will not craft one for him, we overrule Cooper's third assignment of error.

IV. Cumulative Error

{¶55} In his fourth assignment of error, Cooper argues that the cumulative effect of the trial court's evidentiary errors deprived him of a fair trial. Because Cooper has failed to demonstrate that any error, let alone cumulative error, occurred below, we overrule this assignment of error.

* * *

{¶56} Having overruled Cooper's assignments of error, we affirm the trial court's judgments.

Judgments affirmed.

KINSLEY, P.J., and **NESTOR, J.,** concur.