


In the
Supreme Court of the United States



JUSTIN FAIR,

Petitioner,

v.

THE STATE OF LOUISIANA,

Respondent.

**On Petition for a Writ of Certiorari to the
Court of Appeal of Louisiana, First Circuit**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner contends that the petit jury pool notification and/or selection process in Assumption Parish, State of Louisiana, leads to an unconstitutional jury pool based on the lack of minorities and/or individuals born after 2000. Due to this alleged constitutionally deficient petit jury pool and the 23rd Judicial District Court's, Parish of Assumption's, rule not to place either race, gender or age on the Jury Pool List provided the prosecution or defense, petitioner claims he was denied his right to a fair and impartial truly representative jury under the Sixth and Fourteenth Amendment of the United States Constitution. Based upon these alleged violations, he also claims that his right to a truly effective *Batson* challenge of individual prospective jurors was denied. Respondent asserts that petitioner's intertwined claims present three distinct issues for consideration herein.

1. Is Assumption Parish's petit jury pool notification and selection process constitutional as a matter of law and fact?

2. Assuming arguendo that Assumption Parish's petit jury pool notification and/or selection process is constitutionally firm, did the State district court nevertheless err in finding that petitioner failed to preserve his objection thereto by a contemporaneous objection as statutorily required?

3. Was the State district court's denial and State appellate courts' affirmation of the denial of petitioner's *Batson* objection based on the failure to establish a prima facie case of discrimination constitutionally firm?

PARTIES TO THE PROCEEDINGS

Petitioner

- Justin Fair

Respondent

- State of Louisiana

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF JURISDICTION.....	1
STATEMENT OF THE CASE.....	1
I. Trial Court Proceedings.....	2
II. Direct Appeal.....	4
REASONS FOR DENYING THE PETITION	5
I. Fair Cross Section Jury Venire	5
II. <i>Batson</i> Claim.....	14
CONCLUSION.....	18

**RESPONDENT APPENDIX
TABLE OF CONTENTS**

Registered Voters by Parish by Race (May 2026)	Res.App.1a
Registered Voters by Parish and Sex (May 2026)	Res.App.4a
Registered by Parish and Age, Comparing Younger Cohorts to Older Cohorts (May 2026)	Res.App.7a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Barber v. Ponte</i> , 772 F.2d 982 (1st Cir.1985).....	10
<i>Batson v. Kentucky</i> , 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986)	i, 4, 14, 15, 16
<i>Beachum v. Tansy</i> , 903 F.2d 1321 (10th Cir. 1990).....	17
<i>Berghuis v. Smith</i> , 559 U.S. 314, 130 S.Ct. 1382, 176 L.Ed.2d 249 (2010)	6
<i>Brown v. Harris</i> , 666 F.2d 782 (2d Cir.1981).....	10
<i>Brumfield v. Louisiana</i> , No. CV 23-3522, 2024 WL 629464, <i>report and recommendation adopted</i> (E.D. La. Jan. 24, 2024)	10
<i>Coleman v. Alabama</i> , 389 U.S. 22, 88 S.Ct. 2, 19 L.Ed.2d 22 (1967)	12
<i>Duren v. Missouri</i> , 439 U.S. 357, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979).....	9
<i>Ford v. Seabold</i> , 841 F.2d 677 (6th Cir.), <i>cert. denied</i> , 488 U.S. 928, 109 S.Ct. 315, 102 L.Ed.2d 334 (1988)	10

TABLE OF AUTHORITIES (Cont.)

	Page
<i>Georgia v. McCollum</i> , 505 U.S. 42, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992)	15
<i>Hernandez v. New York</i> , 500 U.S. 352, 115 S.Ct. 1859, 114 L.Ed.2d 395 (1991)	15
<i>Johnson v. California</i> , 545 U.S. 162, 125 S.Ct. 2410, 162 L.Ed.2d 129 (2005)	16
<i>Johnson v. McCaughtry</i> , 92 F.3d 585 (7th Cir. 1996)	11
<i>Jones v. Georgia</i> , 88 S.Ct. 4, 389 U.S. 24, 19 L.Ed.2d 25 (1967)	12
<i>Moore v. Cain</i> , No. CV 14-0297-JJB-EWD, 2017 WL 4276934 (M.D. La. Sept. 7, 2017)	6
<i>Mosley v. Dretke</i> , 370 F.3d 467 (5th Cir. 2004)	11
<i>Purkett v. Elem</i> , ___U.S.___, 115 S.Ct.1769, 131 L.Ed.2d 34 (1985)	15
<i>Silagy v. Peters</i> , 905 F.2nd 986 (7th Cir. 5/2/90)	9, 10
<i>Snyder v. Louisiana</i> , 552 U.S. 472, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008)	16
<i>State v. Badon</i> , 338 So.2d 665 (La. 1976)	6

TABLE OF AUTHORITIES (Cont.)

	Page
<i>State v. Barksdale</i> , 247 La. 198, 170 So.2d 374 (1965), <i>cert.</i> <i>denied</i> , 382 U.S. 921, 86 S.Ct. 297, 15 L.Ed.2d 236.....	12
<i>State v. Boys</i> , 2019-0675 (La. App. 4th Cir. 5/26/21).....	16
<i>State v. Brown</i> , 2016-0998 (La. 1/28/22), 347 So.3d 745, <i>cert. denied</i> , __U.S.__, 143 S.Ct. 886, 215 L.Ed.2d 404 (2023)	8
<i>State v. Brown</i> , 2018-01999, 330 So.3d 199 (La. 9/30/21).....	7
<i>State v. Bussa</i> , 176 La. 87, 145 So. 276 (La. 1932).....	6
<i>State v. Calure</i> , 553 So.2d 815 (1989)	15
<i>State v. Fair</i> , 2024 KA 0759 (La. App. 1st Cir. 7/11/25).....	4
<i>State v. Gonsoulin</i> , 38 La. Ann. 459 (La. 1886)	6
<i>State v. Grey</i> , 257 La. 1070, 245 So.2d 178 (1971).....	12
<i>State v. Holliday</i> , 2017-01921, 340 So.3d 648 (La. 1/29/20).....	5
<i>State v. Lee</i> , 559 So.2d 1310 (La. 1990).....	6
<i>State v. Lilly</i> , 930 N.W.2d 293 (Iowa 2019).....	13

TABLE OF AUTHORITIES (Cont.)

	Page
<i>State v. Poland</i> , 255 La. 746, 232 So.2d 499 (1970)	13
<i>State v. Thomas</i> , 2019-0409, 289 So.3d 1030 (La. 1st Cir. 10/25/19).....	8
<i>State v. Tipton</i> , 2024-0078, 404 So.3d 730 (La. App. 1st Cir. 12/10/24)	6
<i>State v. West</i> , 116 La. 626, 40 So. 920 (La. 1906).....	6
<i>Swain v. Alabama</i> , 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965)	12
<i>Tarrance v. State of Florida</i> , 188 U.S. 519, 23 S.Ct. 402, 47 L.Ed. 572 (1903)	13
<i>Taylor v. Louisiana</i> , 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975)	5, 9, 10, 17
<i>Thomas v. Louisiana</i> , 23-5023, __U.S.__, 144 S.Ct. 199, 217 L.Ed.2d 83 (10/2/23)	8
<i>Thompson v. Sheppard</i> , 490 F.2d 830 (5th Cir. 1974)	12
<i>United States v. Diggs</i> , 522 F.2d 1310 (D.C.Cir.1975), <i>cert.</i> <i>denied</i> , 429 U.S. 852, 97 S.Ct. 144, 50 L.Ed.2d 127 (1976)	10

TABLE OF AUTHORITIES (Cont.)

	Page
<i>United States v. DiTommaso</i> , 405 F.2d 385 (4th Cir.1968)	10
<i>United States v. Erickson</i> , 999 F.3d 622 (8th Cir. 2021).....	14
<i>United States v. Gault</i> , 141 F.3d 1399 (10th Cir. 1998)	17
<i>United States v. Jackson</i> , 204 F.3d 1118, 1999 WL 1330689 (5th Cir. Dec. 17, 1999)	10
<i>United States v. Kuhn</i> , 441 F.2d 179 (5th Cir.1971)	10
<i>United States v. Maskeny</i> , 609 F.2d 183 (5th Cir. 1980)	12
<i>United States v. Olson</i> , 473 F.2d 686 (8th Cir.), <i>cert. denied</i> , 412 U.S. 905, 93 S.Ct. 2291, 36 L.Ed.2d 970 (1973)	10
<i>United States v. Orange</i> , 447 F.3d 792 (10th Cir. 2006).....	17
<i>United States v. Potter</i> , 552 F.2d 901 (9th Cir.1977).....	10
<i>United States v. Sanders</i> , 133 F.4th 341 (5th Cir. 2025).....	11
<i>United States v. Test</i> , 550 F.2d 577 (10th Cir.1976)	10
<i>United States v. Warren</i> , 16 F.3d 247 (8th Cir. 1994).....	14

TABLE OF AUTHORITIES (Cont.)

	Page
<i>Washington v. Davis</i> , 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976)	15
<i>Wysinger v. Davis</i> , 886 F.2d 295 (11th Cir.1989)	10

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. VI	i, 5, 9, 17
U.S. Const. amend. XIV	i

STATUTES

LSA-R.S. 14:27	2
LSA-R.S. 14:30.1	2
LSA-R.S. 14:35	2

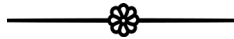
JUDICIAL RULES

LSA-C.Cr.P. art. 401(A)	5
LSA-C.Cr.P. art. 408	5
LSA-C.Cr.P. art. 408(A)	5
LSA-C.Cr.P. art. 409.3	5
LSA-C.Cr.P. art. 419(A)	6
LSA-C.Cr.P. art. 532(9)	7
LSA-C.Cr.P. art. 535(D)	8
Sup. Ct. R. 10(a-c)	1



STATEMENT OF JURISDICTION

Respondent asserts that absent this Honorable Court's discretionary action to review petitioner's writ herein, pursuant to the United States Supreme Court Rule 10(a-c), petitioner's perceived claim does not rise to any level of constitutional and/or jurisprudential violation which requires this Honorable Court's consideration. As asserted above, the true issue herein does not merit this Honorable Court's consideration.



STATEMENT OF THE CASE

On March 27, 2021, Assumption Parish Sheriff's Deputy Rivere was dispatched to Sagona's Hardware in Assumption Parish, State of Louisiana, in reference to a stabbing which had occurred thereat. Upon his arrival, he was informed that the victim, Ronnie Simon, Jr., was enroute to a nearby hospital. Based thereon, he proceeded to the hospital where he met the victim and his wife. Deputy Rivere was advised that Mr. Simon had sustained two stab wounds, one under his left nipple and one under his left arm. Mrs. Simon advised Deputy Rivere that the day before she had asked petitioner herein, Justin Fair, for his help in picking up a U-Haul trailer for use at a church function but later advised him that day that her husband was going to be available to help her and his assistance was no longer required. When the Simons arrived at Sagona's Hardware the following day, she noticed that petitioner was waiting, apparently thinking she would be

alone. She again informed him that his assistance was not needed but petitioner did not leave the area. When Mrs. Simon entered the store to secure the trailer, she noticed that petitioner had repositioned his vehicle near the Simon's vehicle, exited same and started walking toward the Simon vehicle in which Mr. Simon was sitting. As she exited the store, Mr. Simon exited his vehicle. She stated that she was able to get between petitioner and her husband but petitioner pushed her to the ground causing a minor elbow scrape. After she arose, she saw petitioner and her husband fighting. While attempting to break up the fight, she noticed that her husband was bleeding and that petitioner was holding a 6" green handled knife. Based thereon, she got her husband into their vehicle and drove to the hospital.

Mr. Simon informed Deputy Rivere that when his wife had exited the store, and saw petitioner push her to the ground, he exited his vehicle and a subsequent fight occurred. Based upon these facts, an arrest warrant was issued charging defendant with Attempted Second Degree Murder in violation of LSA-R.S. 14:27 and 14:30 and Simple Battery in violation of LSA-R.S. 14:35. Defendant was subsequently found and taken into custody on those charges.

I. Trial Court Proceedings

On April 30, 2021, defendant was charged by Bill of Information with Attempted Second Degree Murder in violation of LSA-R.S. 14:27 and 14:30.1. (Tr. r. p. 28). Defendant was formally arraigned on May 3, 2021, pleading not guilty to all charges. (Tr. r. p. 2). Subsequently, all pre-trial motions were set and heard to include discovery motions. Respondent provided open

file discovery. Just prior to trial (August 1, 2022), the State and petitioner's counsel stipulated to the introduction of the crime scene video taken in the parking area at Sagona's Hardware and to certain still pictures. (Tr. r. p. 12).

Jury selection commenced on August 3, 2022. (Tr. r. p. 13-16). The following day, trial commenced and after presentation of all witnesses and evidence to include the video taken of the incident, the jury unanimously found petitioner guilty of attempted manslaughter. (Tr. r. pgs. 17-19). Thereafter, the trial court ordered that a Pre-sentence Investigation Report be completed, sentencing to follow the submission thereof. (Tr. r. p. 19).

Prior to sentencing, petitioner pro se and his counsel filed separate motions for new trial and motion for post-verdict judgment of acquittal which the trial court subsequently heard and denied. (Tr. r. p. 24). On April 3, 2023, the trial court for written reasons filed into the record (Tr. r. pgs. 86-87), sentenced petitioner to the Louisiana Department of Corrections for a period of twenty (20) years at hard labor with credit for time served. (Tr. r. p. 25). Immediately thereafter, petitioner pro se filed a motion to reconsider sentence which the trial court set for hearing for May 1, 2023. (Tr. r. pgs. 88-92). Prior to the trial court ruling thereon, petitioner pro se filed a motion for appeal which was granted. (Tr. r. pgs. 100-102). Thereafter, the trial court for written reasons filed into the record denied petitioner's motion for reconsideration of his sentence. (Tr. r. pg. 107). From that ruling, petitioner sought direct appellate review.

II. Direct Appeal

On direct appeal, petitioner complained that: (1) the evidence was insufficient to support his conviction (*i.e.* the State failed to prove that defendant had the specific intent to kill Mr. Simon or that he did not act in self-defense, requiring an acquittal); (2) the trial court erred in denying a *Batson* challenge, (3) the trial court erred in imposing an excessive sentence, and (4) the trial court gave an erroneous jury instruction on attempted manslaughter. After submission of briefs, a divided lower appellate court affirmed defendant-appellant's conviction and sentence. *State v. Fair*, 2024 KA 0759 (La. App. 1st Cir. 7/11/25). From that ruling, petitioner sought appellate review to the Louisiana Supreme Court. After consideration, the supreme court denied petitioner's writ of review with Justice Griffen dissenting based on an alleged age discrimination claim.



REASONS FOR DENYING THE PETITION

I. Fair Cross Section Jury Venire

The Sixth Amendment to the United States Constitution guarantees the right to “an impartial jury of the state and district wherein the crime shall have been committed.” U.S. Const. Amend VI. “[T]he selection of a petit jury from a representative cross-section of the community is an essential component of the Sixth Amendment right to a jury trial.” *State v. Holliday*, 2017-01921, p. 51 (La. 1/29/20), 340 So.3d 648, 691 (citing *Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975)). Procedurally, petitioner first contends that Assumption Parish’s jury venire pool selection process unconstitutionally denied him a fair and impartial jury.

In Louisiana, only individuals who are United States citizens over the age of 18 and residing in the Parish may become a registered voter therein. LSA-C.Cr.P. art. 401(A). LSA-C.Cr.P. art. 408(A) requires the jury commission to impartially select only registered voters to serve in the general venire. “The name and address of each person on the list shall be written on a separate slip of paper, with no designation as to race or color, which shall be placed in a box labeled “General Venire Box.” for the general venire and forwarded to the Clerk of Court as custodian thereof. LSA-C.Cr.P. art. 408. In conformance with LSA-C.Cr.P. art. 409.3, petit jury venire pools are then randomly selected from the general venire. Once randomly selected, notification of an individual’s selection for petit jury is mailed by the Sheriff of Assumption Parish by United

States Mail, regular delivery, to the address listed on the voter registration role. *Id.* The law presumes the legality of a venire (*State v. Gonsoulin*, 38 La. Ann. 459 (La. 1886); *State v. West*, 116 La. 626, 40 So. 920 (La. 1906); *State v. Bussa*, 176 La. 87, 145 So. 276 (La. 1932); and *see also State v. Badon*, 338 So.2d 665, 667 (La. 1976).

LSA-C.Cr.P. art. 419(A) provides that, “[a] petit 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.” To successfully attack the jury selection process, a defendant must demonstrate that the mechanism by which the jury selection process works systematically excludes a distinct group and cannot “make out a prima facie case merely by pointing to a host of factors that, individually or in combination, *might* contribute to a group’s underrepresentation. *Berghuis v. Smith*, 559 U.S. 314, 332, 130 S.Ct. 1382, 1395, 176 L.Ed.2d 249 (2010). The burden of proving the grounds for setting aside a constituted general venire is on the defendant. *State v. Lee*, 559 So.2d 1310, 1313 (La. 1990); *State v. Tipton*, 2024-0078 (La. App. 1st Cir. 12/10/24), 404 So.3d 730, 734; and *State v. Badon*, *supra*. Moreover, “[T]he mere fact that one particular jury venire may exhibit disproportionality does not in any sense amount to proof that the State’s system of constituting its central jury pool is unconstitutional or leads to the systematic exclusion of any particular group from the jury-selection process.” *Moore v. Cain*, No. CV 14-0297-JJB-EWD, 2017 WL 4276934, at *8 (M.D. La. Sept. 7, 2017), report and recommendation adopted, No. CV 14-297-

JJB-EWD, 2017 WL 4275903 (M.D. La. Sept. 26, 2017); *see also State v. Brown*, 2018-01999 (La. 9/30/21), 330 So.3d 199, 282.

Respondent now shows that the record is notably devoid of a scintilla of evidence indicating that anyone associated with the jury commission charged with constituting the petit jury venire list purposefully did any action to preclude a fair and impartial petit jury venire list being confected from those individuals qualified to serve. Nor does petitioner adduce a scintilla of evidence that the Clerk of Court, acting in her capacity for ensuring that the petit jury venire subpoenas were timely forwarded to the Sheriff of Assumption Parish and that he subsequently timely forwarded same by regular U.S. Postal mail to those individuals qualified to serve and selected for the general jury venire, perform any action contrary to the law. Conversely, he merely attempts to conflate his failure to timely seek the petit jury venire pool list prior to trial from the Clerk of Court as permitted by law with his allegation that the Clerk of Court “withheld” the list in an attempt to allegedly preclude petitioner from timely challenging the petit jury venire pool by filing a motion to quash same as statutorily required (LSA-C.Cr.P. art. 532(9)). Based upon the above and foregoing, respondent first asserts that petitioner has failed to carry his burden that Assumption Parish’s mechanism for selecting and notifying prospective petit juror members is procedurally unconstitutional or any way contributed to his conviction. Further, while petitioner contends that as his counsel did not receive the jury venire list until the morning of trial, there was no time in which to timely file a motion to quash the petit jury venire belies the real issue. Petitioner’s counsel in brief cites to a pre-

vious case¹ noting that he had the same type issue therein in Assumption Parish. Apparently, despite being previously presented with this alleged issue, counsel chose not to consider the possibility of a repeat thereof and request from the Clerk of Court a petit jury venire list prior to trial nor have a motion to quash prepared in anticipation of the same issue arising herein. Statutorily, where a defendant 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, he/she waives their objection. LSA-C.Cr.P. art. 535(D); *See also State v. Brown*, 2016-0998 (La. 1/28/22), 347 So.3d 745, 798, cert. denied, __U.S.__, 143 S.Ct. 886, 215 L.Ed.2d 404 (2023). Based on the above and foregoing, respondent asserts that procedurally and factually, petitioner failed to carry his burden and this claim is without constitutional, statutory or jurisprudential merit and must be denied.

Petitioner next complains that the petit jury pool was not a fair-cross-section of the population of Assumption Parish citing a census report. Specifically, he cites that as to age, while only 7 of the 200 prospective petit jurors were born after the year 2000 (3.5%), they comprised 11% of the population. Likewise, he complains that while African Americans comprise 29% of

¹ *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, on remand writ denied 2022KW0909 (La. 1st Cir. 9/26/22), 2022WL4463842; writ denied, 2022KP01613 (La. 3/25/23), 358 So.3d 498, writ denied, *Thomas v. Louisiana*, 23-5023, __U.S.__, 144 S.Ct. 199, 217 L.Ed.2d 83 (10/2/23).

the population, only 14% answered the call to the petit jury venire pool and only .025% were questioned as prospective jurors.

A defendant establishes a prima facie violation of the fair-cross-section requirement by showing that (1) a group alleged to have been excluded is a “distinctive” group in the community, (2) the group’s representation in jury pools is not “fair and reasonable” when considered against the group’s percentage in the community, and (3) the group’s underrepresentation “is due to systematic exclusion of the group in the jury-selection process.” *Duren v. Missouri*, 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979)). The defendant bears the burden of proof to show a prima facie violation of the fair-cross-section requirement. *Id.* at 363–64. When presented with an issue concerning the fair-cross-section requirement, the first question is whether the alleged excluded group is a “distinctive group” in the community. The Seventh Circuit noted that the term “distinctive group” is “a rather amorphous concept . . . that the Supreme Court has not burdened . . . with a precise definition.” *Silagy v. Peters*, (7th Cir. 5/2/90), 905 F.2nd 986, 1010. It found, however, that the concept was necessarily linked to the purposes of the Sixth Amendment’s fair-cross-section requirement, which the Supreme Court elaborated in *Taylor v. Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). Those purposes were summarized as follows:

- (1) to ensure that the commonsense judgment of the community will act as a hedge against the overzealous or mistaken prosecutor;
- (2) to preserve public confidence in the criminal justice system by ensuring that the community

participates in the administration of our criminal laws; and

- (3) to further the belief that sharing in the administration of justice is a phase of civic responsibility. *Silagy v. Peters*, (7th Cir. 5/2/90), 905 F.2d 986, 1010 (citing *Taylor v. Louisiana*, 419 U.S. 522, 530–31, 95 S.Ct. 692, 698, 42 L.Ed.2d 390 (1975)).

After review of the facts therein, the court concluded, citing numerous circuits², that young persons do not

² *Barber v. Ponte*, 772 F.2d 982, 998 (1st Cir.1985) (rejecting 18–34 years as distinctive group); *Brown v. Harris*, 666 F.2d 782, 783–84 (2d Cir.1981) (rejecting 18–28 years as distinctive group), cert. denied, 456 U.S. 948, 102 S.Ct. 2017, 72 L.Ed.2d 472 (1982); *United States v. DiTommaso*, 405 F.2d 385, 391 (4th Cir.1968) (rejecting 21–29 years as distinctive group), cert. denied, 394 U.S. 934, 89 S.Ct. 1209, 1210, 22 L.Ed.2d 465 (1969); *United States v. Kuhn*, 441 F.2d 179, 181 (5th Cir.1971) (rejecting 21–23 years as distinctive group); *Ford v. Seabold*, 841 F.2d 677, 681–82 (6th Cir.) (rejecting 18–29 years as distinctive group), cert. denied, 488 U.S. 928, 109 S.Ct. 315, 102 L.Ed.2d 334 (1988); *United States v. Olson*, 473 F.2d 686, 688 (8th Cir.) (rejecting 18–20 years as distinctive group), cert. denied, 412 U.S. 905, 93 S.Ct. 2291, 36 L.Ed.2d 970 (1973); *United States v. Potter*, 552 F.2d 901, 905 (9th Cir.1977) (rejecting 18–34 years as distinctive group); *United States v. Test*, 550 F.2d 577, 590–93 (10th Cir.1976) (rejecting 21–39 years as distinctive group); *Wysinger v. Davis*, 886 F.2d 295, 296 (11th Cir.1989) (rejecting 18–25 years as distinctive group); *United States v. Diggs*, 522 F.2d 1310, 1317 (D.C.Cir.1975) (rejecting 21–30 years as distinctive group), cert. denied, 429 U.S. 852, 97 S.Ct. 144, 50 L.Ed.2d 127 (1976); *Brumfield v. Louisiana*, No. CV 23-3522, 2024 WL 629464, at *13 (E.D. La. Jan. 24, 2024), *report and recommendation adopted*, No. CV 23-3522, 2024 WL 623916 (E.D. La. Feb. 14, 2024); and *United States v. Jackson*, 204 F.3d 1118, 1999 WL 1330689, at *9 (5th Cir. Dec. 17, 1999) (“Age is not a characteristic which can define a distinctive group in the community for purposes of the fair-cross-section requirement.”). *See also United States v. Sanders*,

constitute a distinct group under *Duren* for purposes of determining a fair-cross-section of the community. *Johnson v. McCaughtry*, 92 F.3d 585, 592–93 (7th Cir. 1996).

Based thereon, respondent asserts that as to petitioner’s claim that the exclusion of young persons denied him a fair-cross-section of individuals in the petit jury venire pool is without constitutional or jurisprudential merit. As such, petitioner has failed to meet the first prong of the *Duren* requirement as to young voters. Further, while petitioner cites to statistics he contends supports his position, the Louisiana Secretary of State Parish Report of Registered Voters dated 5/1/26 and Stats_3A: Registered Voters by Age, Sex and Disability³ in consideration with the Petit Jury List (R. 54-62) indicates that from the age of 18-34, there were 2848 registered voters as compared to 13,913 total registered voters. As such, that age segment is 20.47006% of the registered voters in Assumption Parish. The Petit Jury List indicates that of that age segment, 38 individuals or 19% of the registered voters that age were called to be placed in the petit jury pool. Typically, courts assess the degree of under-representation utilizing “the ‘absolute disparity’ measure (the difference in the percentage of the group in the jury pool and the percentage of the group in the jury-eligible population). Herein, that absolute disparity is 1.47006%. However, the courts have recognized that absolute disparities of 10% or less are insufficient to establish discrepancies worthy of relief. *Mosley v. Dretke*, 370 F.3d 467, 479 (5th Cir. 2004) (citing *United States*

133 F.4th 341, 372 (5th Cir. 2025).

³ See Appendix 2 and 3

v. Maskeny, 609 F.2d 183, 190 (5th Cir. 1980); and *Thompson v. Sheppard*, 490 F.2d 830, 832-34 (5th Cir. 1974) (affirming a district court judgment that had resulted in the compilation of a new jury list with an 11% disparity). Based hereon, respondent asserts that petitioner's claim as to a violation of the fair-cross-section of a petit jury venire pool based on age is without constitutional, statutory or jurisprudential merit and must be denied.

Now turning to his claim of insufficient blacks in the petit jury venire pool, respondent agrees that blacks are a distinct group under the *Duren* test. As such, petitioner has met the first prong of *Duren*. In considering *Duren*'s second prong (*i.e.* the group's representation in jury pools is not "fair and reasonable" when considered against the group's percentage in the community) respondent asserts the following. It is settled that purposeful discrimination may not be assumed or merely asserted; it must be proved. *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965); and *State v. Grey*, 257 La. 1070, 1077, 245 So.2d 178, 180 (1971). The question of what constitutes a sufficient showing of intentional discrimination in jury selection is one of fact, varying in its solution with individual cases, and the burden of establishing racial discrimination rests upon the accused. *State v. Barksdale*, 247 La. 198, 170 So.2d 374, 384 (1965), cert. denied, 382 U.S. 921, 86 S.Ct. 297, 15 L.Ed.2d 236. Further, the rulings in *Coleman v. Alabama*, 389 U.S. 22, 88 S.Ct. 2, 19 L.Ed.2d 22 (1967), and *Jones v. Georgia*, 88 S.Ct. 4, 389 U.S. 24, 19 L.Ed.2d 25 (1967), do not sustain the proposition that "the mere establishment of a disparity between the number of Negroes on the venire list makes a prima facie case of discrimination that

must stand where not rebutted by the state.” *State v. Poland*, 255 La. 746, 232 So.2d 499, 505 (1970). “The burden is on the defendant to prove the existence of purposeful discrimination. See *Tarrance v. State of Florida*, 188 U.S. 519, 23 S.Ct. 402, 47 L.Ed. 572 (1903).

Respondent now shows that pursuant to the statistics set forth in the Louisiana Secretary of State’s Parish Report of Registered Voters dated 5/1/264, 30.97205% of registered voters in Assumption Parish are black. The record is devoid of a scintilla of fact as to how many of those individuals who appeared for petit jury venire selection herein were black. Based thereon, respondent asserts that despite only 5 blacks being selected for petit jury venire questioning, petitioner has failed to substantiate his burden of proof as to any disparate treatment either in the selection process of the petit jury venire pool or the petit jury venire. Based thereon, respondent asserts that this writ of certiorari must be denied. In considering *Duren*’s third prong (*i.e.* the group’s underrepresentation “is due to systematic exclusion of the group in the jury-selection process), in *State v. Lilly*, 930 N.W.2d 293 (Iowa 2019), the court noted that an inability to establish any one of the three *Duren/Plain* elements is fatal to a defendant’s fair-cross-section challenge. It further explained that to establish the third prong, a defendant must prove that the underrepresentation resulted from a particular feature (or features) of the jury selection system. *Id.* at 306. The defendant, in other words, “must tie the disparity to a particular practice” and show that the practice caused the systematic exclusion of the distinctive group in the jury selection process.

⁴ See Appendix 2 and 3

Id. at 307. To demonstrate systematic exclusion, a defendant must provide additional evidence in support of his claim, such as “a defect in the [jury selection] process itself that serves to exclude [the underrepresented group],” “that the voter registration . . . requirements impose . . . discriminatory qualifications on applicants,” or “that the administration of the juror selection plan is discriminatory.” *United States v. Warren*, 16 F.3d 247, 252 (8th Cir. 1994); and *United States v. Erickson*, 999 F.3d 622, 627–28 (8th Cir. 2021). Herein, petitioner has failed to carry that burden. Other than contending that there is an underrepresentation of blacks in the petit jury venire pool, he presents no substantive proof that the procedure utilized in Assumption Parish to select and notify registered voters of their respective selection for a petit jury venire pool is constitutionally defective. Based thereon, respondent asserts that petitioner has failed to carry his burden of *Duren’s* requirements. This writ must be denied based thereon.

II. *Batson* Claim

Petitioner next complains that the trial and appellate courts erred in concluding that he failed in proving a *Batson* prima facie case of racial discrimination in the jury selection process. Specifically, he claims that respondent prejudicially used four of its peremptory challenges to exclude all but one of the five minorities who were questioned during voir dire.

In *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), the Supreme Court adopted a three step analysis in determining whether a defendant’s Constitutional rights have been infringed by impermissibly discriminatory practices. First, the Court

requires the defendant to make a prima facia showing that the prosecutor has exercised peremptory challenges on the basis of race. Second, if the requisite showing has been made, the Court noted the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. However, this step does not demand an explanation that is persuasive or even plausible. *Purkett v. Elem*, ___U.S.___, 115 S.Ct.1769, 131 L.Ed.2d 34 (1985). Finally, the Court requires the trial court to determine whether the defendant has carried his burden of proving purposeful discrimination. *Hernandez v. New York*, 500 U.S. 352, 358-359, 115 S.Ct. 1859/1866, 114 L.Ed.2d 395 (1991). In reaching a decision, the trial court is required to examine all of the evidence available. Essentially, this involves a comparison of the arguments and facts in support thereof posited in the challenger's prima facia offering with the "race-neutral" reasons articulated by the exceptor to determine whether the exceptor engaged in purposeful discrimination. This comparison must be made in light of the record with reviewing courts owing the trial court great deference accessing the credibility of in-court testimony. *State v. Calure*, 553 So.2d 815 (1989). The Supreme Court expanded the *Batson* challenge to include defendant's challenges in *Georgia v. McCollum*, 505 U.S. 42, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992). For a *Batson* challenge to succeed, it is not enough that a racially discriminatory result be evident. Rather, the result "must ultimately be tracked to a racially discriminatory purpose." *Batson*, *supra*, 476 U.S. 94, 106 S.Ct. 1721, quoting *Washington v. Davis*, 426 U.S. 229, 240, 96 S.Ct. 2040, 2048, 48 L.Ed.2d 597 (1976). Thus, the sole focus of the *Batson* inquiry is upon the intent of the individual exercising the peremptory exception at the time he exercised same.

To meet the first prong of proving prima facie discrimination, a defendant must establish that: (1) he/she is a “member of a cognizable racial group”; (2) the State exercised peremptory challenges to remove jurors of the defendant’s race; and (3) proffered “facts and any other relevant circumstances to raise an inference” that the State struck the potential jurors solely “on account of their race.” *Johnson v. California*, 545 U.S. 162, 169, 125 S.Ct. 2410, 162 L.Ed.2d 129 (2005) (quoting *Batson*, 476 U.S. at 94, 106 S.Ct. 1712). A wide variety of evidence may be offered to make a prima facie case of discrimination, so long as the sum of the proffered facts gives rise to an inference of discriminatory purpose. *Id.* However, if a defendant fails to make out a prima facie showing of intentional discrimination, the inquiry ends there and does not advance to the second step requiring a race-neutral explanation from the State. A reviewing court should not disturb a trial court’s ruling on the issue of discriminatory intent unless it is clearly erroneous. *Snyder v. Louisiana*, 552 U.S. 472, 477, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008); and *State v. Boys*, 2019-0675 (La. App. 4th Cir. 5/26/21), 321 So.3d 1087, 1098, *writ denied*, 2021-00909 (La. 11/10/21), 326 So.3d 1245.

In the matter *sub judice*, other than stating specific prospective juror’s names, petitioner has failed to offer a scintilla of evidence to support his contention that he proved a prima facie case of discrimination in respondent’s peremptory exclusions of certain prospective jurors. The record reflects that the trial court made no finding that petitioner had satisfactorily provided any feasible substantiation of racial discrimination. As such, respondent was not required to provide any race neutral rationale for its peremptorily

excluding or challenging for cause those specific prospective jurors. Although not specifically addressed, the mere fact of not requiring respondent to provide any race neutral reason for said peremptory exclusions or challenges for cause supports respondent's position that petitioner had failed to make a prima facie case of discrimination. The trial court's ruling must not be disturbed herein as it is not clearly erroneous. Petitioner has failed to prove his claim of racial discrimination in the jury selection process other than to urge this Honorable Court to find that any jury must have the same percentage of any particular race on the jury as the percentage of eligible registered voters in the community. While the Sixth Amendment guarantees a defendant the right to a jury pool consisting of a fair-cross-section of the community (*Taylor v. Louisiana*, 419 U.S. 522, 538, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975) and *United States v. Gault*, 141 F.3d 1399, 1402 (10th Cir. 1998), they have no constitutional right to a jury composed in whole or in part of persons of his race. *Beachum v. Tansy*, 903 F.2d 1321, 1331 (10th Cir. 1990); and *United States v. Orange*, 447 F.3d 792, 797 (10th Cir. 2006). This claim is constitutionally, statutorily and jurisprudentially infirm and must be denied.



CONCLUSION

Respondent asserts for those reason set forth above, the rulings of the Louisiana State trial and appellate courts finding no procedural, statutory and/or constitutional violation in: (a) the juror voir dire pool selection process which comprise a fair-cross-section of eligible voters in Assumption Parish and (b) finding that petitioner fail in proving a prima facie case of discrimination in the juror selection process must be affirm, deny petitioner's writ of certiorari to this Honorable Court.

Respectfully submitted,

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