

No. 25-

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IN THE  
**Supreme Court of the United States**

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JUSTIN FAIR,

*Petitioner,*

*v.*

THE STATE OF LOUISIANA,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
LOUISIANA SUPREME COURT AND  
LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

Jury venires in Assumption Parish, Louisiana are not a fair cross section of the community. To circumvent state law – which requires a pre-trial written objection and hearing – the courts withhold information such as race, gender, or age from the venire list and, thereafter, provide the venire list to defendant the morning of trial. Disparities in the racial, age, and gender make-up of the venire are revealed only when the prospective jurors are observed at trial.

Is the court's barrier to a timely venire list a violation of the Due Process Clause of the Fourteenth Amendment that deprives a defendant of his right to a fair and impartial truly representative jury under the Sixth and Fourteenth Amendments of the U.S. Constitution?

Second, the Constitution forbids striking even a single prospective juror for a discriminatory purpose. Does the stark evidence of the prosecutor's discriminatory use of peremptory challenges to excuse four of five African Americans violate the prima facie rule of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) which requires the state to provide race neutral reasons for the exclusions so as to ensure the defendant's fair trial right by an impartial jury under the Sixth and Fourteenth Amendments to the U.S. Constitution?

**LIST OF PARTIES AND  
STATEMENT OF RELATED CASES**

All parties appear in the caption of the case on the cover page:

Respondent-Appellee, State of Louisiana, through the District Attorney for the Parish of Assumption

Petitioner-Appellant, Justin Fair, an individual incarcerated in the State of Louisiana

*State of Louisiana v. Justin Fair*, No. 2024-0759, Louisiana First Circuit Court of Appeal, Judgment entered July 11, 2025

*State of Louisiana v. Justin Fair*, No. 2025-00933, Louisiana Supreme Court, Judgment entered January 21, 2026; No other cases are directly related.

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## OPINIONS BELOW

The opinion of the State of Louisiana Court of Appeal, First Circuit, with one judge dissenting and assigning reasons, *State v. Fair*, 417 So. 3d 1166; 2024-0759 (La. App. 1 Cir. 07/11/25), is attached as **Pet. App. A, 1a-34a**.

The opinion of the Supreme Court of Louisiana denying the defendant's application for a Writ of Certiorari for discretionary review, with one judge dissenting and assigning reasons, *State v. Fair*, 424 So. 3d 1092; 2025-00933 (La. 01/21/26), is attached as **Pet. App. B, 35a-37a**.<sup>1</sup>

## JURISDICTION

The majority of the Louisiana Supreme Court entered judgment against the Petitioner, denying discretionary review, on January 21, 2026, **Pet. App. B, 35a-36a**. This petition is filed within 90 days of that date. Accordingly, this Court has jurisdiction to review the judgment of the Louisiana Supreme Court, declining to review the decision of the Louisiana Court of Appeal, First Circuit. SUP. CT. R. 13(1); 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS AND AUTHORITIES INVOLVED

1. *The Sixth Amendment to the United States Constitution* provides in relevant part: “In all criminal

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1. Hereafter, citations to the appendices will be cited as “Pet. App. A, \_\_a or Pet.App. B, \_\_a.” Citations to the record below will be cited as “R. \_\_” according to the designations set for the appellate record filed with the Louisiana, First Circuit Court of Appeal.

prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, . . .”

*2. The Fourteenth Amendment to the United States Constitution* provides in relevant part: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

### **STATEMENT OF THE CASE**

Justin Fair went to help Rheshea Simon secure a U-Haul for a church function on March 27, 2021. However, he found Ms Simon’s husband, Ronnie, with her. Although Mr. Simon rejected Mr. Fair’s help, Mr. Fair followed them to Sagona’s Hardware store where Mr. Simon approached Mr. Fair’s car “to see what his problem was.” (R.200,204,205,206) Mr. Simon said that he was feeling “defensive” when Mr. Fair also got out of his car (R.201) but he “blacked out” and did not know what happened. (R.201,205) The security video shows an altercation in the parking lot before both cars drove away. Mr. Simon received stitches for a single wound to the outer left side of his chest, under his armpit. (R.189-190, 192-194,202) Justin Fair was charged with the alleged attempted second degree murder of Ronnie Simon Jr., in violation of L.S.A.-R.S. 14:27(30.1). (R.28)

On the morning of the August 3, 2022 trial, Justin Fair was provided the petit jury list for the first time (R.54-62), showing the 35 persons drawn from the central jury list of 200 people from an Assumption Parish population of over 20,000. Neither the central jury list or the petit jury list showed the race or gender of any juror, but they provided a year of their birth. (R.63-65) Only 7 of the 200, or 3.5%, were born in the year 2000 or after,<sup>2</sup> although that age group formed 11% of the population. It was impossible to determine the number of jurors in the central jury pool of 200 who were African American. By observations documented in the record, only 5 African Americans were called for the 35 prospective petit jurors from the venire of 200. In a parish where African Americans comprised 29% of the population, the five black jurors were .025% of the central jury venire and 14% of the petit jury list for voir dire. (R.458,462)

A twelve person jury was selected with both the State and the defendant using all twelve peremptory challenges allotted. The State used four of their peremptory challenges to excuse four of the five African Americans, one of whom was also in the underrepresented age group. The defense's *Batson* challenges to the jury venire and to the State's exercise of peremptory challenges were denied. (R.13-15,456-464)

The jury rejected Mr. Fair's self defense claim but returned the lesser verdict of attempted manslaughter.

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2. Conversely, 13% of the population of Assumption Parish in 2022 was comprised of citizens over 70 years of age and the central jury pool listed 26 jurors from this age group, or exactly 13%, who were served yet excused because of age.

The district court sentenced Justin Fair to 20 years at hard labor. (R.25,251, 252-253)

On appeal, one judge dissented and assigned reasons regarding the *Batson* issues, while the two judge majority of the Louisiana First Circuit Court of Appeal affirmed the conviction and sentence in *State v. Fair*, 417 So.3d 1166; 2024-0759 (La. App. 1 Cir. 07/11/25). One judge dissented and assigned reasons to the majority of the Louisiana Supreme Court's denial of discretionary review of the jury issues. *State v. Fair*, 424 So. 3d 1092; 2025-00933 (La. 01/21/26)

### **REASONS FOR GRANTING THE WRIT**

Whether deliberate or negligent, the Assumption Parish jury practices prevented Mr. Fair and other black defendants from receiving a fair trial by denying information needed to challenge the central venire until the morning of trial when it is too late to meet the procedural requirements. Moreover, despite the stark statistical evidence of the prosecutor's discriminatory use of strikes to exclude four of the five African Americans who had made it on to the central jury venire and then into the courtroom for possible petit jury service, the trial court failed to find a prima facie case or require the State to provide race neutral reasons for the exclusions. The Louisiana courts' abject failure to grapple with a jury that was empaneled from an unfair cross-section, in violation of the Equal Protection clause of the Fourteenth Amendment, compounded by the prosecution's discriminatory use of peremptory challenges in violation of the Sixth Amendment right to an impartial jury, require the Court's intervention.

**ARGUMENT****Jury Venire Composition Errors Compounded  
By Denial Of Batson Challenges**

It has long been established that racial groups cannot be prevented from jury service, either by exclusion from the venire from which a jury is selected or from individual discriminatory challenges. That constitutional principle was first set forth under the Equal Protection Clause of the Fourteenth Amendment's prohibition of unequal treatment in general and racial discrimination in particular.<sup>3</sup> Later, in *Taylor v. Louisiana*, 419 U.S. 522, 530, 95 S. Ct. 692, 697-98, 42 L. Ed. 2d 690 (1975), the Court held that a fair-cross-section venire requirement is derived from the Sixth Amendment protection of how an "impartial jury" is assembled.<sup>4</sup>

On the morning of trial, Justin Fair, a black male, and his attorney observed that only five members of the jury pool appeared to be African American, information that

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3. *Strauder v. West Virginia*, 100 U.S. 303 (1880) struck down a West Virginia law that excluded blacks from jury service only 12 years after the Fourteenth Amendment was enacted

4. *Taylor*, 419 U.S., at 527; *Holland v. Illinois*, 493 U.S. 474, 478-479 (1990). A jury that represents a fair cross-section of the community enables "the commonsense judgment of the community [to serve] as a hedge against the overzealous or mistaken prosecutor and in preference to the professional or perhaps overconditioned or biased response of a judge." *Id.* at 530, 95 S. Ct. at 698. It also helps legitimize the legal system and is "critical to public confidence in the fairness of the criminal justice system." *Id.* Finally, it encourages civic participation through the shared administration of justice. *Id.*

was not included on the jury venire provided that morning. Assumption Parish, Louisiana, in 2022, had a population that was 65% white, 29% black and 6% other race and ethnicity.<sup>5</sup> Eleven percent of the population was in the 20-29 year old age group. The jury venire lists produced for all trials in Assumption Parish, such as the list of 200 names given to Mr. Fair’s counsel, provides a year of birth for each prospective juror, but does not list the gender or race of the prospective jurors. Of the 200 names listed, only seven were born after the year 2000.<sup>6</sup> (R.463-464) The Assumption Parish practice of withholding the insufficient venire list until trial is a barrier to Mr. Fair’s exercise of his right to challenge the inadequacy of the venire.<sup>7</sup> All he could do was object that the observed jurors were not a fair cross section of the community.

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5. See e.g. <http://censusreporter.org/profiles/05000US22007-assumption-parish-la/> or [https://data.census.gov/profile/Assumption\\_Parish,\\_Louisiana?g=050XX00US22007](https://data.census.gov/profile/Assumption_Parish,_Louisiana?g=050XX00US22007) or <https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/louisiana/county/assumption-parish>

6. See **Pet.App B, 37a**

7. In *Duren v. Missouri*, the Court defined a three-part test for establishing a prima facie violation of the fair cross-section requirement. 439 U.S. 357, 364, 99 S. Ct. 664, 668, 58 L. Ed. 2d 579 (1979): (1) the group alleged to be excluded is a “distinctive” group in the community; (2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is due to systematic exclusion of the group in the jury-selection process. *Duren*, 439 U.S. at 364, 99 S. Ct. at 668. If the defendant establishes a prima facie case, the burden shifts to the state to justify the disproportionate representation by proving “a significant state interest” is “manifestly and primarily advanced” by the causes of the disproportionate exclusion. *Id.* at 367-68, 99 S. Ct. at 670.

When Mr. Fair later made a *Batson* challenge to the State's discriminatory exercise of peremptory challenges, the trial court noted that it was "physically impossible" to comply with the procedural rules to challenge the venire, and so allowed Mr. Fair's counsel to raise issues to the lack of proportional representation on the jury venire "to reserve them," but overruled the argument. (R.463-464) As to the *Batson* challenge itself, Mr. Fair showed that of the twelve peremptory challenges allowed to the State,<sup>8</sup> four were used to exclude African Americans, leaving only one African American to serve on the jury. Yet the trial court found no *prima facie* showing and required no explanation by the State. (R.456-462) The Louisiana appellate courts did not correct either of the Constitutional violations created by the Assumption Parish jury procedures or the State's discriminatory actions that prevented Mr. Fair from receiving a fair trial by a jury of his peers.

### **Barrier to Challenging General Venire**

A criminal defendant has a right, under the Sixth and Fourteenth Amendments of the U.S. Constitution, to a petit jury selected from a fair cross section of the community. A petit jury must be chosen from a central venire that is selected according to law.<sup>9</sup> Louisiana law requires that a motion to quash, the singular method of

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8. The number of peremptory challenges in a trial for an offense punishable necessarily by imprisonment at hard labor is fixed at twelve by La. Const. art. I, § 17(A); La. C.Cr.P. Art. 799.2

9. *State v. Jacko*, 444 So.2d 1185 (La. 1984); *State v. Procell*, 332 So.2d 814 (La. 1976); La. Sup. Ct. R. 25, 26.

raising “fair cross-section” challenges to the venire,<sup>10</sup> must be made in writing before trial, and decided before trial.<sup>11</sup>

The 23<sup>rd</sup> Judicial District Court in Assumption Parish avoids a challenge to the composition of the jury venire by withholding the list until the day of trial so that the race, age and gender are not known until the defendant gets to court on the day of voir dire and physically views the prospective jurors. (R.463-464).<sup>12</sup> As noted by the trial court, it was “physically impossible” to comply with the procedural requirements for a challenge. Although a defendant has no right to a jury of any particular racial composition, the Court has long held that the State cannot act so as to deprive a defendant of his right to a venire that is “truly representative of the community.” *Smith v. Texas*, 311 U.S. 128, 130 (1940).

The Petit Jury list, filed in the record (R.54-62), shows 200 people of unknown race and gender were served for the term beginning July 5, 2022, for the trial date of

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10. In *State v. Thompson*, 324 So. 3d 113; 2020 0023 (La. App. 1 Cir. 04/16/21), the Court said that the proper procedural vehicle for alleging that the general or petit jury venire was improperly drawn, selected, or constituted is a motion to quash. La. C.Cr.P. Art. 532(9). La. C.Cr.P. Arts. 521, 532(9), and 535(C); *State v. Pooler*, 96-1794 (La. App. 1st Cir. 5/9/97), 696 So.2d 22, 39, writ denied, 97-1470 (La. 11/14/97), 703 So.2d 1288.

11. La. C.Cr.P. Art. 531-536.

12. Indeed a previous attempt to make a challenge to Assumption Parish venire was thwarted for that very reason. *State v. Thomas*, 2019-0409 (La. 1st Cir. 10/25/19), 289 So. 3d 1030, writ granted in part and remanded on other grounds, 2019-01819 (La. 6/22/20), 297 So. 3d 727 (per curiam).

August 3, 2022. Of the 200 prospective jurors, 79 appeared for trial and 45 were absent. The venire list states the year that the 200 jurors were born, showing that citizens over 70 years of age were fairly represented as they comprised 13% of the population of Assumption Parish in 2022 and 26 of that age group were served, although they were then included in the group of 77 prospects who were excused for age or medical reasons, postponed, or were not served.

However, the central venire was not representative of persons born in the year 2000 or after or of African Americans. Only 7 of the 200, or 3.5%, were born between 2000 and 2024, although that age group formed 11% of the population. It was impossible to determine the number of jurors in the central jury pool of 200 who were African American. From the 79 citizens who appeared on the date of trial and the petit jury list of 35 who were called into the courtroom for Mr. Fair's trial (R.63-65,458,462), by observations documented in the record, there were only 5 African Americans. In a parish where African Americans comprised 29% of the population, the five black jurors were .025% of the central jury venire and 14% of the petit jury list for voir dire. (R.458,462)

Mr. Fair's counsel also participated in *Thomas*, supra, and understood that some showing of the disparity had to be made before trial began, even where there was no opportunity to file a written motion to quash. Mr. Fair's defense counsel scrambled to identify and count the number of African Americans and young people on record and articulate the objection to the disparate representation of the community's demographics, contrary to the Louisiana Court of Appeal's mistaken finding that, "Initially we note there is no indication Assumption Parish employed an improper system."

The Assumption Parish discriminatory system has persisted since 2018 when the *Thomas* case was tried. In *Thomas*, supra, the defense asserted that the racial makeup of the jury venire was not representative of the Assumption Parish population, as most jurors were drawn from two predominantly white communities. In *Thomas*, the motion for new trial alleged that communities in the parish with a larger African-American population systematically were not served with jury summons.<sup>13</sup> Thomas' post-verdict request for a hearing to determine if the Assumption Parish procedures had resulted in the under-representation of African-Americans on the venire was denied. The Louisiana First Circuit found that the issue was not preserved timely.

While the Louisiana Supreme Court in *Thomas* denied discretionary review, one judge concurred but added, "*This matter presents a clear allegation of racial discrimination concerning the selection of Black citizens for the Assumption Parish Jury Pool. The troubling disparity between the percentage of potentially eligible Black jurors in Assumption Parish and those who were summoned for jury duty implicates fundamental rights.*"<sup>14</sup> The concurring judge, then suggested the remedy that was requested by Mr. Fair here but also denied:

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13. In *Thomas*, the defense proffered the list of 275 venire members dated September 26, 2018, which contained the names and addresses of the petit jury venire. Defendant also proffered a list of Assumption Parish polling places and the number of registered voters by party and race. (Ex. "Assumption Parish Poll Place Name and Location & Registered Voters by Party and Place").

14. *State v. Thomas*, 19-1819 (La. 6/22/20), 297 So.3d 727, 728. (Johnson, C.J., concurring).

Defendant’s argument, at the very least, suggests that African Americans were systematically excluded from the jury selection process. Systematic exclusion of a specific class in the source or sources from which the jury venires are chosen is precluded by law and, along with being denied a hearing on the matter despite raising a timely objection, would be an injustice upon defendant.<sup>15</sup>

The jury venire system appears to have worsened in Assumption Parish between Thomas’ 2018 trial and Justin Fair’s 2022 trial. In *Thomas*, 56 African Americans were served with jury duty summons and were present from a central venire of 275, or a 20% representation. In Mr. Fair’s trial, the five black jurors were only .025% of the central jury venire and 14% of the petit jury list. Yet the Louisiana courts avoid considering the issue.

The defendant must “raise the issue before voir dire began” but must raise it before appeal<sup>16</sup> or it is waived.

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15. Citing “A general jury venire ‘shall not be set aside for any reason unless fraud has been practiced, some great wrong committed that would work irreparable injury to the defendant, or unless persons were systematically excluded from the venires solely upon the basis of race.’ *State v. Lee*, 559 So.2d 1310, 1313-14 (La. 1990), cert. denied, 499 U.S. 954, 111 S.Ct. 1431, 113 L.Ed.2d 482 (1991)”; See also La. C.Cr.P. Art. 416-419.

16. *Thompson*, supra, at 117, citing LSA-C.Cr.P. Art. 841; *State v. Thibodeaux*, 2016-0994 (La. 10/27/17), 227 So. 3d 811, 812 (per curiam); *Segura v. Frank*, 93-1271, 93-1401 (La. 1/14/94), 630 So. 2d 714, 725, cert denied sub nom, *Allstate Insurance Co. v. Louisiana Insurance Guaranty Association*, 511 U.S. 1142, 114 S. Ct. 2165, 128 L. Ed. 2d 887 (1994)

Justin Fair did not waive the issue in this case. After his experience in the *Thomas* case, Mr. Fair's counsel, Mr. Jones, raised the issue as soon as he had the information, upon seeing the racial makeup and ages of the prospective jurors when he arrived at court for trial, as well as noting the barrier created by Assumption Parish practice and the procedural requirements:

THE COURT: . . . But if the makeup of the juror isn't—or if the venire list isn't relative to the population, then you may have a separate issue,

MR. JONES: *Well, how would I—and I want to make this argument, too. How would I know that if I'm not given notice of the race of the persons until I'm actually here? We went through the same thing with State versus Kirby Smith.*

THE COURT: *I always thought it was included on that venire list.*

MR. JONES: *It's not. So—and, If you know, that was a whole deal with that case. I don't know that until I get here on the morning of, And I can't file a motion to quash the jury venire based on that, because I don't know. I don't have that information.*

THE COURT: I'll let you put the argument on the record just to reserve it for appeal purposes, if necessary,

MR. JONES: Well --

THE COURT: But I know the constitutional case law is saying if the makeup doesn't represent, you know, the proper percentage of the population, then . . .'

MR. JONES: And the only reason I'm doing that is because I got hammered in the Kirby Thomas case with that—that same issue. The Court of Appeals said that—or one justice on the Court of Appeals said that I should have filed a motion to quash prior to the seating of the voir dire.

THE COURT: *I think that's a physical impossibility.*

MR. JONES: *My point very well taken. So --*

THE COURT: *Especially if the venire list doesn't have the race of the potential jurors on it.*

MR. JONES: *So I just want to make that record clear, in this particular case, you know, that's—so if it goes up on appeal they understand that.*

THE COURT: You're reserving—or you're making the argument or reserving the right to argue for appeal purposes that the venire makeup wasn't representative of the actual population percentages, I guess, for lack of a better word? . . .

MR. JONES: I won't make that mistake twice.

THE COURT: Just show he's reserving it for the record. Just make an objection. I'm going to deny it now, but then that way he's got it on the record. (R.463-464)

America's trial judges bear "the primary responsibility to enforce *Batson* and prevent . . . discrimination from seeping into the jury selection process."<sup>17</sup> The trial judge in Justin Fair's case acknowledged the problematic jury venire but abdicated his responsibility, took no action to correct it, other than kicking the case up the chain for an appeal where the majorities of the Louisiana Court of Appeal and Supreme Court did the same. The dissenting judges on each appellate level pointed out the discrimination that occurred in Justin Fair's jury composition and selection.

The majority of the Louisiana Court of Appeal incorrectly found the above quoted exchange to be deficient because "defense counsel did not attempt to present any argument or evidence to show the venire was improperly drawn and did not move to quash the venire."<sup>18</sup> Apparently the Court of Appeal missed the trial court's acknowledgment about the filing of a motion to quash: "*I think that's a physical impossibility. . . . Especially if the*

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17. *Flowers v. Mississippi*, 588 U.S. 284, 302, 139 S.Ct. 2228, 204 L.Ed.2d 638 (2019).

18. The majority of the Court of Appeal mistakenly found that neither *Thompson* nor the *Cannon* decision "provide(s) grounds to disregard the defendant's failure to follow the proper procedure for raising a jury venire challenge."

*venire list doesn't have the race of the potential jurors on it.*" Counsel for Mr. Fair did all that the Assumption Parish practices for jury selection allowed him to do. On appeal, Justin Fair's request for remand for a hearing to develop the issue was denied.

The majority of the Louisiana Court of Appeal erred in finding "any potential grounds for a motion were waived." Justin Fair objected and documented the issue of the lack of young adults and African Americans from the jury pool *before* trial, arguing that African Americans and young people were underrepresented. On this *prima facie* showing that Justin Fair was denied due process and a jury from a fair cross section, the trial court should have recessed to conduct a full hearing to determine if the venire was fairly comprised and whether jury duty summons were inadequately served on those listed, resulting in the under-representation of African-Americans and people aged 18-22 on the venire.

The record shows at least a *prima facie* case of discrimination. One judge dissented to the Louisiana Supreme Court's denial of discretionary review in this case, writing (Pet.App. B2):

I would grant and docket to consider the applicant's claims of race and age discrimination. . . . The State recognizes—but does not argue against—the applicant's claims of age discrimination. Of the two hundred perspective jurors, only seven were born after the year 2000. Failure to include younger adults in jury service only serves to further erode respect for such service. This Court has

already quashed a general venire under similar circumstances. *State v. Cannon*, 19-0590 (La. 4/18/19), 267 So. 3d 585, 586.<sup>19</sup>

The lone dissenting judges in the Louisiana Court of Appeal and Louisiana Supreme Court could not get Justin Fair a fair jury trial, or even a hearing about the Assumption Parish jury process. Assumption Parish continues to successfully evade the issue of discrimination in the drawing and disclosure of the jury pool nearly seven years after the trial that led to the *Thomas* decision. As Justin Fair's case illustrates, the systemic discrimination persists and requires the Court's intervention, particularly where the Louisiana Supreme Court has failed to resolve the problem.

The Petition should be granted, the conviction should be vacated and the case remanded for new trial with a jury from a properly constituted venire. Minimally, the case should be remanded for a hearing on the composition of the general venire and to determine if persons otherwise qualified to serve on the jury were given an opportunity to serve; whether their names were excluded from the general venire as a result of a significant error in the process; whether summons were issued and properly served; and whether the exclusion resulted in a general

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19. In *State v. Cannon*, the Court granted a new trial when persons born after 1993 were left off the jury rolls because of a computer error, resulting in a general venire that was improperly constituted under state law. La. C.Cr.P. Arts. 401 et seq. and La. Const. Articles I, § 3 (“No person shall be denied the equal protection of the laws.”) and V, § 33 (“A citizen of the state who has reached the age of majority is eligible to serve as a juror within the parish in which he is domiciled.”).”

venire that was improperly constituted under the Constitution.

***Batson* Challenge: Discriminatory  
Use of Peremptory Challenges**

“The Constitution forbids striking even a single prospective juror for a discriminatory purpose.” *Flowers v. Mississippi*, 588 U. S. 284, 303, 139 S. Ct. 2228, 204 L. Ed. 2d 638 (2019).<sup>20</sup> Under *Batson* and *Flowers*, a pattern of strikes against jurors with the same race suggests that a prosecutor is striking jurors based on impermissible stereotypes about those protected characteristics rather than the juror’s individual views.

At Mr. Fair’s trial, the court conducted voir dire in groups of fourteen prospective jurors after screening for qualifications as to residency, age, and hardship. In the first round, the State used two peremptory challenges, each to exclude a black male. (R.352,355) There were no African American prospective jurors on the second panel. (R.412-415) In the third round of voir dire, the State used all of the remaining challenges, including one backstrike, to remove two black female jurors. The defense raised a *Batson* challenge as four of the State’s peremptories were used to strike all but one of the only five African American jurors who had been served, appeared, and made it into the jury box for voir dire. (R.456-462):

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20. See also *Foster v. Chatman*, 578 U. S. 488, 499, 136 S. Ct. 1737, 195 L. Ed. 2d 1 (2016); *Snyder v. Louisiana*, 552 U. S. 472, 478, 128 S. Ct. 1203, 170 L. Ed. 2d 175 (2008).

MR. JONES:<sup>21</sup> Judge, I'm going to say Batson. He struck every black juror, every last one of them.

MR. DAIGLE: No.

THE COURT: I don't have race on my sheets, but if you want to . . .

MR. DAIGLE: We have Danielle Bell. (R.456). . . .

THE COURT: That's the only African American individual on the jury?

MR. JONES: Yep.

MR. DAIGLE: Yep. (R.457)

In *Batson v. Kentucky*, 476 U.S. 79,93-98, 106 S.Ct. 1712, 1721-1724, 90 L.Ed.2d 69 (1986), the United States Supreme Court adopted a three-step analysis to determine whether the constitutional rights of a defendant or prospective jurors have been infringed by impermissible discriminatory practices.<sup>22</sup> First, the defendant must make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race. Second, if the requisite showing has been made, the burden shifts

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21. Mr. Jones is the defense attorney; Mr. Daigle is the prosecutor.

22. As cited in *State v. Kitchen* 231 So. 3d 849; 2017 0362 (La. App. 1 Cir. 09/15/17); *State v. Handon*, 2006-0131, pp. 3-4 (La. App. 1 Cir. 12/28/06), 952 So.2d 53, 56.

to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination.

The judge admitted that he was not keeping track of race on his list (R.63-65) and the clerk acknowledged, “They don’t do that anymore. Race is not included, race and gender.” (R.457) The judge and clerk reconstructed the challenges “by memory,” with the parties’ input. The trial judge then reviewed the State’s peremptory challenges to two black male jurors, Mr. Buggage and Mr. Lovincy, in the first round and two black female jurors, Ms Sargent and Ms Hardnett in the thrid round, to eliminate four of the five African American prospects. (R.458-461)

After the review, Mr. Fair’s attorney repeated his complaint against the State’s prima facie prejudicial pattern several times: “They didn’t have that many blacks in the panels anyway. But he struck all of them except for one. . . . The ones that they had, he struck all except for one and which is Ms. Danielle Bell. . . . He struck all of the African American jurors in the panel with the exception of one.” (R.459-460) The judge asked again before ruling:

THE COURT: So we’ve got four strikes used on African American potential jurors and eight used on potential white jurors. So based on that case, what’s your argument, Mr. Jones? . . . So based on that case, what’s your argument, Mr. Jones?

MR. JONES: *Well, Judge, I mean, first of all, there were only a certain number—the pool*

*wasn't a lot of African Americans.* But the ones that they did pick out of the pool, to go through the voir dire process, he struck them all except—with the exception of Danielle Bell.

THE COURT: As far as a prima facie showing initially, if I look at—just looking at the strikes, I don't remember if you gave me the reasons or not when they struck or just offered the preemptory challenge. I'm just looking at this case I just let y'all read, You may—I don't think there's a Batson issue now, just because of the numbers of white and black jurors both struck. (R.462-463)

The trial court's math is wrong and fails to consider the defendant's complaint that there were less black jurors comparatively to start. The trial court erred in comparing only the count of challenges rather than the percentages. The State used a third of its preemptory challenges to exclude 80% of the black jurors who appeared for voir dire in Mr. Fair's case, while at the same times using 8 or two-thirds of their preemptory challenges to remove 27% of the 30 white jurors who were called. The math clearly shows a prima facie case of prejudicial use of preemptory challenges. The trial court failed to require the State to make a race neutral explanation for the four challenges.

To establish a prima facie case, the defendant must show: (1) the defendant is a member of a cognizable group and the prosecutor exercised preemptory challenges to remove venire members of the defendant's race; (2) the challenge was preemptory rather than for cause; and (3) relevant circumstances sufficient to raise an inference that

the prosecutor struck the venire person on account of his being a member of that cognizable group.<sup>23</sup> The trial court can “effectively collapse the first two stages of the *Batson* procedure, whether or not the defendant established a prima facie case of purposeful discrimination.”<sup>24</sup> An African American defendant alleging that members of his race have been impermissibly excluded from the venire may make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. *Batson*, 476 U.S. at 93-94.

Justin Fair is black (R.27a) and thus, a member of the same cognizable group, as the four excluded jurors. The prosecutors eliminated the two most like Mr. Fair, the black males, in the first round. Those were the only two peremptory exceptions the State used in that round. Because of the venire issues previously addressed, there were no black prospective jurors on the second panel. In the third round, the prosecutor eliminated a juror, Ms Hardnett, who was a member of both under-represented groups, young and black. Finally, the prosecutor, without any more or new information, used a backstrike to reject Ms Sargent, who he had initially found “acceptable.” In all, he shut out four of the five venire members of Justin Fair’s race who made it to voir dire in Assumption Parish. **A single black person was allowed to remain on the twelve person jury in a parish where almost a third of the citizens are black.** Justin Fair made a prima facie

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23. *Batson*, 476 U.S. at 96, 106 S.Ct. at 1723.

24. *State v. Jacobs*, 99-0991, p. 8 (La. 5/15/01), 803 So.2d 933, 941, cert. denied, 534 U.S. 1087, 122 S. Ct. 826, 151 L. Ed. 2d 707 (2002).

case of discrimination which the State was required to explain.<sup>25</sup>

Challenges to jury selection based on unconstitutional proxies like race<sup>26</sup> exist to protect the equal protection rights of “potential jurors, as well as [defendants], . . . to jury selection procedures that are free from state-sponsored group stereotypes.” *Ibid.* These challenges guard against prosecutorial bias: not only the perception that a prospective juror might favor a defendant because they share a protected characteristic, but that a prospective juror might hold a particular view because of a stereotype based on race or gender. See *Id.*, at 141-142, 114 S. Ct. 1419, 128 L. Ed. 2d 89; *Batson*, 476 U. S., at 104-105, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (Marshall, J., concurring). Notably, the Dissenting judge from the Louisiana First Circuit found (Pet.App.A22-23):

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25. In *State v. Myers*, 761 So. 2d 498, 499, 99-1801 (La. 04/11/00), in a burglary trial, Myers, an African-American, objected to the prosecution repeatedly using peremptory challenges to remove African-Americans from jury panel. The trial court did not respond to defense counsel’s protests, and proceeded with voir dire. The Court held that defense counsel’s protests were sufficient to raise the issue of an equal protection challenge and the trial court was obliged to rule on whether defendant made a prima facie case, and if so, to require race-neutral reasons for peremptory challenges. Because the court did nothing, the proper course was to remand for a hearing on equal protection issues or for new trial, but because the trial judge had died, a new trial was the only proper course.

26. See *Batson*, 476 U. S., at 96, 106 S. Ct. 1712, 90 L. Ed. 2d 69, or gender, see *J. E. B. v. Alabama ex rel. T. B.*, 511 U. S. 127, 128, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994).

In this case, it is undisputed that defendant made a timely objection to the prosecutor's removal of all but one of the African American persons on the venire. This showing alone demonstrates a "seriously disproportionate exclusion" of African Americans from the jury venire, thus raising an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race, and thereby establishing a prima facie case of purposeful discrimination.<sup>27</sup> Once the defendant made the requisite showing, the burden shifted to the State to explain adequately the racial exclusion. *Batson*, 476 U.S. at 94. However, the trial court then rejected defendant's challenge without requiring the prosecutor to give a race-neutral explanation for his actions. These facts warrant a remand of this case for further proceedings. Upon remand, if the trial court decides that the prosecutor has not come forward with a race neutral explanation for his action, petitioner's conviction should be reversed. See *Batson v. Kentucky*, 476 U.S. at 100.

"More powerful than these bare statistics, however, are side-by-side comparisons of [jurors with certain protected characteristics] who were struck and [jurors without those characteristics] allowed to serve." *Miller-*

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27. Further, a defendant of any race may raise a *Batson* claim, and a defendant may raise a *Batson* claim even if the defendant and the excluded juror are of different races. *Flowers v. Mississippi*, 588 U.S. 284, 301, 139 S.Ct. 2228, 2243, 204 L.Ed.2d 638 (2019); *Powers v. Ohio*, 499 U.S. 400, 415, 111 S.Ct. 1364, 1373, 113 L.Ed.2d 411 (1991).

*El v. Dretke*, 545 U. S. 231, 241, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (2005). After Mr. Fair provided the statistic showing a prima facie case, the State should have been required to explain why the peremptory challenges were used disproportionately against black jurors so that the side-by-side comparison of explanations of *Dretke* could be used to evaluate their discriminatory intent.

The numbers in Justin Fair’s jury selection process were substantially similar to those in *Snyder v. Louisiana*, where the court found a prima facie case and required the State to give explanations for the peremptory challenges. In the Court’s review, the State’s explanation for the peremptory challenge to only one of the black jurors was compared to the prosecutor’s acceptance of white jurors who had expressed comparable answers in voir dire. The same type of comparison was made in *Miller-El v. Dretke*, supra, where the Court noted, “Happenstance was unlikely to produce the disparity shown by the substantial percentage of black jurors who were struck, especially where white jurors with comparable views were not challenged.” Such a comparison was included as one of the “variety of evidence to support a claim that a prosecutor’s peremptory strikes were made on the basis of race” in *Flowers*.

In mistakenly finding that Mr. Fair did not show a prima facie case, the State was not required to provide race neutral explanations. While a comparison of the State’s explanations for the peremptories is not available, a comparison of the questions and answers in the voir dire in Justin Fair’s case by white jurors who were “acceptable” vis-a-vis the four excluded black jurors is eye-opening and demands a new trial.

Khloe Hardnett, a black female (R. 461), introduced herself as a 19 year old student at the local community college. She lived in Belle Rose, Louisiana and had no children. (R.365-366) Thus, Ms Hardnett was the member of both underrepresented groups: race and age. She said that she had no problem sitting in judgment (R.382), understood the aggressor doctrine and self-defense (R. 386), and that, other than family and religion, her career is the most important thing to her. (R. 400) On defense questioning, she said that if she were punched, she would punch back. (R.405) The State used a peremptory challenge to exclude her in the third round. (R.420)

Cheryl Sargent, a black female (R.456, 461), lived on Pelican Street in Labadieville. She was widowed with four grown children. She was retired from Food Service Management. (R. 294) Ms Sargent had served on a prior criminal jury where they convicted. (R.300) She also said that 20 years earlier she sat on a criminal case that Mr. Daigle handled. (R. 308) There were no follow up questions as to whether she was describing the same case. Ms Sargent said she will accept the law from the judge (R. 312) and decide the case "strictly by facts." (R.330) On questioning by the defense about the defendant's exercise of his right to not testify, she said:

MR. JONES: Okay. Ms. Sargent, you have that concerned look on your face. How do you feel about that? That makes you uncomfortable?

MS. SARGENT: Not really. I feel like if he's there, he has a right to present his side. And he has a right to present his side and the facts. (R. 336)

Ms Sargent said she has not formed any opinion about the case. (R. 340) The most important thing in her life other than family is “Wellbeing . . . meaning safety and security, peace.” (R. 344) ***The State accepted her on the jury*** (R. 354) but later used a peremptory backstrike to exclude her (R. 456) without any additional questioning or new information.

Kirby Lovincy, a black male (R. 459), introduced himself: “210 Virginia Street. Worked for Louisiana Department of Transportation; Separated; Three kids.” (R. 297) Mr. Lovincy knows Mr. Fair’s mother and father from church, but said he could still sit on the case and make a judgment call. (R. 311) Mr. Daigle asked, “You sure?” (R.312) and he confirmed. About police testimony having more or less credibility, he said, “The facts only—I’m just sticking to the facts only.” (R. 330) About the defendant’s exercise of his Fifth Amendment right to silence, Mr. Lovincy said, “I’d have to hear the facts and the evidence. He’s sitting there, but we don’t know what happened.” (R.336) The most important thing in his life is “safety.” (R.343) He agrees with the right to defend one’s self. (R.348) The State used a peremptory strike in the first round to exclude him. (R. 355)

Eugene Buggage, a black male (R.300), introduced himself: “Washington Street, Napoleonville, Louisiana. Retired, McDermott. Wife works in Donaldsonville at the Citi Trends.” (R.291) When asked if he had been a crime victim, he answered, “I have a nephew that has been in jail for a while. Just got out a couple of weeks ago,” (R. 298) but he said it would not effect him sitting as a juror. (R.299) Mr. Buggage served on a jury 10 years earlier in a sexual assault case that resulted in a not guilty verdict. (R.301) Mr. Buggage knows Mr. Fair’s family “very well”

as he lived near them but he only knows Justin Fair “to see him” and “knows nothing about the case.” (R.305-306) He said that his religion would not be a problem in judging another person. (R. 324) When asked by the defense about police officer testimony, Mr. Buggage said,

“Yeah, I said, ‘Yes. I have tendency to believe them,’ because they do like we did awhile ago. They take over (sic) for their job. So if they betray their oath, I think there should be consequences like we do, as well. So I think they have a tendency to.

The defense attorney cut him off. (R. 329) Mr. Buggage said it is important to him to have “health and ability to love.” (R. 345) The State immediately used a peremptory challenge to remove him in the first round. (R. 352)

Ms Harnett and Ms Sargent were ideal prospective jurors, with no red flags for either side to be concerned as to their abilities to be fair and follow the law. They were neither too eager to serve or too reluctant. Shelby Giroir, a white female, was a college student, like Ms Harnett. (R.366,399) When Ms Giroir was asked what was important to her, she gave an identical answer, “I think I would say, like, my future and my career, being that I am so young,” prompting the defense attorney’s observation: “Kind of like Ms. Hardnett. Both of you -guys are college students—or young ladies are college students.” (R.401) The State found Shelby Giroir “Acceptable” (R.415) but excluded Ms Hardnett.

Mr. Buggage’s closeness to the defendant’s family may have given a prosecutor pause, but his answers of

the whole were very similar to those of Jurors Penny Bernchoux and Pam Rivere, white females. Mr. Buggage, Ms Rivere (R.298) and Ms Bernchoux all had a relative who was incarcerated at the time they were being called to jury service. Unlike Mr. Buggage and Ms Rivere, Ms Bernchoux said that might influence her.(R.302,324-325) Ms Rivere, like Mr. Buggage, had also previously served on a jury which rendered an acquittal, Ms Rivere stating: “about ten years ago. I can’t tell you exactly what it was. He wasn’t guilty.” (R. 301) While the prosecutor found both Ms Bernchoux (R.356) and Ms Rivere “Acceptable” (R. 352), Mr. Buggage was eliminated.

While Mr. Lovincy had some familiarity with Mr. Fair’s family, he was adamant that it would not influence him. He did not know Justin Fair and did not know anything about the case. The prosecutor said Juror Sandy Fontenot, a white female, “had a look on her face” about missing work for jury duty. (R.316) She not only said she understood self defense, she made some arguments in favor of self defense and provocation. (R. 335) Nonetheless, after promising, like Mr. Lovincy had, to follow the law, the State found her “Acceptable,” while Mr. Lovincy’s pledge did not save him from exclusion. Even the judge commented about Ms Fontenot, “I was wondering what you were going to do. She’s the one that brought up the self defense stuff when you said that.” (R.352)

For none of the four eliminated jurors was the prosecutor’s discriminatory use of the peremptory challenge so clear as for Ms Sargent, who years ago had served on a jury and convicted the defendant in a case by this prosecutor. The white juror, Ms Bernchoux, had also previously had been on a jury that convicted someone. (R.302,325) It was an asset for jury service for

Ms Bernchaux’s “acceptable” finding. But without any new information after initially accepting Ms Sargent, the State used a peremptory to backstrike her.

The Louisiana courts continue to allow the practices noted in *Snyder*. As in *Snyder*, this comparison of the African-American jurors whom the prosecution struck with white jurors whom the prosecution accepted, despite shared issues, shows the peremptory strike against one or more of the four black jurors was motivated in substantial part by discriminatory intent. On the whole, these are “relevant circumstances sufficient to raise an inference that the prosecutor struck the venire person on account of his being a member of that cognizable group” and a prima facie case of discrimination was made under *Batson*. Minimally, the Court should grant this Petition, reverse and remand with the same order issued in *Snyder* as the situations are the same.

A defendant may establish a prima facie case of purposeful discrimination in selection of the petit jury **solely on evidence concerning the prosecutor’s exercise of peremptory challenges at the defendant’s trial**. Similar to *Snyder* and *Miller-El v. Dretke*, in this case, the numbers tell the story (80% of the black jurors were perempted) and established a prima facie case. The State’s tactics herein showed seriously disproportionate exclusion of African American or black jurors.

Also, the State took advantage of the Assumption Parish means of comprising the jury venire that led to a disproportionate number of white prospects. Finally, from the voir dire answers for the four black jurors who were excluded, there was no legitimate, race-neutral basis for the exercise of the State’s peremptories particularly when

compared to the answers of the white juror who were accepted by the State. As stated in *Snyder*, a peremptory strike *to even one juror* shown to have been motivated in substantial part by discriminatory intent is enough to reverse a conviction and require a new trial, in Justin Fair's case there were four.

While the trial court never got to the third stage of *Batson*, which requires the court to determine if the defense showed purposeful discrimination, the combined effect of the underrepresentation of African Americans on the jury venire and their exclusion from the jury by discriminatory use of peremptory challenges, shows purposeful discrimination in Assumption Parish. “(A) court must undertake ‘a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. . . .’ Circumstantial evidence of invidious intent may include proof of disproportionate impact. . . . (T)otal or seriously disproportionate exclusion of [African Americans] from jury venires, . . . is itself such an unequal application of the law . . . as to show intentional discrimination.”<sup>28</sup>

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28. In *State v. Collier*, 553 So. 2d 815, 816 (La. 1989), Collier's first trial for armed robbery ended in a mistrial when a jury composed of nine whites and three blacks were deadlocked. Collier, who was black, was re-tried. In the second trial, Collier objected to the State's use of peremptory challenges to excuse eight black prospective jurors. The trial judge found a prima facie case and the prosecutor offered racially neutral explanations. The trial judge denied the challenge, resulting in a 12-person jury of 10 white and two black jurors. The Louisiana Supreme Court reversed and remanded, finding all of the relevant circumstances surrounding voir dire could reasonably lead a trial judge to infer the existence of purposeful discrimination.

Despite the barriers, there was circumstantial evidence of invidious intent. Justin Fair established a prima facie case of improper exercise of peremptory challenges. The trial court erred in not requiring the State to provide race-neutral explanations for the choices. Where the trial court did nothing about Mr. Fair's complaints despite the outward indicators of purposeful discrimination, the conviction should be vacated and the case remanded for a new trial with fairly chosen jury. This Petition should be granted.

**CONCLUSION**

In view of the facts and law set forth herein and the entire record of the case, the Petitioner-defendant, Justin Fair, prays that this Honorable Court grant this Petition for Writ of Certiorari, vacate the conviction and order a new trial for the violation of his Fourteenth Amendment rights to due process by a jury drawn from a fair cross section of the community, and his Sixth Amendment rights to a fair and impartial jury.

Respectfully submitted,

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## **APPENDIX**

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**APPENDIX A — OPINION OF THE LOUISIANA,  
FIRST CIRCUIT COURT OF APPEAL WITH  
DISSENT *STATE V. FAIR*, 417 So. 3d 1166;  
2024-0759 (La.App.1 Cir. 07/11/25)**

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

DOCKET NUMBER  
2024 KA 0759

STATE OF LOUISIANA

VERSUS

JUSTIN J. FAIR

Judgment Rendered: July 11, 2025

\* \* \* \* \*

ON APPEAL FROM THE  
TWENTY-THIRD JUDICIAL DISTRICT COURT,  
DIVISION D  
IN AND FOR THE PARISH OF ASSUMPTION  
STATE OF LOUISIANA  
DOCKET NUMBER 21-112

HONORABLE STEVEN TUREAU,  
JUDGE PRESIDING

\* \* \* \* \*

*Appendix A*

**BEFORE: WOLFE, MILLER, AND GREENE, JJ.**

[Miller, J dissents w/ reasons]

GREENE, J.

The defendant, Justin J. Fair, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:30.1 and La. R.S. 14:27, and pled not guilty. After a trial by jury, he was found guilty of the responsive offense of attempted manslaughter, a violation of La. R.S. 14:31 and La. R.S. 14:27. *See* La. Code Crim. P. art. 814(A)(4). He filed a motion for post-verdict judgment of acquittal, which the trial court denied.<sup>1</sup> The trial court sentenced the defendant to twenty years imprisonment at hard labor and denied his subsequent motion to reconsider sentence. He now appeals, raising the following assignments of error: (1) the evidence was insufficient to support the verdict; (2) the trial court erred in denying a **Batson**<sup>2</sup> challenge; (3) the trial court imposed an excessive sentence; and (4) the trial court gave an erroneous jury

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1. The defendant also filed a combined pro se motion for new trial or for post-verdict judgment of acquittal. However, the record does not reflect a ruling by the trial court on the defendant's pro se posttrial motion. Nonetheless, the arguments raised in the defendant's pro se motion were also presented in the counseled motion. Thus, any error in the trial court's failure to rule on the pro se motion was harmless. *See* La. Code Crim. P. art. 921; **State v. Johnson**, 2006-1235 (La. App. 1st Cir. 12/28/06), 951 So.2d 294, 303.

2. **Batson v. Kentucky**, 476 U.S. 79, 93-98, 106 S.Ct. 1712, 1721-1724, 90 L.Ed.2d 69 (1986).

*Appendix A*

instruction on attempted manslaughter. For the following reasons, we affirm the conviction and sentence.

**STATEMENT OF FACTS**

On March 27, 2021, Detective Chet Breaux of the Assumption Parish Sheriff's Office was dispatched to the scene of a stabbing in the parking lot of Sagona's Hardware Store, located in Paincourtville. The incident was captured on store surveillance footage. Ronnie Simon, Jr., the victim of the stabbing, arrived at the hardware store that day to rent a U-Haul with his wife, Rheshea Simon. The defendant, a childhood friend of Mrs. Simon, also entered the parking lot immediately behind them, pulled up around them, and parked, as Mr. and Mrs. Simon stopped their vehicle in front of the store. Mrs. Simon exited their vehicle and approached the defendant's vehicle to let him know that Mr. Simon was there to assist her and that she no longer needed his assistance.

However, the defendant did not leave. Mr. Simon parked next to the defendant, and Mrs. Simon entered the store while Mr. Simon and the defendant waited in the parking lot. The defendant moved out of his parking spot, positioning his vehicle between Mr. Simon's vehicle and the hardware store door. Mr. Simon then exited his vehicle and approached the defendant's vehicle to confront him. The defendant exited his vehicle, armed with a knife.<sup>3</sup> As the two men began to tussle, Mr. Simon lifted his shirt, realizing he had been stabbed in the chest and armpit.

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3. The knife was never recovered.

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The defendant then left the area, and Mr. and Mrs. Simon reentered their vehicle and went directly to the hospital.

**COUNSELED ASSIGNMENT OF ERROR  
NUMBER ONE AND PRO SE ASSIGNMENT OF  
ERROR NUMBER TWO**

In the first counseled assignment of error and the second pro se assignment of error, the defendant contends the State failed to rebut or disprove evidence that he acted in self-defense. The defendant also maintains the State failed to prove he had the specific intent to kill. He contends the jury's acquittal on the charged offense, attempted second degree murder, was based on the lack of evidence of the specific intent to kill.<sup>4</sup>

A conviction based on insufficient evidence cannot stand, as it violates due process. *See* U.S. Const. amend. XIV, La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See* La. Code Crim. P. art. 821(B); **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789,

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4. In his counseled brief, in the sufficiency argument, the defendant also contends the trial court's jury instruction on specific intent caused the jury to convict him of attempted manslaughter without finding proof of specific intent to kill beyond a reasonable doubt. The argument regarding the jury instructions will be discussed in addressing pro se assignment of error number three, directly contesting the same jury instruction.

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61 L.Ed.2d 560 (1979); **State v. Thomas**, 2019-0409 (La. App. 1st Cir. 10/25/19), 289 So.3d 1030, 1037.

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **State v. Currie**, 2020-0467 (La. App. 1st Cir. 2/22/21), 321 So.3d 978, 982. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis which raises a reasonable doubt. **State v. Southall**, 2022-0746 (La. App. 1st Cir. 6/2/23), 369 So.3d 925, 930, *writ denied*, (La. 2/6/24) 378 So.3d 750.

Manslaughter is a homicide that would either be first or second degree murder, but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his cool reflection and self-control. La. R.S. 14:31(A)(1). “Sudden passion” and “heat of blood” are not elements of the offense of manslaughter; rather they are mitigatory

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factors in the nature of a defense that tend to lessen the culpability. **State v. Newton**, 2014-1301, (La. App. 1st Cir. 3/6/15) 2015 La. App. Unpub. LEXIS 93, 2015 WL 996250, \*2 (unpublished). The defendant does not dispute injuring Mr. Simon with a knife.<sup>5</sup> However, he contends the State failed to prove beyond a reasonable doubt that he had the specific intent to kill or to rebut evidence he acted in self-defense.

To support a conviction for attempted manslaughter under La. R.S. 14:31(A)(1), the State must prove beyond a reasonable doubt that defendant possessed the specific intent to kill and committed an overt act in furtherance of that goal. *See* La. R.S. 14:27(A); **State v. Holmes**, 2013-1530, (La. App. 1st Cir. 5/22/14) 2014 La. App. Unpub. LEXIS 319, 2014 WL 2168837, \*3 (unpublished). Specific intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Specific criminal intent need not be proven as a fact, but may be inferred from the circumstances and actions of the defendant. **Thomas**, 289 So.3d at 1038. Under all the circumstances shown, an intent to kill might be reasonably inferred from the

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5. In his pro se brief, the defendant initially argues the State failed to disprove his claim that he acted in self-defense, but then inconsistently argues he accidentally injured Mr. Simon. He further briefly maintains that the video and still shots presented by the State fail to show that he had a knife. As later discussed herein, after our review of the video, still shots, and testimony presented at trial, we find a rational juror could have rejected the defendant's hypotheses of innocence.

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intentional use of a deadly weapon, such as a knife, to produce injuries involving serious risk of death. *See State v. Butler*, 322 So.2d 189, 194 (La. 1975). Thus, specific intent to kill may be inferred when the defendant stabs a victim, especially when those wounds are to the heart or chest. *See State v. Jones*, 2018-0479, (La. App. 1st Cir. 11/2/18) 2018 La. App. Unpub. LEXIS 300, 2018 WL 5779773, \*4 (unpublished).

In a non-homicide situation, a claim of self-defense requires a dual inquiry: (1) an objective inquiry into whether the force used was reasonable under the circumstances; and (2) a subjective inquiry into whether the force used was apparently necessary. *See* La. R.S. 14:19(A)(1)(a). Self-defense is not available to “[a] person who is the aggressor or who brings on a difficulty . . . unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.” La. R.S. 14:21.

The Louisiana Supreme Court has recognized that statutory law does not address the burden of proof for defenses. *State v. Cheatwood*, 458 So.2d 907, 910, n. 4 (La. 1984). In previous cases dealing with the burden of proving or disproving a claim of self-defense in a non-homicide case, this court has analyzed the evidence under both standards of review, that is, whether the defendant proved self-defense by a preponderance of the evidence or whether the State proved beyond a reasonable doubt that the defendant did not act in self-defense. *See Jones*, 2018 La. App. Unpub. LEXIS 300, 2018 WL 5779773 at

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\*3. However, La. Code Crim. P. art. 390(A), as recently enacted by the Louisiana Legislature and effective August 1, 2024, provides: “In any criminal proceeding in which the justification of self-defense is raised pursuant to R.S. 14:19 or 20, the state shall have the burden to prove beyond a reasonable doubt that the defendant did not act in self-defense.” Thus, the legislature has resolved the previous uncertainty in Louisiana law as to who has the burden of proving or disproving self-defense in a non-homicide case. *See State v. Morrison*, 55,869 (La. App. 2d Cir. 11/20/24) 400 So. 3d 1254, 1260-1261, 2024 WL 4830543, \*4.

The instant offense occurred prior to the effective date of La. Code Crim. P. art. 390(A). A two-fold inquiry is required by La. Civ. Code art. 6 in deciding whether a law should be applied retroactively. First, it must be ascertained whether the enactment expresses legislative intent regarding retrospective or prospective application. If such intent is expressed, the inquiry ends. If no such intent was expressed, the second step is to classify the enactment as either substantive, procedural or interpretive. Substantive laws are laws that impose new duties, obligations or responsibilities upon parties, or laws that establish new rules, rights and duties or change existing ones. Interpretive laws are those which clarify the meaning of a statute and are deemed to relate back to the time that the law was originally enacted. Procedural laws prescribe a method for enforcing a substantive right and relate to the form of the proceeding or the operation of laws. Laws that are procedural or interpretive may be applied retroactively. *State v. Washington*, 2002-2196 (La. 9/13/02), 830 So.2d 288, 290 (per curiam).

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The legislature did not express its intent regarding retrospective or prospective application of La. Code Crim. P. art. 390. Thus, as no such intent was expressed, we must classify La. Code Crim. P. art. 390 as either substantive, procedural, or interpretive. As it prescribes a method for enforcing a defendant's substantive right to assert the justification of self-defense in relation to the operation of La. R.S. 14:19 or La. R.S. 14:20 at trial, we find La. Code Crim. P. art. 390 is procedural law that may be applied retroactively. Therefore, the relevant inquiry on appeal is whether, viewing the evidence in the light most favorable to the prosecution, a rational fact finder could have found beyond a reasonable doubt that the defendant did not act in self-defense.

At trial, the State presented video surveillance footage of the incident, along with testimony by Detective Breaux, Mr. Simon, and the emergency room physician.<sup>6</sup> Mr. Simon testified his wife first told the defendant she no longer needed his help prior to their arrival at the hardware store. Mr. Simon further testified he was startled to see the defendant when they arrived at the hardware store. As shown in the video, prior to entering the store, Mrs. Simon approached the defendant's vehicle, seemingly making a brief statement to the defendant. According to Detective Breaux and Mr. Simon, at that point, Mrs. Simon again told the defendant he was not needed because Mr. Simon was there. Mr. Simon testified he wondered why the defendant was still there, as he waited for his wife to come out of the hardware store.

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6. While Mrs. Simon did not testify at trial, Detective Breaux testified that she was interviewed by the police.

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As shown on the video, Mr. Simon and the defendant initially remained in their cars, parked side-by-side, while Mrs. Simon was in the store. Moments before she exited the store, the defendant pulled up in front of the store door and stopped. At that point, Mr. Simon exited his vehicle and approached the defendant's vehicle, according to his trial testimony, to "see what [the defendant's] problem [was]." Mr. Simon further clarified that he wanted to know why the defendant was still there and why he blocked his vehicle.

Before Mr. Simon could ask any questions, the defendant exited his vehicle as well, and the confrontation immediately became physical. As shown in the video, once the defendant exited his vehicle, the defendant lifted his arm, and Mr. Simon then swung his arm at the defendant. Mr. Simon then stepped back, as the defendant moved towards him. Mrs. Simon exited the store and quickly positioned herself between the two men. The defendant pushed Mrs. Simon to the ground,<sup>7</sup> Mr. Simon swung at the defendant in response, and the defendant swung at Mr. Simon's chest area. Mr. Simon stepped back, lifted his shirt, then got back in his vehicle on the driver's side. The defendant got back in his vehicle and drove off, as Mrs. Simon entered their vehicle on the driver's side, after Mr. Simon.

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7. Once Mrs. Simon positioned herself between Mr. Simon and the defendant, it appears both of the men pushed her in an attempt to move her from between the two of them. She was initially pushed by Mr. Simon before the defendant then pushed her to the ground

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Mr. Simon testified he “was feeling defensive” when the defendant opened his door, and he blacked out when the defendant first exited his vehicle and began to swing at him. Regarding the defendant’s knife, Mr. Simon testified it was shiny, pointy, silver, “like a shank,” with a green handle. Detective Breaux, who viewed the surveillance footage while at the scene and testified regarding still photographs from the footage, also testified it appeared to be a six-inch blade knife. Mr. Simon testified they went straight to the hospital after exiting the parking lot, where he was treated for his injuries and photographed by Detective Breaux. Mr. Simon testified his injuries were sustained as the knife entered his chest and struck his armpit while exiting.

Dr. John Tosh, the emergency room physician who treated Mr. Simon, testified Mr. Simon had two knife wounds to the left side of his chest. He noted Mr. Simon’s chest X-ray showed a pneumothorax or hemothorax. A CAT scan was taken to ensure Mr. Simon’s wounds did not penetrate into the thoracic cavity, located just to the side of the sternum, where the heart is located. The CAT scan showed Mr. Simon’s thoracic cavity was not violated. Dr. Tosh testified he then sewed up Mr. Simon’s injuries.

Dr. Tosh testified Mr. Simon’s chest wound was approximately six centimeters long and described it as a “pretty good size wound.” He testified the heart would be the main concern for such an injury, located an inch or two away from the wound. Dr. Tosh further estimated Mr. Simon’s armpit wound as three centimeters. He agreed Mr. Simon’s injuries were not life threatening but

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confirmed that if the knife had gone a little deeper or if it had gone between the ribs or gone in at a different angle, the wound could have turned deadly. The defendant did not testify at trial.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. **State v. Williams**, 2001-0944 (La. App. 1st Cir. 12/28/01), 804 So.2d 932, 939, *writ denied*, (La. 2/14/03) 836 So.2d 135. The reviewing court does not determine whether another possible hypothesis has been suggested by the defendant which could explain the events in an exculpatory fashion; rather, the reviewing court evaluates the evidence in the light most favorable to the prosecution and determines whether the alternative hypothesis is sufficiently reasonable that a rational factfinder could not have found proof of guilt beyond a reasonable doubt. **State v. Jones**, 2016-1502 (La. 1/30/18), 318 So.3d 678, 682 (per curiam).

In his counseled brief, the defendant initially argues Mr. Simon approached him aggressively, and he acted in self-defense. However, the testimony and surveillance footage presented at trial shows the defendant remained in the area after being told his assistance was no longer needed. He initially parked alongside Mr. Simon, but then positioned his vehicle between Mr. Simon's vehicle and the door where Mrs. Simon would exit the store. Mr. Simon approached the defendant's vehicle just before the defendant got out of the car, armed with a knife. Further, the defendant extended his arm toward Mr. Simon prior to any contact. Arguably, the defendant was the aggressor under the circumstances. Mr. Simon batted the defendant's

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hand away, and the defendant then pushed Mrs. Simon down to the ground. It was at that point that Mr. Simon swung at the defendant, and the defendant inflicted the knife wounds. Based on our review of the evidence, we cannot say the jury acted irrationally when it found the testimony and surveillance footage was inconsistent with the defendant's claim that his use of force was reasonable under the circumstances. After viewing the evidence in the light most favorable to the prosecution, we find that a rational fact finder could have found beyond a reasonable doubt that the defendant did not act in self-defense.

Next, the defendant contends the State failed to prove beyond a reasonable doubt he had the specific intent to kill Mr. Simon. Surveillance footage and testimony presented at trial showed the defendant stabbed Mr. Simon in the chest, inflicting a wound only an inch or two from his heart. The defendant pushed Mrs. Simon out of the way in order to stab Mr. Simon. Dr. Tosh agreed that had the puncture been slightly deeper, the wound could have been deadly. Further, the defendant fled the scene after the stabbing. Flight and attempt to avoid apprehension indicate consciousness of guilt, and therefore, are circumstances from which a juror may infer guilt. **Southall**, 369 So.3d at 933. Under the facts and circumstances presented in this case, we cannot say that the jury was irrational in determining the defendant had the specific intent to kill Mr. Simon. *See State v. Ordodi*, 2006-0207 (La. 11/29/06), 946 So.2d 654, 660; **Jones**, 2018 La. App. Unpub. LEXIS 300, 2018 WL 5779773 at \*5 (conviction upheld based on evidence the defendant chased after the victim and stabbed him in the chest before stabbing him in the legs); **State v.**

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**Brunet**, 95-0340 (La. App. 1st Cir. 4/30/96), 674 So.2d 344, 348, *writ denied*, (La. 11/1/96) 681 So.2d 1258 (conviction upheld based on evidence the defendant stabbed the victim with a six-inch long knife in the lower right side of her back as she was bent over, causing a wound that penetrated into her chest, and possibly punctured a lung).

An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the factfinder and thereby overturning a verdict on the basis of an exculpatory hypothesis presented to, and rationally rejected by, the jury. *See State v. Calloway*, 2007-2306 (La. 1/21/09), 1 So.3d 417, 418 (per curiam). Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, the elements of attempted manslaughter. Accordingly, we find no merit in counseled assignment of error number one and pro se assignment of error number two.

**COUNSELED ASSIGNMENT  
OF ERROR NUMBER TWO**

In counseled assignment of error number two, the defendant contends trial counsel made a prima facie case that African Americans and young people were excluded from the jury venire, in violation of his right of due process. The defendant also maintains the trial court erred in not finding a prima facie case of discriminatory practices, based on the State's use of peremptory challenges to strike four of the five African American potential jurors.

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He argues he is entitled to a new trial, or alternatively, the case should be remanded for a hearing on these issues.

The proper procedural vehicle for alleging that the general or petit jury venire was improperly drawn, selected, or constituted is a motion to quash. La. Code Crim. P. art. 532(9). A motion to quash based on the ground that the petit jury venire was unconstitutionally drawn should be filed in writing prior to the beginning of the jury selection. *See* La. Code Crim. P. arts. 521, 532(9), and 535(C); *see also State v. Smith*, 2017-1333, (La. App. 1st Cir. 2/21/18) 2018 La. App. Unpub. LEXIS 40, 2018 WL 1007350, \*4 (unpublished), *writ denied*, 2018-0405 (La. 2/18/19), 265 So. 3d 771. A defendant who does not file a motion to quash on the ground the jury venire was improperly drawn, selected, or constituted in accordance with the timeliness and form requirements set forth in the Louisiana Code of Criminal Procedure waives his objection. *State v. Tipton*, 2024-0078 (La. App. 1st Cir. 12/10/24), 404 So.3d 730, 734.

In this case, the defendant concedes he did not file a motion to quash but argues he preserved the issue by raising it after the State used peremptory strikes to remove two potential jurors from the third panel of prospective jurors. Specifically, defense counsel stated, “[t]hey didn’t have that many blacks in the panels anyway. But he struck all of them except for one.” Counsel then noted he was not given notice of the race of the prospective jurors until he was present for trial. Thus, counsel argued he was unaware of any basis for filing a motion to quash the jury venire. The trial court then gave defense counsel

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an opportunity to make an argument in order to preserve it in the record for purposes of appeal. However, defense counsel did not attempt to present any argument or evidence to show the venire was improperly drawn and did not move to quash the venire.<sup>8</sup> The defendant now notes the petit jury list<sup>9</sup> shows only seven potential jurors were born in the year 2000 or after. He further notes five African American jurors appeared to be called for voir dire.

In **State v. Thompson**, 2020-0023 (La. App. 1st Cir. 4/16/21), 324 So.3d 113, 117, *writ denied*, (La. 11/3/21) 326 So.3d 893, this court noted the defendant's jury was assembled therein from the same venire the Louisiana Supreme Court found defective in **State v. Cannon**, 2019-590 (La. 4/18/19), 267 So.3d 585 (per curiam). Specifically, it was noted in **Thompson**, those born after June 2, 1993, were excluded from the jury pool. However, this court further found the defendant's claim of a defective jury venire was not properly before this court, as the defendant did not file a pretrial motion to quash or raise the issue before voir dire began, and did not raise the issue until the appeal. Thus, the defendant's claim therein was denied as waived. **Id.**

Herein, the defendant argues the instant case is distinguishable from **Thompson** in that he raised the issue below during voir dire. However, we find the

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8. The defendant bears the burden of proving the grounds for setting aside the venire. **Tipton**, 404 So.3d at 734.

9. As the defendant notes, the petit jury list does not show the race of the of the individuals.

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**Cannon** decision does not provide grounds to disregard the defendant's failure to follow the proper procedure for raising a jury venire challenge. **State v. Armentor**, 2019-1267 (La. App. 1st Cir. 7/31/20), 309 So.3d 762, 771, *writ denied*, (La. 2/17/21) 310 So.3d 1149. Initially we note there is no indication Assumption Parish employed an improper system. Moreover, as the defendant concedes, the record shows the defendant did not move to quash the petit jury venire by oral or written motion and did not raise the issue before voir dire began. Therefore, we disagree with the defendant's contention that the issue was preserved in this case and find the defendant did not properly raise his challenge to the jury venire's composition. Thus, any potential grounds for a motion were waived. *See* La. Code Crim. P. art. 535(D); **Thomas**, 289 So.3d at 1043-44.

The defendant next contends the trial court erred in not finding a prima facie case of discrimination under **Batson** when the State used peremptory challenges as back strikes during the third round of the selection of jurors. He notes he raised the **Batson** challenge as four of the State's peremptory strikes were at that point used to remove all but one of the five prospective African American jurors.

Systematic exclusion of a specific class in the source or sources from which the jury venires are chosen is precluded by law. This principle does not mean that a defendant is entitled to a petit jury which reflects the population of the community in every respect. Defendants are not entitled to a jury of any particular composition. A venire reflecting exactly the complete representation

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of every group within a community would be virtually impossible to seat. An equal protection violation occurs if a party exercises a peremptory challenge to excuse a prospective juror on the basis of that person's race. **State v. Kitts**, 2017-0777 (La. App. 1st Cir. 5/10/18), 250 So.3d 939, 960.

In **Batson**, the Supreme Court adopted a three-step analysis to determine whether the constitutional rights of a defendant or prospective jurors have been infringed by impermissible discriminatory practices. First, the defendant must make a prima facie showing that the prosecutor has exercised peremptory challenges on the basis of race. Second, if the requisite showing has been made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination. See La. Code Crim. P. art. 795(C); **State v. Peters**, 2013-1110, (La. App. 1st Cir. 4/17/14) 2014 La. App. Unpub. LEXIS 235, 2014 WL 1515757, \*1 (unpublished), *writ denied*, (La. 3/6/15) 161 So.3d 10.

To establish a prima facie case, the defendant must show: (1) the prosecutor's challenge was directed at a member of a cognizable group; (2) the challenge was peremptory rather than for cause; and (3) relevant circumstances sufficient to raise an inference that the prosecutor struck the venireperson on account of his being a member of that cognizable group. Without an inference that the prospective jurors were stricken because they are members of the targeted group, the defendant is unable

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to make a prima facie case of purposeful discrimination and his **Batson** challenge expires at the threshold. **Peters**, 2014 La. App. Unpub. LEXIS 235, 2014 WL 1515757 at \*1.

The trial court plays a unique role in the dynamics of voir dire, for it is the court that observes firsthand the demeanor of the attorneys and venire members, the nuances of questions asked, the racial composition of the venire, and the general atmosphere of the voir dire that simply cannot be replicated from a cold transcript. A reviewing court owes the district court judge's evaluations of discriminatory intent great deference and should not reverse such evaluations unless they are clearly erroneous. **State v. Pope**, 2017-0305, (La. App. 1st Cir. 9/15/17) 2017 La. App. Unpub. LEXIS 295, 2017 WL 4082427, \*5 (unpublished), *writ denied*, (La. 6/1/18) 243 So.3d 1064.

Herein, because the trial court found no pattern, i.e., that the defense failed to make a prima facie case that the State based its peremptory challenges on race, the three-step analysis ended at that point. Our inquiry, then, is whether the trial court erred in finding that the defendant failed to present a prima facie case of purposeful discrimination. **Pope**, 2017 La. App. Unpub. LEXIS 295, 2017 WL 4082427 at \*7.

After the **Batson** challenge, the trial court noted the State used four strikes to remove potential African American jurors, and eight strikes to remove potential Caucasian jurors. The trial court then asked defense counsel to present an argument to support the claim of discriminatory practices by the State. However, defense

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counsel failed to raise any other relevant evidence that would support an inference of discrimination. The mere invocation of **Batson** when minority prospective jurors are peremptorily challenged in the trial of a minority defendant does not present sufficient evidence to lead to an inference of purposeful discrimination. Such an automatic finding would preclude the need for the first **Batson** step in the trial of any defendant who was a member of a cognizable racial group whenever a peremptory challenge was raised to a prospective juror who was also a member of that racial group. Without further argument or reasons presented by the defense, the trial court had nothing from which to draw an inference of purposeful discrimination. **Pope**, 2017 La. App. Unpub. LEXIS 295, 2017 WL 4082427 at \*7.

Moreover, the nature of the case itself presented no overt racial overtones. Both Mr. Simon and the defendant were from the same cognizable racial group. Based on the circumstances of this case, including our review of the totality of the voir dire, we find no error in the trial court's conclusion that the defendant failed to present a prima facie case of purposeful discrimination. Thus, no further inquiry is required and the subsequent steps of the **Batson** analysis need not be performed. *See Pope*, 2017 La. App. Unpub. LEXIS 295, 2017 WL 4082427 at \*7. Counseled assignment of error number two is precluded and/or otherwise without merit.

*Appendix A***PRO SE ASSIGNMENT OF  
ERROR NUMBER THREE**

In assignment of error number three, the defendant contends the trial court's erroneous jury instruction on the specific intent to kill, as to the responsive offense of attempted manslaughter, led to his conviction. He also maintains while the trial court specifically defined attempted second degree murder, it failed to specifically define attempted manslaughter.<sup>10</sup>

The trial court must instruct the jury on the law applicable to the case. La. Code Crim. P. art. 802(1). In analyzing jury instructions, Louisiana cases caution against taking certain phrases out of context of the charge as a whole. The test articulated is whether, taking the instruction as a whole, reasonable persons of ordinary intelligence would understand the charge. **State v. Leger**, 2017-0461 (La. App. 1st Cir. 5/11/20), 303 So.3d 337, 346. As stated by the Louisiana Supreme Court, "a great deal of credit should be accorded to the good sense and fairmindedness of jurors who have heard the evidence and who know what was and was not proven." **State v. Brown**, 2020-0150, (La. App. 1st Cir. 2/19/21) 2021 La. App. Unpub. LEXIS 19, 2021 WL 650816, \*14 (unpublished), *writ denied*, (La. 6/1/21) 316 So.3d 835, quoting **State v. Dupre**, 408 So.2d 1229, 1234 (La. 1982).

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10. The counseled brief also raised but does not assign as a separate error, this issue in the context of the sufficiency of the evidence argument, previously addressed herein.

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Herein, regarding the elements of the charged offense, attempted second degree murder, the trial court defined second degree murder, in part, “as the killing of a human being when the offender has a specific intent to kill or inflict great bodily harm.” The trial court further instructed the jury, in pertinent part, “Louisiana law defines ‘attempt’ as a person who actively desires to commit a crime and does something for the purpose of intending directly toward committing the crime is guilty of an attempt to commit that crime.” The trial court further defined specific intent as follows, “specific criminal intent is that state of mind which exists when the circumstances indicate that the defendant actively desired the prescribed criminal consequences to follow from his act or failure to act.” The court further informed the jury that criminal intent, as a question of fact, may be inferred from the circumstances.

In discussing the responsive offense at issue, attempted manslaughter, the trial court did not make a direct reference to specific intent, though as stated, an attempt, including the definition of specific intent, had previously been defined. Specifically, the trial court stated:

Manslaughter occurs when a person kills another in sudden passion or heat of blood immediately caused by provocation sufficient to deprive and [sic] average person of his self control and cool reflection. If you find that the person’s blood had actually cooled or that an average person’s blood would have cooled at the time the offense was committed, the provocation

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is not sufficient to make an attempted killing in attempted manslaughter.

After the trial court defined the responsive offenses, defense counsel requested a bench conference and informed the trial court he was almost certain that attempted second degree murder requires specific intent to kill, not to cause great bodily harm. The parties discussed the issue further after the jury was sent to deliberate. Further, the following jury question was presented to the court during deliberations, “Can we have the possible verdict definitions[?]” The trial court then, in pertinent part, reread the above quoted definitions of second degree murder and attempted manslaughter.

However, before re-sending the jury to deliberate, the trial court further stated:

And attempt, as it regards to attempted second-degree murder or attempted manslaughter, any person who actively desires to commit a crime and does something for the purpose of intending directly toward committing the crime is guilty of an attempt to commit that crime.

The trial court then called the jury back into the courtroom and added:

I’ve got to go back and amend the definition of attempted second-degree murder. It does not include the specific intent to inflict great bodily harm. In order to find a defendant guilty

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of attempted second-degree murder, you have to find -- or you must find that the defendant acted with the specific intent to kill, not with the specific intent to inflict great bodily harm.

The trial court failed to inform the jury that the requirement of proof beyond a reasonable doubt of specific intent to kill (rather than merely to cause great bodily harm) also applies to a guilty verdict of attempted manslaughter. *See Thomas*, 289 So.3d at 1038. While there was no contemporaneous objection at trial, issues regarding an instructional error should still be evaluated to ensure due process. *State v. Cavazos*, 610 So.2d 127, 128 (La. 1992) (per curiam) (substantial probability that jurors may have convicted the defendant under the incorrect definition of a crime justifies setting aside the conviction on due process grounds even in the absence of a contemporaneous objection); *Jones*, 2018 La. App. Unpub. LEXIS 300, 2018 WL 5779773 at \*6.

Instructional errors are subject to harmless-error analysis. *Jones*, 2018 La. App. Unpub. LEXIS 300, 2018 WL 5779773 at \*6. An invalid instruction on the elements of an offense is harmless if the evidence is otherwise sufficient to support the jury's verdict and the jury would have reached the same result if it had never heard the erroneous instruction. *State v. Hongo*, 96-2060 (La. 12/2/97), 706 So.2d 419, 421; *State v. Dardar*, 2014-0813, (La. App. 1st Cir. 11/7/14) 2014 La. App. Unpub. LEXIS 650, 2014 WL 5801528, \*5 (unpublished). The harmless error inquiry is based upon "whether the guilty verdict actually rendered in *this* trial was surely unattributable

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to the error.” **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993); **Brunet**, 674 So.2d at 348 (“If the jury verdict is surely unattributable to the instruction that attempted manslaughter can be based upon specific intent to commit great bodily harm, rather than specific intent to kill, there is harmless error.”).<sup>11</sup>

As previously discussed in addressing the sufficiency of the evidence, the jury was presented ample evidence to infer that the defendant had the specific intent to kill Mr. Simon after exiting his vehicle armed with a knife, pushing Mrs. Simon onto the ground to have a clear aim at

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11. In his pro se brief, the defendant cites **State v. Porter**, 626 So.2d 476 (La. App. 3d Cir. 1993), in which the appellate court reversed and remanded a conviction of attempted second degree murder due to an erroneous jury instruction on the requisite element of specific intent to kill. We note **Porter** predates **Hongo**. Prior to **Hongo**, there was a conflict among the courts of appeal, with some circuits holding the jurisprudence mandated reversal and remand for retrial where the trial court gave an erroneous instruction similar to the one at issue in this case. See **State v. Woods**, 2000-2147 (La. App. 1st Cir. 5/11/01), 787 So.2d 1083, 1096, *writ denied*, (La. 6/14/02) 817 So.2d 1153. Other circuits, including this court in **Brunet**, conducted a harmless error analysis after finding the trial court gave such an erroneous instruction. See **Brunet**, 674 So.2d at 348. The **Hongo** decision settled the issue, holding, “[b]ecause the erroneous instruction at issue may be an irrelevancy and because a reviewing court can make this determination, the error is not structural such as that in Sullivan, but rather a trial error which may or may not have prejudiced defendant and thus is subject to harmless error analysis.” **Hongo**, 706 So.2d at 422.

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Mr. Simon, stabbing the knife into Mr. Simon's chest, and puncturing an area very close to his heart. The defendant then fled the scene. We find the jury's verdict is surely unattributable to the erroneous jury instruction. Thus, the instructional error was harmless in this case. Accordingly, pro se assignment of error number three lacks merit.

**COUNSELED ASSIGNMENT OF ERROR  
NUMBER THREE AND PRO SE  
ASSIGNMENT OF ERROR NUMBER ONE**

In counseled assignment of error number three and pro se assignment of error number one, the defendant argues the twenty-year maximum sentence imposed herein is excessive. He contends Mr. Simon's injury was non-life threatening and that Mr. Simon instigated the conflict. He maintains this case is at the lower end of the spectrum of actions and injuries that could be involved in an attempted manslaughter incident. In his pro se brief, the defendant additionally contends his third felony conviction, by agreement with the State, should have been expunged and notes his prior felonies were not crimes of violence.

Both the United States and Louisiana Constitutions prohibit the imposition of excessive or cruel punishment. U.S. Const. amend. VIII; La. Const. art. I, § 20. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction

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of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. **State v. Scott**, 20170209 (La. App. 1st Cir. 9/15/17), 228 So.3d 207, 211, *writ denied*, (La. 8/31/18) 251 So.3d 410.

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of La. Code Crim. P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. The articulation of the factual basis for a sentence is the goal of La. Code Crim. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even when there has not been full compliance with La. Code Crim. P. art. 894.1. **Id.**

The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. **State v. Harris**, 2022-1190 (La. App. 1st Cir. 6/2/23), 369 So.3d 447, 451. On appellate review of a sentence, the relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. **Scott**, 228 So.3d at 211.

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Regarding manslaughter, La. R.S. 14:31(B) provides that the maximum sentence which may be imposed is forty years at hard labor. Under La. R.S. 14:27(D)(3), the maximum sentence for attempted manslaughter is twenty years at hard labor. Thus, the trial court imposed the maximum sentence in this case. As a general rule, maximum sentences are to be reserved for the worst offenders and the worst offenses. Maximum sentences may also be imposed when the offender poses an unusual risk to public safety due to his past conduct of repeated criminality. **State v. Nicholas**, 2011-0641 (La. App. 1st Cir. 11/9/11), 90 So. 3d 547, 2011 WL 5429572, \*2 (unpublished), *writ denied*, (La. 4/9/12) 85 So.3d 694.

At the sentencing hearing, the trial court noted it received and reviewed the presentence investigation report (PSI), which recommended the defendant receive the maximum sentence, and classified the defendant as a third-felony offender. The defendant's criminal record consists of a multitude of arrests dating from 2000 to the instant offense. In 2009, the defendant entered a guilty plea to possession of marijuana after being charged, in part, with intent to produce, manufacture, or distribute cocaine. The PSI also shows a pending aggravated second degree battery charge resulting from a 2013 arrest. Further, in 2016, the defendant was convicted of the crime of manufacturing or distributing of a Schedule I controlled dangerous substance and possession of marijuana.

In imposing the sentence, the trial court further noted it considered the nature of the crime and the sentencing guidelines and found the aggravating factors outweighed

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any mitigating factor. We find the trial court adequately considered the sentencing guidelines. Further, we find the reasons articulated by the trial court are sufficient to support the defendant's sentence. We note the defendant, by using a dangerous weapon, knowingly created a risk of death to Mr. Simon and could have injured Mrs. Simon in the process, as he pushed her to the ground just before violently wounding Mr. Simon with a knife. *See* La. Code Crim. P. art. 894.1(B)(6) and (10). Considering the facts of the offense and the defendant's lengthy arrest history and prior convictions, we find no abuse of discretion by the trial court. The imposed sentence is not grossly out of proportion to the seriousness of the offense, nor does the sentence shock this court's sense of justice. Accordingly, counseled assignment of error number three and pro se assignment of error number one lack merit.

**CONVICTION AND SENTENCE AFFIRMED.**

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STATE OF LOUISIANA      STATE OF LOUISIANA  
COURT OF APPEAL      VERSUS  
FIRST CIRCUIT      JUSTIN J. FAIR  
DOCKET NUMBER      2024 KA 0759

[/s/ Illegible]

**MILLER, J., dissenting.**

I respectfully dissent from the majority's opinion herein. The defendant made a prima facie case of purposeful racial discrimination based on the State's use of its peremptory challenges, including the use of two back strikes, to eliminate all but one African American from the jury venire. Accordingly, I would remand so that the trial court can determine whether the prosecutor can show a race neutral explanation for his action. If the prosecutor cannot make this showing, the trial court should reverse petitioner's conviction.

When a defendant makes a *Batson* challenge, claiming the State has used peremptory challenges in a manner that violates the Equal Protection Clause, the defendant must first make out a prima facie case of discrimination. *Batson v. Kentucky*, 476 U.S. 79, 91-94, 106 S.Ct. 1712, 1720-1722, 90 L.Ed.2d 69 (1986); *see also* La.C.Cr.P. art. 795(C).<sup>1</sup> If a prima facie case of discrimination is

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1. Louisiana Code of Criminal Procedure art. 795(C) provides,

No peremptory challenge made by the state or the defendant shall be motivated in substantial part on the

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successfully established, the burden of production then shifts to the State to come forward with a race neutral explanation for its peremptory challenges. *Batson*, 476 U.S. at 97; *State v. Brown*, 2010-0635, 56 So. 3d 462.

In *Batson*, the Supreme Court explained the burden-shifting process, in more detail, as follows:

The defendant who alleges discriminatory selection of the venire has the burden of proving “the existence of purposeful discrimination.” In deciding if the defendant has carried his burden of persuasion, a court must undertake “a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.” Circumstantial evidence of invidious intent may include proof of disproportionate impact. We have observed that under some circumstances proof of discriminatory impact “may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds.” For example, “total or seriously disproportionate exclusion of

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basis of the race or gender of the juror. If an objection is made that a challenge was motivated in substantial part on the basis of race or gender, and a prima facie case supporting that objection is made by the objecting party, the court **shall** demand a satisfactory race or gender neutral reason for the exercise of the challenge.

[Emphasis added.]

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[African Americans] from jury venires,” ... “is itself such an ‘unequal application of the law ... as to show intentional discrimination[.]”

[The United States Supreme Court has] recognized that a black defendant alleging that members of his race have been impermissibly excluded from the venire may make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. Once the defendant makes the requisite showing, the burden shifts to the State to explain adequately the racial exclusion. The State cannot meet this burden on mere general assertions that its officials did not discriminate or that they properly performed their official duties. Rather, the State must demonstrate that “permissible racially neutral selection criteria and procedures have produced the monochromatic result.”

. . .

[A] defendant may establish a prima facie case of purposeful discrimination in selection of the petit jury **solely on evidence concerning the prosecutor’s exercise of peremptory challenges at the defendant’s trial**. To establish such a case, the defendant first must show ... the prosecutor has exercised peremptory challenges to remove from the

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venire members of the defendant's race. Second, the defendant is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits "those to discriminate who are of a mind to discriminate." Finally, the defendant must show that these facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race. This combination of factors in the empaneling of the petit jury, as in the selection of the venire, raises the necessary inference of purposeful discrimination.

[Citations omitted; emphasis added.] *Batson*, 476 U.S. at 93-96.

In this case, it is undisputed that defendant made a timely objection to the prosecutor's removal of all but one of the African American persons on the venire. This showing alone demonstrates a "seriously disproportionate exclusion" of African Americans from the jury venire, thus raising an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race, and thereby establishing a prima facie case of purposeful discrimination.<sup>2</sup> Once the defendant made

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2. An African American defendant alleging that members of his race have been impermissibly excluded from the venire may make out a prima facie case of purposeful discrimination by showing that the totality of the relevant facts gives rise to an

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the requisite showing, the burden shifted to the State to explain adequately the racial exclusion. *Batson*, 476 U.S. at 94. However, the trial court then rejected defendant's challenge without requiring the prosecutor to give a race-neutral explanation for his actions. These facts warrant a remand of this case for further proceedings. Upon remand, if the trial court decides that the prosecutor has not come forward with a race neutral explanation for his action, petitioner's conviction should be reversed. *See Batson v. Kentucky*, 476 U.S. at 100.

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inference of discriminatory purpose. *Batson*, 476 U.S. at 93-94. Further, a defendant of any race may raise a *Batson* claim, and a defendant may raise a *Batson* claim even if the defendant and the excluded juror are of different races. *Flowers v. Mississippi*, 588 U.S. 284, 301, 139 S.Ct. 2228, 2243, 204 L.Ed.2d 638 (2019); *Powers v. Ohio*, 499 U.S. 400, 415, 111 S.Ct. 1364, 1373, 113 L.Ed.2d 411 (1991).

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**APPENDIX B — OPINION OF THE LOUISIANA  
SUPREME COURT WITH DISSENT, *STATE V.*  
*FAIR*, 424 So. 3d 1092; 2025-00933 (La. 01/21/26)**

THE SUPREME COURT OF  
THE STATE OF LOUISIANA

No. 2025-K-00933

STATE OF LOUISIANA

VS.

JUSTIN J. FAIR

IN RE: Justin Fair - Applicant Defendant; Applying For  
Writ Of Certiorari, Parish of Assumption, 23rd Judicial  
District Court Number(s) 21-112, Court of Appeal, First  
Circuit, Number(s) 2024 KA 0759;

**January 21, 2026**

Writ application denied.

JLW

JDH

JBM

JMG

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CRC

AHP

Griffin, J., would grant and docket and assigns reasons.

Supreme Court of Louisiana  
January 21, 2026

/s/ Katie Marjanovic  
Chief Deputy Clerk of Court  
For the Court

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**SUPREME COURT OF LOUISIANA**

**No. 2025-K-00933**

**STATE OF LOUISIANA**

**VS.**

**JUSTIN J. FAIR**

*On Writ of Certiorari to the Court of Appeal,  
First Circuit, Parish of Assumption*

**GRIFFIN, J., would grant and docket and assigns reasons.**

I would grant and docket to consider the applicant's claims of race and age discrimination. Louisiana's constitutional prohibitions on both race and age discrimination are textually stronger than their federal counterparts. La. Const. art. I § 3. The right of adults to serve on juries is also expressly protected. La. Const. art. V § 33 (A). Continued reliance on federal precedent, especially precedent that predates the current Louisiana Constitution, may therefore be inappropriate.

The State recognizes – but does not argue against – the applicant's claims of age discrimination. Of the two hundred perspective jurors, only seven were born after the year 2000. Failure to include younger adults in jury service only serves to further erode respect for such service. This Court has already quashed a general venire under similar circumstances. *State v. Cannon*, 19-0590 (La. 4/18/19), 267 So. 3d 585, 586.