HOW TO HANDLE VOIR DIRE

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Case Law on the Trial Judge's Role

BATSON CHALLENGES DUE TO RACIAL OR GENDER DISCRIMINATION

In *Woodson v. Porter Brown Limestone Co.*, 916 S.W.2d 896, 900 (Tenn. 1996), a wrongful death action, plaintiff's decedents were killed when their car was struck by a gravel truck driven by defendant Felix Morris, an employee of defendant Porter Brown Limestone Company, Inc.

During the jury selection, defendants exercised a peremptory challenge to exclude the sole black juror from the venire. The court excused the juror, and the others challenged peremptorily, but asked that they remain temporarily in the courtroom. Plaintiff's counsel requested permission to approach the bench and, in the bench conference that followed, objected to the challenge of the black juror. Upon hearing the objection, the court required each counsel to "detail the reasons for [the] challenges." After the written reasons were passed to the trial judge, he told the juror that he had a right to serve on the jury. The juror responded: "I'd rather not exercise that right." The court thanked and excused the juror without further comment on the record. As a result, an all-white jury was seated. The jury returned a verdict for the defendant driver and employer.

On appeal the Tennessee Supreme Court reversed and remanded for a new trial, adopting the holding in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). as follows:

> [I]in *Batson v. Kentucky*, the Court held that a criminal defendant could challenge the exclusion of racial minorities on equal protection grounds. *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). There a black criminal defendant challenged the prosecution's use of peremptory challenges to exclude all the black members of the venire. The United States Supreme Court held that the equal protection clause guarantees defendant that the State will not exclude members of defendant's race from the venire on account of race. *Id.* at 97–98, 106 S.Ct. at 1723–24.
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> The *Batson* Court outlined the appropriate procedure for raising the equal protection challenge. First, defendant must establish a prima facie case of purposeful discrimination. Defendant "may make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." *Id.* at 94, 106 S.Ct. at 1721. This showing may include proof of systematic exclusion, substantial underrepresentation on the venire, or the selection methods and results solely in the present case. *Id.* at 95, 106 S.Ct. at 1722.5 As to the purposeful requirement, defendant is entitled to rely on the nature of the peremptory challenge—that it permits " 'those to discriminate who are of a mind to discriminate.' " *Id.* at 96, 106 S.Ct. at 1723 (quoting *Avery v. Georgia*, 345 U.S. 559, 562, 73 S.Ct. 891, 892, 97 L.Ed. 1244 (1953)). In the end, defendant must establish that a consideration of all the relevant circumstances raises an inference of purposeful discrimination. *Id.* at 97, 106 S.Ct. at 1723.
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> Once defendant makes a prima facie showing, the state is required to demonstrate a neutral explanation for the exclusion. *Id.* The explanation need not reach the level of a "for cause" challenge, but neither may it be so scant as to rely on assumed bias on the part

of the excluded juror because of race or to conclusively assert universal good faith on the part of the prosecutor. *Id.* at 97–98, 106 S.Ct. at 1723–24. If a race-neutral explanation is given, the trial court must determine whether, given all the circumstances, defendant has established purposeful discrimination. If so, the juror may not be excluded. After reviewing these standards, the *Batson* Court remanded the case to allow the trial court to evaluate the facts.

While the holding in *Batson* focused on defendant's rights, it also referenced the negative effects that race-based exclusions have on the excluded juror and the community. *Id.* at 87–89, 106 S.Ct. at 1718–19. Five years later, in *Powers v. Ohio*, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991), the Court expanded *Batson* in a case that emphasized the importance of the excluded juror's rights. In *Powers*, a white defendant was deemed to have third party standing to challenge the exclusion of a black juror. "[T]he Equal Protection Clause prohibits a prosecutor from using the State's peremptory challenges to exclude otherwise qualified and unbiased persons from the petit jury solely by reason of their race, a practice that forecloses a significant opportunity to participate in civil life. An individual juror does not have a right to sit on any particular petit jury, but he or she does possess the right not to be excluded from one on account of race." *Powers v. Ohio*, 499 U.S. at 409, 111 S.Ct. at 1370. Further, "race is irrelevant to the defendant's standing to object to the discriminatory use of peremptory challenges." *Id.* at 416, 111 S.Ct. at 1373.

The same year, the Court applied the *Batson* rationale to civil cases holding that "[r]acial discrimination has no place in the courtroom, whether the proceeding is civil or criminal." *Edmonson v. Leesville Concrete Co., Inc*, 500 U.S. 614, 630, 111 S.Ct. 2077, 2088, 114 L.Ed.2d 660 (1991). Since "[t]he selection of jurors represents a unique function delegated to private litigants by the government and attributable to the government for purposes of invoking constitutional protections ...," *id.* at 627, 111 S.Ct. at 2086, the Court found state action in the civil action forum. Therefore, a private litigant's use of peremptory challenges in a civil case constitutes state action; it is unconstitutional to use peremptory challenges to exclude jurors because of race.

....

First, the court must provide an opportunity to counsel to object to potential peremptory challenges before the court announces the exclusion and excuse of challenged jurors. This procedure may be outlined before trial, detailed in the pretrial order, or described in the court's local rules. For example, counsel could be required to submit challenges in writing to opposing counsel before presenting them to the clerk or judge. Prior to reading the names of the excluded jurors, the judge might inquire as to objections or might simply pause to allow objections. Counsel desiring to contest a challenge on discrimination grounds could do so at the bench or in a jury-out conference.

Secondly, after the objection is raised, the court must ascertain whether a prima facie case of purposeful discrimination has been established. This proffer or discussion should also occur outside the presence of the jury. If the court finds that a prima facie case has been established, the court must give the opposing party the opportunity to rebut the prima facie case by establishing a neutral reason for the exercise of the challenge. The

objecting party must be allowed to respond as to why the reason is pretextual or inadequate. Thereafter, the court must determine, by considering all the facts and circumstances, whether the totality of the circumstances support a finding of purposeful discrimination. "The ... ultimate burden of persuasion rests with, and never shifts from, the opponent of the strike." *Purkett v. Elem*, 514 U.S. at ——, 115 S.Ct. at 1771, 131 L.Ed.2d at 839.

The trial judge must carefully articulate specific reasons for each finding on the record, *i.e.*, whether a prima facie case has been established; whether a neutral explanation has been given; and whether the totality of the circumstances support a finding of purposeful discrimination. The trial court's factual findings are imperative in this context. On appeal, the trial court's findings are to be accorded great deference and not set aside unless clearly erroneous. *See In re A.D.E.*, 880 S.W.2d 241, 243 (Tex.App.1994). Thus, specificity in the findings is crucial.

If the court concludes that a prima facie case has not been established, no explanation may be required. If the court, however, determines that a prima facie case was established but that the explanation is sufficient, or that the totality does not support a finding of purposeful discrimination, the juror should be excluded and the strike counted against the excluding party. If the court finds that the totality of the circumstances warrant a finding of purposeful discrimination, the juror should remain, his or her name should not be announced, and the excluding party should be restored to the peremptory challenge. Alternatively, if the court finds that purposeful discrimination has been established, the court can exclude the entire venire and begin selection with a new panel. In any event, having found purposeful discrimination based on the totality of the circumstances, the court cannot allow the exercise of the challenge.

Woodson v. Porter Brown Limestone Co., 916 S.W.2d 896, 902–07 (Tenn. 1996).

BATSON REFINED FURTHER IN A CRIMINAL CASE

In *State v. Echols*, 382 S.W.3d 266 (Tenn. 2012), the defendant, sentenced to life imprisonment for Murder First Degree, appealed on the ground that the State, by peremptory challenge, improperly removed one of only two black jurors on the prospective juror list. During voir dire, the State utilized a peremptory challenge to excuse a black woman as a prospective juror. The Defendant challenged the State's use of the peremptory challenge, pointing out that she was one of only two black jurors on the panel. While acknowledging that no specific questions had been asked of the prospective juror, the State explained that she had failed to make eye contact when examined, had "asked the court officer something," and was "rocking back ... in her chair and fidgeting," and, therefore, the State had "sense[d] that she [did not] want to be [there] ... to the level of almost being angry about still being seated." The Defendant pointed out that there were other potential jurors who had vocalized a desire to be excused from jury service and were denied, whereas the prospective juror at issue had not made any objections. The Court held as follows:

If a defendant establishes a prima facie case of impermissible discrimination, the State must provide a race-neutral explanation for the challenges at issue. *State v. Kiser*, 284 S.W.3d 227, 255–56 (Tenn.2009). If the State offers a race-neutral explanation, the

trial court must "determine, 'from all of the circumstances, whether the defendant has established purposeful discrimination.' " *Id.* (quoting *State v. Hugueley*, 185 S.W.3d 356, 368 (Tenn.2006)). "The trial court may not simply accept a proffered race-neutral reason at face value but must examine the prosecutor's challenges in context to ensure that the reason is not merely pretextual." *Id.* (quoting *Hugueley*, 185 S.W.3d at 368). We have emphasized that under the *Batson* rule, trial courts "must carefully articulate specific reasons for each finding on the record, *i.e.*, whether a prima facie case has been established; whether a neutral explanation has been given; and whether the totality of the circumstances support a finding of purposeful discrimination." *Hugueley*, 185 S.W.3d at 369 (quoting *Woodson v. Porter Brown Limestone Co.*, 916 S.W.2d 896, 906 (Tenn.1996)).

In this instance, the trial court did not expressly find that the Defendant had made a prima facie case of purposeful discrimination but considered the State's explanation and upheld the challenge to the prospective juror as race neutral. The trial judge stated, "I've noticed also some of the things [the State] is talking about. [The prospective juror] has gotten the officer's attention a couple of times."

In making the ruling, the trial judge explained that the prospective juror appeared to be anxious and that "she had, in fact, asked permission to leave the courtroom." In our view, the totality of the circumstances does not support a finding of purposeful discrimination. The trial court properly overruled the Defendant's objection to the peremptory challenge.

Echols, 382 S.W.3d 266 at 282 (Tenn. 2012)(footnotes omitted).

THE JUDGE'S ROLE IN *BATSON* "BODY LANGUAGE" CASES

In *Zakour v. UT Med. Grp., Inc.*, 215 S.W.3d 763, 774-75 (Tenn. 2007), a medical malpractice case involving the diagnosis of a mass in the plaintiff's breast as benign when she ultimately died of cancer, the defendants raised a racial *Batson* objection when the only two black women on the jury were peremptorily challenged and a gender *Batson* challenge when the defendants exercised 6 of its 7 challenges against women. Both objections were denied by the trial court. As to the gender challenge, the defense reason for the challenge was for "body mechanics." On appeal from a jury verdict for the defendants, the Court affirmed the trial court as to its denial of the racial challenge, but reversed and remanded for a new trial as to the gender *Batson* challenge, holding as follows, first quoting a federal criminal case concerning body mechanics:

> An impression of the conduct and demeanor of a prospective juror during the voir dire may provide a legitimate basis for the exercise of a peremptory challenge. The fact that a prosecutor's explanations in the face of a Batson inquiry are founded on these impressions does not make them unacceptable if they are sufficiently specific to provide a basis upon which to evaluate their legitimacy. Yet, because such after-the-fact rationalizations are susceptible to abuse, a prosecutor's reason for discharge bottomed on demeanor evidence deserves particularly careful scrutiny. Prosecutors would be well advised—when contemplating striking a juror for reasons of demeanor—to make

> contemporaneous notes as to the specific behavior on the prospective juror's part that renders such person unsuitable for service on a particular case.

Brown v. Kelly, 973 F.2d 116, 121 (2d Cir.1992) (citing *United States v. Sherrills*, 929 F.2d 393, 395 (8th Cir.1991)).

Although observations of a juror's body language may prompt a peremptory challenge, a trial court should evaluate such reasons thoroughly. Courts of this state and other jurisdictions have recognized that "neutral explanations that are based on subjective assessments, such as the juror's demeanor, must be carefully scrutinized." *State v. Scott*, No. W2002–01324–CCA–R3–CD, 2003 WL 21644414, at *3 (Tenn.Crim.App. July 8, 2003) (citing *Jenkins*, 52 F.3d at 746). *See also Sherrills*, 929 F.2d at 395. In *State v. Hood*, which has been cited with approval by our Court of Criminal Appeals, the Supreme Court of Kansas stated as follows regarding body language as a basis for peremptorily challenging a potential juror:

> Hostility toward the prosecution, as evidenced by oral responses, tone of voice, sitting with arms crossed, leaning forward when defense counsel conducts voir dire, or leaning back while the prosecution asks questions, is a matter which the trial court may take into consideration in determining whether the prosecutor has a valid and neutral reason for striking the juror.... Again, however, the trial judge must be particularly sensitive when body language, alone, is advanced as a reason for striking a juror....

780 P.2d at 166. Courts have accepted a wide variety of body-language-related reasons for striking a juror from the venire, finding that they satisfied the requirements of *Batson*. *See, e.g., Jenkins*, 52 F.3d at 745 (challenged jurors "scowled at government attorneys and agents during voir dire" and "their body language and facial expressions indicated disinterest in the proceedings"); *Barfield*, 911 F.2d at 648 (juror displayed hostile facial expressions during voir dire); *Ruiz*, 894 F.2d at 506 (juror "made facial expressions during voir dire suggesting that she really did not want to sit [on the jury]" (internal quotation marks omitted)); *Carpenter v. Michigan*, No. 1:06–CV–500, 2006 WL 3446564, at *3 (W.D.Mich. Nov.28, 2006) (juror was evasive when answering questions, sat with arms crossed, and "[h]er whole body language told [the attorney] she didn't want to be here"); *Carroll*, 34 S.W.3d at 319 (juror was non-assertive and failed to make eye contact).

However, the Defendants' reliance on "body mechanics" as a reason for striking six of the ten women in the venire differs markedly from the explanations that have been found acceptable under *Batson*. The Defendants failed to describe particular displays of body language—such as scowling at the attorneys, failing to make eye contact, falling asleep during voir dire, and so forth—that provided the basis for excusing the female jurors. As we have already noted, in order to satisfy the requirements of Batson, an attorney's justification for exercising a peremptory challenge must be clear, reasonably specific, legitimate, and related to the particular case being tried. *See Batson*, 476 U.S. at 98, 106 S.Ct. 1712. The Defendants' explanation in this case does not meet that standard. Therefore, we find that the trial court erred in overruling the Plaintiff's second gender-based *Batson* objection.

THE JUDGE'S ROLE IN "RACIAL PERCENTAGE" CASES

In *State v. Kiser*, 284 S.W.3d 227 (Tenn. 2009), the defendant was sentenced to death for the murder of a deputy sheriff. After the jury selection was over, the defense objected because 9 of the State's 19 peremptory challenges ere exercised against minorities "for an impermissibly discriminatory purpose." The trial court overruled the objection, and the Court on appeal held as follows:

> When a defendant alleges that the prosecution is challenging jurors in violation of Batson, a three-prong inquiry with a shifting burden of production ensues. The first prong requires the defense to establish a prima facie case of purposeful discrimination. The defense may satisfy this requirement by pointing to a disproportionate number of peremptory strikes directed at minority venire persons. See Miller–El v. Cockrell, 537 U.S. 322, 331, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003). If the trial court determines that the defense has made out a prima facie case of impermissible discrimination, the second prong places on the prosecution the burden of producing a race-neutral explanation for its challenges. *Batson*, 476 U.S. at 97, 106 S.Ct. 1712; *Hugueley*, 185 S.W.3d at 368. "This explanation must be a clear and reasonably specific account of the prosecutor's legitimate reasons for exercising the challenge ... [but] need not be persuasive, or even plausible." *Hugueley*, 185 S.W.3d at 368. The trial court may deem the reason offered to be race-neutral unless a discriminatory intent is inherent in the prosecution's explanation. *Id.*
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> If the prosecution offers a race-neutral explanation for its challenges, the third prong requires the trial court to determine, "from all of the circumstances, whether the defendant has established purposeful discrimination." *Id.*; *see also Snyder v. Louisiana*, 552 U.S. 472, 128 S.Ct. 1203, 1208, 170 L.Ed.2d 175 (2008) ("[I]n reviewing a ruling claimed to be Batson error, all of the circumstances that bear upon the issue of racial animosity must be consulted."). "The trial court may not simply accept a proffered race-neutral reason at face value but must examine the prosecutor's challenges in context to ensure that the reason is not merely pretextual." *Hugueley*, 185 S.W.3d at 368. "If the trial court determines that the proffered reason is merely pretextual and that a racial motive is in fact behind the challenge, the juror may not be excluded." *Id.* at 369. As this Court has previously noted, "determination of the prosecutor's discriminatory intent or lack thereof turns largely on the evaluation of the prosecutor's credibility, of which the attorney's demeanor is often the best evidence." *State v. Smith*, 893 S.W.2d 908, 914 (Tenn.1994). Credibility judgments lie peculiarly within a trial judge's realm. *Hernandez v. New York*, 500 U.S. 352, 365, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991) (plurality opinion). We therefore give great deference to a trial court's findings in this regard and will not set them aside unless they are clearly erroneous. *Hugueley*, 185 S.W.3d at 369; *see also Snyder*, 128 S.Ct. at 1207, 128 S.Ct. 1203 (recognizing that "[o]n appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous"). Accordingly, "[t]he trial judge must carefully articulate specific reasons for each finding on the record, i.e., whether a prima facie case has been established; whether a neutral explanation has been given; and whether the totality of the circumstances support a finding of purposeful discrimination." *Woodson v. Porter Brown Limestone Co.*, 916 S.W.2d 896, 906 (Tenn.1996).

In this case, the defense did not object to the exclusion of jurors as they were being rejected but instead lodged its Batson objection at the conclusion of all peremptory challenges. Defense counsel simply stated, "I'm going to make a—in essence, a Batson challenge. By my count one, two, three, four, five, six, seven, eight, nine of the State's nineteen challenges were minorities, so." Thus, the defense alleged that nine of the prosecution's nineteen peremptory challenges, or 47 percent, were directed at members of minority ethnic groups. The trial court then asked for the State's response. One of the prosecutors answered,

> I can answer the question—the answer to the question, because it's the same [with] regard to every jury; that the juror was stricken because they were equivocal rather than unequivocal regarding their answers regarding the death penalty. Those would be the issues that we looked at, the issue that was at least paramount when the jury was first selected.

The trial court noted that four of the jurors selected to serve were African–American, and two of them "were two of the very first ones placed in the jury box." The court then ruled, "in this type of case, as much time as we've spent on [the death penalty], of course, this Court recognizes as a race neutral reason and I'll overrule your motion for the *Batson* challenge."

We stressed in *Hugueley* that a trial court should make comprehensive findings in response to a *Batson* challenge, articulating its conclusions with respect to each of the three *Batson* prongs and its reasons therefore. *Hugueley*, 185 S.W.3d at 371. We also recognize, however, that this trial was held prior to our decision in *Hugueley*. Nevertheless, we take this opportunity to reiterate the requirement that trial courts respond specifically and completely to each *Batson* prong in turn in order to allow adequate appellate review. As the Supreme Court has recognized, "[t]he trial court has a pivotal role in evaluating *Batson* claims." *Snyder*, 128 S.Ct. at 1208.

Here, the *Batson* challenge was based simply on the prosecution's exercise of 47 percent of its peremptory challenges against venire persons of an ethnic minority. Of course, if 47 percent of the jury pool against which these challenges were exercised consisted of ethnic minorities, no prima facie case based solely on statistics would have been made out. The trial court made no specific finding with respect to whether the defense made out a prima facie case, however; it simply turned to the State and asked for its response.

The record does not contain the jury questionnaires or the notes maintained by counsel (or the trial judge) with respect to juror selection. The Rule 12 data report prepared by the trial court indicates that 50 to 75 percent of the population of the county from which the jury was selected was Caucasian, the same race as Defendant. At least 25 percent of the population from which the venire was selected was therefore of a minority ethnicity (assuming that the county's registered voters reflect a similar ethnic distribution). The Rule 12 data report also indicates that 6 of the 16 jurors selected for Defendant's trial were non-Caucasian, or 37.5 percent. From a purely statistical standpoint, then, Defendant's jury reflected favorably the overall population from which his jury was selected.

In addition to the Rule 12 data report, the State filed a response to Defendant's motion for new trial in which it asserted that, in addition to the four African–Americans remaining on the jury after it exercised its challenges, one American Indian and one Caucasian/American–Indian remained on the jury. The State also asserted that "it exercised nine (9) peremptory challenges against Caucasians." The trial court referred to this responsive pleading in its order denying Defendant's motion for new trial and stated, "This court continues to be satisfied with the race neutral basis provided by the state as to each challenge of a minority juror. Under all the circumstances, this court finds that its initial ruling was correct and that no *Batson* error is supported by the record."

Thus, the record reflects that the State exercised nineteen peremptory challenges, nine of which were used to eject Caucasians and which left sitting as jurors four African–Americans and two other jurors of minority ethnicity. While we do not hold that the trial court erred in proceeding as if the defense had made out a prima facie case of purposeful impermissible discrimination, we point out that, under the circumstances of this jury pool, and with nothing other than a few statistics to guide us, the prima facie showing was weak, at best.

Turning to the second prong of the *Batson* inquiry, the race-neutral reason offered by the prosecution rested on the challenged jurors' responses to questions regarding the death penalty, which the prosecution described as "equivocal rather than unequivocal." We agree with the trial court that this is a race-neutral reason that contains no inherent discriminatory intent, thereby requiring analysis under the third *Batson* prong.

Under the third prong, the party raising the *Batson* objection bears the burden of persuading the trial court that the other party has engaged in purposeful and impermissible discrimination. *Batson*, 476 U.S. at 93, 106 S.Ct. 1712 (holding that the party objecting to a peremptory challenge bears the ultimate burden of establishing purposeful discrimination). In this case, the defense asserts that, regardless of any equivocation the challenged jurors may have expressed about the death penalty, each of these jurors also made unequivocal statements that they would follow the law in setting any punishment. The defense then argues that "[e]vidence of purposeful discrimination is found by comparing the [challenged] jurors' unequivocal responses with the actually equivocal responses given by non-minority juror [N.D.], who the prosecution did not challenge, and who ultimately sat on the case." *See Miller–El v. Dretke*, 545 U.S. 231, 241, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) (recognizing that disparate treatment of potential jurors who responded similarly to similar questions may indicate impermissible discrimination where the only significant difference between the prospective jurors is their race).

In light of this argument, we have reviewed the voir dire of each of the six challenged jurors identified in Defendant's brief to this Court. R.J. stated, "I do not believe in the death penalty." D.R.-M. said, "I personally do not believe on [sic] [the death penalty]." L.C. stated, "I do not believe in the death penalty." S.G. said, "I'm morally opposed to the death penalty." G.M. asserted that the punishment for murdering a police officer should not be greater than that for murdering other victims. C.M. explained that her younger sister's boyfriend had been convicted of murder; that whether the death

penalty was appropriate depended on the manner in which the victim was murdered; that she would consider a defendant's background in deciding which punishment to impose; and that she "[did not] think [she] would like to [sit on this jury]."

We have also reviewed the voir dire of N. D., the sole unchallenged juror identified by the defense in its brief in support of its allegation of purposeful discrimination. The defense contends that her responses were equivocal because she stated that she "felt like" and "thought" that she could impose the death penalty. At no time, however, did N.D. express any specific opposition to, or trouble with, the death penalty. Cf. Snyder, 128 S.Ct. at 1211–12 (finding prosecutor's expressed reason for challenging black juror pretextual where two white jurors who made similar responses were not challenged). The defense has missed the mark as to the challenged jurors. Although these jurors stated unequivocally in subsequent voir dire that they could follow the law, including instructions regarding the death penalty, all but C.M. had also indicated some specific belief demonstrating some actual opposition to the death penalty as it would be applied in this case. "[A] juror's reservations about the death penalty may constitute a legitimate explanation for the State's exercise of a peremptory strike." *Hugueley*, 185 S.W.3d at 375. While we respect each challenged juror's expressed commitment to following the law, we also respect the prosecution's concern with these jurors' personal beliefs, which are in opposition to what the law would have required them to do. Thus, while the challenged jurors' specific responses to questions regarding their willingness to follow the law were unequivocal and likely prevented their being dismissed for cause, their seating as jurors would have required them to work in opposition to their own beliefs. The prosecution's expressed concern with these jurors' equivocation was therefore supported by these jurors' responses during voir dire.35 At the third prong of a Batson inquiry, "the decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed." *Hernandez*, 500 U.S. at 365, 111 S.Ct. 1859. Our review of the record convinces us that the trial court did not err in believing the prosecution's explanation for its peremptory challenges. In sum, the totality of the circumstances does not support a finding of purposeful discrimination by the prosecution in exercising its peremptory challenges. We therefore affirm the trial court in overruling Defendant's *Batson* objection. Defendant is not entitled to relief on this issue.

State v. Kiser, supra, 284 S.W.3d 227, 255–59 (Tenn. 2009)(footnotes omitted).

THE JUDGE'S ROLE IN ASSESSING THE CREDIBILITY OF THE ATTORNEYS AND MAKING SPECIFIC FINDINGS

In *State v. Hugueley*, 185 S.W.3d 356, 369-70 (Tenn. 2006), the Court held as follows:

Once the defendant makes out a prima facie case, the State has the burden of producing a neutral explanation for its challenge. *Batson*, 476 U.S. at 97 . This explanation must be a clear and reasonably specific account of the prosecutor's legitimate reasons for exercising the challenge. *Id.* at 98 n.20 . However, the race or gender neutral explanation need not be persuasive, or even plausible. *Purkett v. Elem*, 514 U.S. 765, 767-68, 115 S. Ct. 1769, 131 L. Ed. 2d 834 (1995) . "Unless a discriminatory intent is

inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Id.* at 768 (quoting *Hernandez v. New York*, 500 U.S. 352, 360, 111 S. Ct. 1859, 114 L. Ed. 2d 395 (1991) (plurality opinion)). If a race-neutral explanation is provided, the trial court must then determine, from all of the circumstances, whether the defendant has established purposeful discrimination. *Batson*, 476 U.S. at 98 . The trial court may not simply accept a proffered race-neutral reason at face value but must examine the prosecutor's challenges in context to ensure that the reason is not merely pretextual. *See Miller-El v. Dretke*, 162 L. Ed. 2d 196, 545 U.S. 231, 125 S. Ct. 2317 (2005) ("*Miller-El II*"). In that case, the Court reiterated that "the rule in *Batson* provides an opportunity to the prosecutor to give the reason for striking the juror, and it requires the judge to assess the plausibility of that reason in light of all evidence with a bearing on it." *Id.* at 2331 . If the trial court determines that the proffered reason is merely pretextual and that a racial motive is in fact behind the challenge, the juror may not be excluded. *Woodson v. Porter Brown Limestone Co.*, 916 S.W.2d 896, 903 (Tenn. 1996) . As this Court has noted in the past, "determination of the prosecutor's discriminatory intent or lack thereof turns largely on the evaluation of the prosecutor's credibility, of which the attorney's demeanor is often the best evidence."

.... As noted previously, this Court has instructed trial courts that, when making a determination regarding a *Batson* objection, they "must carefully articulate specific reasons for each finding on the record, i.e., whether a prima facie case has been established; whether a neutral explanation has been given; and whether the totality of the circumstances support a finding of purposeful discrimination." *Woodson*, 916 S.W.2d at 906 . Thus, we are initially constrained to point out that the trial court's findings on Defendant's *Batson* objections at trial are barely adequate to permit our review. After each of defense counsel's objections, the trial court failed to make a specific finding that a prima facie case of purposeful discrimination had been made. Nevertheless, the prosecutor's response to each objection clearly implies that the trial court expected the State to proffer its reasons for challenging the subject venire person. That is, after each *Batson* objection by defense counsel, the trial court indicated in some fashion that the second prong of the *Batson* analysis was called into play. Thus, we assume that the trial court determined that, as to each of these five venire persons, Defendant had made out a prima facie case of impermissible discrimination. *See Woodson*, 916 S.W.2d at 905 (even where trial court made no explicit finding that the objecting party had made out a prima facie case, it was appropriate to conclude that the trial court had done so because "otherwise, the court would not have required [the striker] to explain the challenge"). Nor did the trial court offer much commentary on the State's proffered reasons for its strikes, or render detailed findings about its reasons for overruling each of Defendant's *Batson* claims. We are especially concerned about the trial court's failure to make specific findings in light of the United States Supreme Court's recent decision in *Miller-El II* . Although decided after the trial of this case, *Miller-El II* demonstrates the importance of a complete record and comprehensive findings by the trial court. .... "if a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful

discrimination to be considered at Batson's third step." *Id.* Thus, "disparate treatment" of potential jurors who responded similarly to similar questions may be indicative of impermissible discrimination where the only significant difference between the persons is their race. Another factor indicative of the prosecution's improper motive was its "disparate questioning" of the venire members, depending upon the member's race." 372-73. Page 374 says burden of showing discrimination always rests with party objecting. P. 376-"In *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 129, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994) , the United States Supreme Court held that "gender, like race, is an unconstitutional proxy for juror competence and impartiality." We analyze a party's claim that a peremptory challenge is impermissibly gender-based in the same manner as a claim that a challenge is racially motivated. *See id.* at 144-45 ."

IN DEPTH ANALYSIS AND ARTICULATE FINDINGS

In *State v. Stout*, 46 S.W.3d 689, 711-712 (Tenn. 2001), although the trial judge didn't make clear that he said all of the right things on the record or considered the *Batson* issue in the right order, he was given credit for his detailed findings. The court held as follows:

> We acknowledge that some of the trial court's language in this case appears to indicate that it simply rejected a facially race-neutral explanation offered by the defendant. .... (The race-neutral explanation need not be persuasive, or even plausible. Unless a racially discriminatory intent is inherent in the proponent's explanation, the reason offered will be deemed race neutral.) However, despite the imprecise phraseology used by the trial court, the record makes clear that the court engaged in the required in-depth analysis of all the circumstances before reseating [the juror] on the jury, and did not impermissibly shift the burden of persuasion to the defendant. The court took pains to articulate its findings on the record, and it had the opportunity - which we do not - to assess the demeanor of the prospective juror and defense counsel, and to evaluate their credibility. On appeal, this Court accords great deference to the trial court's findings, and will not set them aside unless clearly erroneous. (where a trial court's findings upon a *Batson* challenge are based on the credibility of witnesses, the standard of review is whether the trial court's decision was clearly erroneous). We find this Court's analysis in *State v. Hathaway* to be instructive: Although a trial court must accept a facially race-neutral explanation for purposes of determining whether the proponent has satisfied his burden of production, this does not mean that the court is bound to believe the explanation in making its [final] determination. In other words, while the court may find that a proffered explanation is race-neutral, the court is not required, in the final analysis, to find that the proffered explanation was the actual reason for striking the juror. If the court determines that a race or gender based motive was behind the challenge, the juror may not be excluded. In making its determination, the trial court must look to the totality of the circumstances for rarely will a party admit that its purpose in striking a juror was discriminatory. Accordingly, the trial court may infer discriminatory intent from circumstantial evidence. 'The factfinder's disbelief of the reasons put forth by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination, and . . . no additional

proof of discrimination is required.' Additionally, the court may consider whether similarly situated members of another race were seated on the jury or whether the race-neutral explanation proffered by the strikes' proponent is so implausible or fantastic that it renders the explanation pretextual. The trial court may also consider the demeanor of the attorney who exercises the challenge which is often the best evidence of the credibility of his proffered explanations. .... (trial court "has the power to disbelieve even a race-neutral explanation offered by the prosecution"). The record supports the trial court's ruling in this case. Defendant struck eight white jurors consecutively. *See Batson*, 476 U.S. at 97 ("a 'pattern' of strikes against . . . jurors [of a particular race] . . . might give rise to an inference of discrimination.") The only black juror defendant struck worked for the Division of Corrections. The defendant's explanation for striking Moore rested primarily on Moore's demeanor, and the trial judge was in a much better position to evaluate both Moore's demeanor and defense counsel's credibility than is this Court. The trial judge's findings are not clearly erroneous, and this issue is therefore without merit.

CHALLENGES FOR CAUSE

Tennessee Rule of Criminal Procedure 24 states that a trial court "shall excuse that juror from the trial of the case if the court is of the opinion that there are grounds for challenge for cause." Tenn. R. Crim. P. 24(c)(1). This rule gives the trial court "the right to excuse a juror for cause without examination of counsel." *State v. Sexton*, 368 S.W.3d 371, 391 (Tenn. 2012) (quoting *State v. Hutchison*, 898 S.W.2d 161, 167 (Tenn. 1994)). A party may use peremptory challenges to strike a juror who was not excused for cause. See Tenn. R. Crim. P. 24(e). "However, as our supreme court has instructed, 'A defendant must not only exhaust his peremptory challenges, but he must also challenge or offer to challenge any additional prospective juror in order to complain on appeal that the trial judge's error in refusing to excuse for cause rendered his jury not impartial.'" *State v. Kiser*, 284 S.W.3d 227, 280 (Tenn. 2009) (appendix) (quoting *State v. Irick*, 762 S.W.2d 121, 125 (Tenn. 1988)).

In *State v. Hugueley*, 185 S.W.3d 356, 377–78 (Tenn. 2006), a death penalty appeal, one ground alleged for reversal was that the judge denied a challenge for cause by the defense, allowing a witness's half-brother to serve as a juror after being examined for bias. In affirming that decision by the trial court, the Supreme Court held as follows regarding the presumption of bias by a juror:

> Both the United States and Tennessee Constitutions guarantee criminal defendants the right to a trial by an "impartial jury." U.S. Const. amend. VI; Tenn. Const. art. I, § 9. "The impartial jury guaranteed by constitutional provisions is one which is of impartial frame of mind at the beginning of trial, is influenced only by legal and competent evidence produced during trial, and bases its verdict upon evidence connecting defendant with the commission of the crime charged." *State v. Lawson*, 794 S.W.2d 363, 367 (Tenn.Crim.App.1990). To protect this right, litigants have the right to lodge a "propter affectum" challenge for cause to a potential juror on the basis that he or she is biased or prejudiced for or against one of the parties. See *Toombs v. State*, 197 Tenn. 229, 270 S.W.2d 649, 650 (1954); *State v. Akins*, 867 S.W.2d 350, 355 (Tenn.Crim.App.1993). A

propter affectum challenge should be upheld where some bias or partiality is either actually shown to exist or is presumed to exist from circumstances. *Durham v. State*, 182 Tenn. 577, 188 S.W.2d 555, 559 (1945). Circumstances justifying a presumption of bias include a juror's willful concealment of "ulterior and prejudicial motives" arising from his prior conviction and prior involvement as prosecuting witness in a case very similar to the defendant's, *see id.* at 559, and a juror's failure to disclose a "very close" familial relationship between the juror and the prosecuting attorney's wife, *see Toombs*, 270 S.W.2d at 651.

In this case, the trial court overruled defense counsel's challenge for cause to [the juror] after both the prosecution and defense counsel had an opportunity to closely question him during a period of sequestered voir dire and after the trial court itself probed Mr. Watkins' impartiality. The trial court was obviously satisfied that [the juror's] relationship would not prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. A determination of the qualifications of a juror rests within the sound discretion of the trial court. *State v. Howell*, 868 S.W.2d 238, 248 (Tenn.1993). We find no abuse of discretion in the trial court's refusal to excuse [the juror] for cause in this case.

TWO FACTORS TO BE CONSIDERED IN CHALLENGES FOR CAUSE (PARTICULARLY WITH JURORS WHO WORK IN LAW ENFORCEMENT)

In *State v. Pamplin*, 138 S.W.3d 283, 286–87 (Tenn. Crim. App. 2003) the defendant was convicted of assaulting a deputy sheriff. Another deputy was in the jury box, and the defense attorney did not use a peremptory challenge because he was mistaken about how many he had left and ran out. He then challenged for cause, but the judge denied his request. The Court of Criminal Appeals reversed, holding as follows regarding challenges for cause in general, and law enforcement in particular:

With regard to a prospective juror who is not otherwise disqualified to serve, there are two situations where a challenge for cause should be sustained. The first is where the prospective juror indicates by his or her answer that they cannot or will not be a fair or impartial juror. The second is where, irrespective of the answers given on voir dire, the trial court should presume the likelihood of prejudice on the part of the prospective juror because the potential juror has such a close relationship, be it familial, financial, or situational, with any of the parties, counsel, victims, or witnesses. *See generally, 47 AM. JUR. 2d, Jury* § 266–94 (1995). As observed by the trial judge in this case, no Tennessee case or statute requires that a law enforcement officer be automatically excluded from a jury. *See State v. Pender*, 687 S.W.2d 714, 718 (Tenn.Crim.App.1984) (holding that the juror's status as a police officer, standing alone, did not lead to the conclusion that he was biased or prejudiced). However, Juror Barrett's professional relationship and interest in the case was entirely too close to that of Captain Parker and Officer Ely. Not only was Barrett a member of the same law enforcement agency as was Captain Parker, he was also a subordinate employee of Parker. Moreover, the nature of the case involved an assault upon a law enforcement officer. In addition, Juror Barrett was personally acquainted with Eric Ely, the prosecuting witness, who was a police officer and victim of the offenses.

Finally, we note that the juror served on the jury as its foreman while in full uniform and with sidearm. With regard to this fact, we are constrained to hold that this practice should clearly be avoided, as the presence of a uniformed officer on the jury presents the appearance of authority and undermines the concept of impartiality. We are reminded that the jury selection process should endeavor to select jurors who are not only fair and impartial but are also free from the suspicion of impartiality.

VOIR DIRE PERMISSIBLE QUESTIONS

A voir dire examination is for the purpose of advising counsel of the juror's qualifications, interest or bias and to enable the exercise of one's peremptory challenges. *Smith v, State*, 327 S.W.2d 308. 318 (1959).

In *State v. Samuel*, 243 S.W.3d 592, 598–99 (Tenn. Crim. App. 2007), the rape victim was 14 years old but had the IQ of a 6 year old, and the State wished to voir dire the potential jurors about mental retardation (which we now are supposed to refer to as "intellectual disability"), and the trial judge allowed this over the defense objection. The Court of Criminal Appeals held as follows:

> The defendant's first issue on appeal is that the trial court erred during voir dire of the jury when it allowed the State to question jurors regarding their knowledge of mental retardation and at trial when it allowed a witness to testify regarding the victim's I.Q. and developmental level. The defendant argues that this was improper because the State did not indict the defendant for aggravated rape under 39–13–502(3)(B) which requires, "The defendant is aided and abetted by one (1) or more other persons; and ... (B) the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless." The State argues that the questions concerning and the proof of C.P.'s mental retardation were submitted to explain the victim's potential child-like behavior during her testimony.
>
> "The ultimate goal of voir dire is to [e]nsure that jurors are competent, unbiased, and impartial." *State v. Cazes*, 875 S.W.2d 253, 262 (Tenn.1994). The conducting of the voir dire of prospective jurors is in the discretion of the trial court. Id. Therefore, an appeal from a trial court's decision cannot be overturned by this Court unless it is apparent that the trial court abused its discretion. *See State v. Mickens*, 123 S.W.3d 355, 375 (Tenn.Crim.App.2003).
>
> The defendant objected to the State's questioning regarding the jurors' knowledge of mental retardation. In response to this objection, the State replied that "the voir dire is to determine if these jurors can be fair and impartial, and the State has a right to know if they would be against or not be fair and impartial to a mentally retarded child that's going to testify." The trial court overruled the defendant's objection.
>
> C.P. was going to be called as a witness. At the time of the trial, she was fourteen and had an I.Q. of 44, which put her at the same functioning level as a six- or seven-year-old child. The State had a definite interest in determining whether any jurors would have a bias against believing the victim because of her mental retardation. We do not see any abuse of discretion here.

ADDITIONAL VOIR DIRE IN CAPITAL CASES

When trying a capital case, *you should consult with your capital case attorney* on additional questions you should ask as the trial judge when a juror states he/she cannot vote for death or gives a vague or equivocal answer as to whether the juror's reservations might affect the juror's performance as the trier of fact and there is a challenge for cause, such as:

> You have stated that you possess certain mental reservations about capital punishment. Would these reservations prevent you from maling an impartial decision as to the defendant's guilt in this case?
> Because of your mental reservations about capital punishment, do you state that you automatically could never vote to impose the death penalty in this or any other case - no matter how heinous the crime?
> Would you automatically refuse to ever consider the imposition of capital punishment in this case regardless of the law and the evidence in the case?
> [Only if the juror indicates a willingness to consider the death penalty] Can ou abide by your oath and follow the law the court will give you in this case?

If the juror indicates he/she can consider the death penalty, the judge should deny any challenge for cause as to that ground. If the juror automatically will not consider it, the judge should excuse the juror for cause. If the potential juror is equivocal, your capital case attorney will be up to date with the latest U.S. and Tennessee Supreme Court cases on these challenges for cause, beginning with *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968) *and Wainwright v. Witt*, 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985), which set the standards for when the judge can and cannot excuse for cause, and *State v. Keen*, 926 S.W.2d S.W.2d 727, 740 (Tenn.1994), when a juror's answers are very vague, indefinite and evasive.

Also, in *Wolf v. Sundquist*, 955 S.W.2d 626, 633 (Tenn. Ct. App. 1997), two jurors sued the State for not allowing them to serve on a jury because of their religious beliefs against the death penalty. Our Supreme Court held in that case that jurors with a religious issue should be excused if their religious beliefs would not allow them to vote for death.

THE USE OF JURY QUESTIONNAIRES

In *State v. Reid*, 164 S.W.3d 286, 331–32 (Tenn. 2005), the trial judge gave out a questionnaire for the potential jurors to complete before voir dire. The defendant argued on appeal that judge erred by denying his motion to inquire on the questionnaire inquiring about the jurors' gender, birth date, educational background, and economic class. The Supreme Court held as follows:

> Specifically, appellant argues that the court's questionnaire did not cover the topics in sufficient detail to evaluate the representation of cognizable groups, relying upon *Duren v. Missouri*, 439 U.S. 357, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979), which holds that a defendant has a right to challenge the venire to ensure adequate representation of cognizable groups.
> ....
> [T]he control of voir dire proceedings rests within the sound discretion of the trial

court, and this court will not interfere with the exercise of this discretion unless clear abuse appears on the face of the record. *State v. Howell*, 868 S.W.2d 238, 247 (Tenn.1993), cert. denied, 510 U.S. 1215, 114 S.Ct. 1339, 127 L.Ed.2d 687 (1994). Furthermore, a trial judge has a right to participate in voir dire examination. Tenn. R.Crim. P. 24(a). Tennessee Rule of Criminal Procedure 24(a) provides: "The court may put to the respective jurors appropriate questions regarding their qualifications to serve as jurors in the case...." The trial court found that its juror questionnaire covered the topics sufficiently. Appellant has failed to show that the inquiries made by the trial court were improper or inadequate and has failed to show any abuse of discretion by the trial court. Thus, this issue is without merit.

A SAMPLE JURY QUESTIONNAIRE

A sample jury questionnaire is attached. If you are trying a civil case, you will probably remove all of the law enforcement and DA questions and obviously the two death penalty questions, 41 and 42, and it will be much shorter, unless you wish to add automobile wreck or lawsuit questions. The questionnaire includes on the first page a statement to be read to the jurors on the record describing the process and instructions for when and where they are to report for jury duty, to be removed from the questionnaire before it is turned in to your court deputies, to be taken home with them to remind them when and where to appear, and the oath on the last page for the trial judge to administer to the jurors *before they begin filling it out*. You may also wish to enter an order, with agreement of the attorneys when they asked for permission to give out the questionnaire, not allowing the attorneys to give copies of the questionnaires to their clients, victims, their families or anyone else, and not to re-ask any of the questions on the questionnaire during in-court voir dire unless needed for clarifying or expanding on the jurors' written answers. The attorneys by agreement can agree to have their expected witnesses listed on Question 45, for the juror to circle the names of any witness with which that juror is personally acquainted.

If feasible, the questionnaires may be given to the jury pool 2 or 3 weeks before the trial, and then randomly numbered in court with the attorneys present in the order they will be called to the jury box and then given to the attorneys to study ahead of time, and then any jurors needing to be individually voir dired due to pretrial publicity can be handled on the first day of jury selection after having been agreed to by the attorneys. Be aware that if the jurors are given the names of the parties in the trial on the questionnaire ahead of time, they may do considerable research on the internet prior to trial, even if told not to by the court when given the questionnaire, so usually those names are not listed.

TO PROSPECTIVE JURORS

You are being considered as a potential juror in a trial which will begin Monday, May 6, 2024. It is anticipated that the jury selection will be completed Monday or Tuesday, and the trial will take at most through the following Monday. During the course of the trial, if you are selected as a juror, you will be sequestered. During this time, you will only be allowed to communicate with your family through court personnel, and we will provide your meals, transportation and hotel rooms.

This questionnaire is designed to obtain information from you with respect to your qualifications to sit as a juror in this case. By the use of this questionnaire, the process of jury selection will be shortened. Please respond to the following questions as completely as possible. The information contained within the questionnaire will become part of the court's permanent record, but *it will not be distributed to anyone except the attorneys in the case and the judge*. During the questioning by the attorneys in court, you will be given an opportunity to explain or expand your answers, if necessary.

Because this questionnaire is part of the jury selection process, the questions must be answered by you under oath or affirmation. You should fill out this questionnaire by yourself without consulting any other person. If you wish to make further comments regarding any of your answers, please use the back of the questionnaire. If you do not understand a question, please write "**I do not understand**" and the question will be explained to you in court.

You will be told on Monday or Tuesday, May 6th or 7th, whether or not you have been selected as a potential juror in this case. If you are selected as an actual juror, you will be allowed to go home and pack for the trial, which should last until at most a week.

PLEASE REALIZE THAT THERE ARE NO RIGHT OR WRONG ANSWERS - JUST HONEST ONES

Report May 6th, 2024, at 8:30 am, to the Shelby County Building at 157 Poplar Ave., Room 134 (corner of Poplar and 2nd Street)

PLEASE PRINT YOUR ANSWERS

1. Name: _____
   Age: _____

2. What is your marital status? (put an X by all that apply)
   [ ] Never married [ ] Married [ ] Remarried [ ] Divorced
   [ ]Living with someone [ ] Separated [ ] Widow/Widower

3. If married or living with someone, for how long? _____ Is he/she:
   ("X" all that apply) [ ] Currently employed [ ] Unemployed
   [ ] Homemaker [ ] Retired [ ] Student

4. What kind of work does this person do, if employed? _____

5. Job title and job duties of spouse/person with whom you live:
   _____

6. Please give the following information as to each of your children or step-children (if any):
   Child No. 1: Sex:____ Age:____ Occupation:
   Present city and state of residence (if not living with you):
   _____
   Child No. 2: Sex:____ Age:____ Occupation:
   Present city and state of residence (if not living with you):
   _____
   Child No. 3: Sex:____ Age:____ Occupation:
   Present city and state of residence (if not living with you):
   _____
   Child No. 4: Sex:____ Age:____ Occupation:
   Present city and state of residence (if not living with you):
   _____
   Child No. 5: Sex:____ Age:____ Occupation:
   Present city and state of residence (if not living with you):
   _____

   (If you have additional children/step-children, please continue on the back of this page.)

7. Are you: ("X" all that apply) [ ] Currently employed [ ] Unemployed [ ] Homemaker [ ] Retired [ ] Student

8. Employer: _____
   For how long? _____

9. Salaried or hourly employee? _____

10. What kind of work do you do? _____
11. Please list any other jobs and employers in the last 10 years:

Employer	Job Description	Dates

12. Have any of your jobs involved supervisory responsibilities? [ ] Yes [ ] No

13. What is the largest number of people you have supervised? _____
14. Do you currently manage or supervise others? [ ] Yes [ ] No

15. What was the last grade you attended in school? _____

16. What type of training, if any, have you received beyond high school?
    _____

17. If you attended college, what school(s) or university? _____
    Major subject: _____
    Minor subject: _____
    Did you graduate? [ ] Yes [ ] No. Degree(s): _____

18. If you attended graduate school after college, what subject(s) or field(s) did you study? _____
    What university did you attend? _____
    What degree(s) did you receive, if any? _____

19. If you were in the service (including national guard or reserves), please state:

What branch? _____
Highest rank: _____
Have you ever served on a court martial? [ ] Yes [ ] No

20. Are you a member of any church, temple, or other religious organization?
[ ] Yes [ ] No
What is the name(s) and location(s)? _____
_____

21. What activities, if any, are you involved with at present with your church, temple or religious organization? _____

22. Have you ever studied for the ministry, served as a lay minister or held any position of responsibility in this organization? _____

23. What societies, unions, professional associations, volunteer groups, civic clubs or other organizations have you or any family members joined?
_____
_____
Are you/they presently still a member? _____

24. What offices are you holding, or have you held in the past, in these organizations? _____

25. What are your hobbies, favorite recreations, pastimes and spare time activities? _____

26. Are you registered to vote? [ ] Yes [ ] No

27. If yes, do you vote regularly? [ ] Yes [ ] No

28. Have you ever served as a juror before? [ ] Yes [ ] No
If yes, how many times? ____ Which court? [ ] State [ ] Federal
What kind of case? _____
Was a verdict reached? [ ] Yes [ ] No
Were you the foreperson? [ ] Yes [ ] No

29. Do you have any family members or friends who are connected with law

enforcement or the court system in any way, including any attorneys?
[ ] Yes [ ] No If Yes, please give details:

_____
_____
_____
_____
_____

30. Have you or any family member ever known, or in any way been connected with a member of the District Attorney's Office? [ ] Yes [ ] No
If Yes, please give details: _____
_____
_____
_____

31. Have you or any family member or friends ever had the occasion to use the services of any State or Federal Prosecutor's office? [ ] Yes [ ] No
If Yes, please give details:

32. Have you or any family member or friend ever been a victim of a crime?
[ ] Yes [ ] No If Yes, please give details: _____
_____
_____

33. Do you subscribe to or read regularly any newspapers, the Daily Memphian or magazines? If so, please list: _____
_____

34. What are your favorite TV shows, if any? _____

35. How would you classify your family income?
[ ] low [ ] low-middle [ ] middle [ ] middle-high [ ] high

36. Which of the following do you live in?
[ ] House [ ] Apartment [ ] Other: _____
Do you: [ ] Rent [ ] Own [ ] Guest of renter/owner

37. Have you or a family member or close friend ever been a member of a group, association or club that advocates legal reform or victim's rights (such as MADD, SADD, ACLU, NORML, NRA, etc.)? [ ] Yes [ ] No
If Yes, who and which group? _____

38. Have you ever been a member of a private club or social organization (such

as a Fraternity/Sorority, Country Club or any club with a closed membership requiring a vote to join)? [ ] Yes [ ] No
If Yes, what group? _____

39. Have you or any family member or friend ever worked in a prison, jail or detention center of any kind? [ ] Yes [ ] No
If Yes, what position(s): _____
Name of institution(s): _____
Dates worked: _____

40. Have you ever known anyone who has served a prison sentence?
[ ] Yes [ ] No If Yes, please give details: _____
_____
_____
_____
_____

The defendant in this case is charged with Murder First Degree. If the defendant is convicted of this charge, the trial will proceed into a sentencing phase, and you may be required to listen to additional evidence, if offered, and asked to determine what sentence the defendant should receive. The jury would have to choose between a sentence of death, life imprisonment without the possibility release for 51 years, or life imprisonment.

41. Would you say that you are open to considering all forms of punishment in a Murder First Degree case, depending on the evidence in the trial and what you learned about the defendant in the sentencing phase? [ ] Yes [ ] No

42. With reference to the death penalty, which of the following statements would best represent your opinion? (Circle the appropriate number)

1. I believe that the death penalty is the appropriate form of punishment in all murder cases.

2. I believe that the death penalty is the appropriate form of punishment in some murder cases, and I could return a verdict of death if I believed it was warranted in a particular case, depending on the evidence, the law and what I learned about the defendant.

3. Although I do not believe that the death penalty ever ought to be imposed, as long as the law provides for it, I could vote to impose it if I believed it was warranted in a particular case, depending on the evidence, the law, and what I learned about the defendant.

4. I believe that the death penalty is the appropriate form of punishment in some murder cases, but I could never return a verdict of death.

5. I could never, under any circumstances, return a verdict of death.

6. None of the above. If so, please explain

_____

_____

_____

_____

_____

43. What are your main sources of news and information?
[ ] TV [ ] Newspaper [ ] Radio [ ] Magazines [ ]Daily Memphian
[ ] Internet [ ] Conversations with others [ ] Other _____

44. If you read the newspaper or Daily Memphian, how often do you read it?
[ ] Every day [ ] Most days [ ] Weekends [ ] Infrequently

45. The following persons may be involved in this case. Please place a Check beside any person with whom you may be acquainted:

[Attorneys insert here a list of possible witnesses, if they wish]

46. How much attention have you paid to specific criminal cases that have occurred in this area in the past ten years? [ ]a lot [ ]a little [ ]none

Please explain what cases, if any, and what was your interest in them, including interest stimulated by the newspapers, TV or other media:

COURT'S ADMONITION TO PROSPECTIVE JURORS

1. From this day forward, you are to make no attempt to discover any information concerning this trial or any pre-trial publicity surrounding it, until the jury is selected and sworn.

2. You are not to communicate with your family, other jurors or anyone else regarding any subject connected with this case from this point on, other than the possibility that if selected as a juror you may be sequestered, and are not to form or express any opinion about the trial until the case is finally submitted to the jury.

3. You are not to read, listen to or view any news reports concerning this case from this day forward until you are excused from jury duty, and are not to read or view accounts of any trials or criminal cases contained in local newspapers, radio or television broadcasts from Friday, May 3rd through Monday, May 6th, 2024 (the weekend prior to and the day of jury selection). This case must be decided solely upon the law and the evidence introduced in the courtroom during the trial after the jury is sworn.

4. You are to report promptly to the Court any incident involving an attempt by any person to improperly influence any member of the jury or a violation by any juror of any of the Court's admonitions.

Juror's Oath or Affirmation

I, the undersigned potential juror, hereby make oath or affirmation that I have well and truly answered the questions asked on this form regarding my suitability as a juror, and that I have read and understand the above admonitions and will conduct myself accordingly, so help me God. I understand that if I am selected as a juror in this case, I will be allowed to return home to pack for this approximately 7 to 8 day trial, and swear or affirm that I will not discuss, other than the possibility that I may be sequestered, any matter connected with this trial with family, friends or anyone else, from now until the trial is concluded.

_____

Signature of Juror