STATE OF LOUISIANA	*	**NO. 2000-KA-0769**
VERSUS	*	**COURT OF APPEAL**
ROBERT D. TAYLOR	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 403-740, SECTION "F"
HONORABLE DENNIS J. WALDRON, JUDGE
* * * * * *
JAMES F. MC KAY, III
JUDGE
* * * * * *

(Court composed of Judge James F. McKay III, Judge Terri F. Love, Judge Max N. Tobias, Jr.)

HON. HARRY F. CONNICK
DISTRICT ATTORNEY OF ORLEANS PARISH
LESLIE P. TULLIER
ASSISTANT DISTRICT ATTORNEY OF ORLEANS PARISH
New Orleans, Louisiana
Attorneys for Plaintiff/Appellee

JENNIFER REYNOLDS
TULANE LAW SCHOOL
COMMUNITY SERVICE PROGRAM
-and-

SHERRY WATTERS
LOUISIANA APPELLATE PROJECT
New Orleans, Louisiana
Attorneys for Defendant/Appellant

AFFIRMED

STATEMENT OF THE CASE

On December 21, 1998, the State filed a bill of information charging the defendant with possession of stolen property (auto) valued over $500.00, a violation of La. R.S. 14:69. On January 5, 1999, he pleaded not guilty. A hearing on the motions was held on January 15 and 20, 1999. The trial court found probable cause and denied the motion to suppress the evidence. Trial was held on March 18, 1999. The jury found the defendant guilty as charged. On March 25, 1999, the defendant pleaded guilty to the multiple bill alleging that he was a second offender. The trial court ordered a presentence investigation. On July 15, 1999, the defendant was sentenced as a second offender to six years at hard labor without benefit of probation or suspension of sentence with credit for time served.

STATEMENT OF THE FACTS

At the trial on March 18, 1999, Detective Kathleen Savatiel testified that on October 26, 1998, she and her partner, Officer Kevin Balancier, received a phone call from a concerned citizen informing them that "a black male was driving around the neighborhood in a stolen Dodge truck." The

neighborhood was the area around Louisiana Avenue, on both sides of Simon Bolivar. The female caller provided the license plate number on the late model black Dodge Ram truck. Detective Savatiel and her partner began a proactive patrol of the area around Louisiana Avenue. Later in the afternoon the detectives spotted a black Dodge truck at the stoplight at Louisiana and Simon Bolivar. When the truck's traffic signal light turned green on Simon Bolivar, the detectives' traffic signal light on Louisiana was still red. As the truck passed the detectives, they noticed the license number and it matched the number provided by the caller. The officers turned left onto Simon Bolivar and attempted to follow the truck as Detective Savatiel ran the license plate number through the NCIC computer to see if the vehicle was stolen. The officers stopped the vehicle at around Simon Bolivar and Freret Street before they had verified that the truck was listed as stolen. The officers asked the defendant to step out and handcuffed him for their safety. They told the defendant that he had not actually been arrested because they had not verified through the computer that the vehicle was stolen. The officers observed that there were no keys in the ignition, and the NCIC computer check verified that the truck was stolen. They then advised the defendant that he was under arrest for possession of a stolen vehicle and transported the truck and the defendant to the station. The Crime Lab took

photographs. Officer Balancier recovered a screwdriver from the truck. No keys were found.

On cross-examination Detective Savatiel stated that Officer Balancier drove the truck back to the station. She typed the report and was not present when the Crime Lab personnel were taking pictures. She did not order that fingerprints be taken. The concerned citizen had talked to Officer Balancier. She did not run the license plate through the NCIC computer until she spotted the truck around 3:00 p.m. She stated that the officers followed the defendant about six blocks before stopping him. She said that the black male was described as being in his early twenties. Detective Savatiel wanted to verify through the NCIC computer that the truck was still on the list of stolen vehicles because it could have been recovered and turned over to the owner. She answered negatively when she was asked whether she questioned the defendant about how he obtained the truck. On redirect Detective Savatiel stated that there were no keys in the ignition, but she could not recall whether the steering column had been defeated.

Joseph Colletti, the owner of the 1996 Dodge Ram truck, testified that on the night of October 22, 1998, his truck was stolen. He had parked the truck in front of his house and he had locked the doors. Colletti identified the license plate number, S712988. He identified his registration papers,

which indicated that the cost of the truck was $18,492 plus $1,800 for his trade-in vehicle. Colletti said that he called the police to report that his truck had been stolen. Colletti testified that he gave no one permission to take his truck. He had a stereo in the truck, and the steering column and ignition were in perfect shape before the truck was stolen. On cross-examination Colletti said that he did not see who stole the truck.

Officer Balancier testified that the concerned citizen stated that a black male with a dark complexion and a medium bush was in the area of Miro and General Taylor possibly in a stolen black Dodge Ram truck and provided a specific license plate number. No clothing description was provided. Officer Balancier wrote down the number, ran it through the computer, and was notified that the truck had been stolen in Jefferson Parish. He and Officer Savatiel drove around about 9:00 a.m., but did not see the described truck. Throughout the day they would take a look in the area. One time as they were traveling on Louisiana approaching the red light on Magnolia, they spotted a black Dodge Ram truck on Magnolia heading into the project. They let the truck cross in front of them, and then checked the license plate. When the license plate matched, he called the dispatcher in order to have other units converge. He followed the truck, and they were able “to jam him [defendant] up in traffic” at the corner of Jackson and

Simon Bolivar. The officers were able to exit their car and stop the defendant before he knew that he was being followed. At about 3:05 p.m. on October 26, 1998, Officer Balancier checked the license plate through the NCIC computer and verified that it was still listed as stolen. There was no key in the ignition, which had been pulled out. A screwdriver, which was on the seat, was needed to turn on or off the engine.

On cross-examination Officer Balancier stated that he felt that fingerprinting was not necessary. He checked to verify that the truck was still stolen around 3:00 p.m. to make sure that the truck had not been found and turned over to the legitimate owner during the day. According to Officer Balancier, the officers followed the defendant for about eighteen blocks. The officer asked the unit ahead to jam the traffic so that the defendant could not move, and he then exited his car and approached the Dodge truck. Officer Balancier was dressed in plain clothes with a gold badge hanging around his neck. He knocked on the truck window and told the defendant to open the door. When the defendant did not comply, the officer took out his revolver and ordered the defendant to open the door. Nine officers surrounded the defendant. The covering around the ignition switch had been ripped off, and the officer had to use the screwdriver to turn off the engine at the station. The radio had been removed from the

dashboard along with the speakers from the doors.

On redirect examination, Officer Balancier stated that after he knocked on the window of the truck he saw the defendant fumbling around. The officer then pulled his revolver for his safety and that of his partner. He said that no keys, which fit the truck, were found on the defendant. On recross examination, the officer stated that any keys that fit the truck would have been entered on the book.

The defense called Marie Taylor, the defendant's mother, to the stand. She stated that the defendant lived with his grandmother in 1998. She retrieved her son's property from Central Lockup. She picked up a set of keys, a gold watch, and $8.00. She pulled out the keys and identified all but one of them. She stated that the defendant did not own a car.

Robert Taylor, the defendant, testified that he was nineteen years old on October 26, 1998. He was stopped in traffic when he saw in his rearview mirror that two police officers had hopped out with their guns drawn. He locked his doors. The officers tapped their guns on the window of the truck and told him to open the door. After the officers tapped a second time, he opened the door. He declared that he did not fumble at all. The defendant stated that he did not own the truck. He borrowed the truck from a friend around his grandmother's house. He was on his way to his mother's house

to pick up some things he had left there. He said that Joseph Kurkendel loaned him the truck while it was running. The defendant claims that there was a key in the ignition when the officers pulled up and that key to the truck was on his key chain. According to the defendant, he told Officer Balancier that he had borrowed the truck from a friend; however, the officer was not interested. The defendant said that he had dropped Joseph off and was in the truck about ten minutes when he was stopped. He stated that he saw the police following him, but did not flee. He was heading to his mother's house at 2013 South Liberty Street. He admitted to a prior conviction for possession of crack cocaine. The defendant declared that he did not have the truck during the morning of October 26, 1999; he had not taken the truck from Metairie; and he had not used a screwdriver to start the truck. The defendant stated that the key was in the ignition when the officers stopped him, and he did not get the key back until he was at the station. Officer Balancier returned the key to him. The black key on his key ring was the key to the truck. He also said that he did not notice that the radio had been removed because there was a key in the ignition. The defendant also stated that he did not remove anything from the vehicle.

On cross-examination the defendant conceded that he did not know that Joseph owned a Dodge Ram truck. However, Joseph had a Chrysler,

which the defendant had used in the past. He continued to claim that the key for the truck remained in the ignition and that he had placed that key on his key ring. He said that he spotted the police Taurus even though it was an unmarked car. He stated that he never saw the screwdriver. He reiterated that he did not notice that anything was wrong with the ignition because a key was in the ignition, and he did not see that the radio had been ripped out.

Joseph Colletti was recalled to the stand to state that his key to the truck was silver and had a ram's head on it. He also stated that, the black key with a star on the defendant's key ring did not look like the key for the truck.

Officer Balancier was recalled to the stand and testified that he did not believe that he had his gun drawn when he first approached the truck. He pulled his revolver when the defendant began fumbling around the seat. The officer denied that the defendant told him that he had borrowed the vehicle. Officer Balancier stated that he was positive that there was no key in the ignition of the truck when he stopped the defendant.

ERRORS PATENT

A review of the record reveals no error patent.

DISCUSSION

In his sole assignment of error the defendant argues that the trial court

erred by denying his Batson objection based on the State's use of its peremptory challenges to systematically exclude prospective African American jurors and by granting the State's Batson objection to his use of his challenges to exclude prospective Caucasian jurors who had been victims of crime. He contends that the errors deprived him of a fair trial.

In State v. Myers, 99-1803 (La. 4/11/00), 761 So.2d 498, 500-01, the Louisiana Supreme Court discussed Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986):

> Both in this state and throughout the nation, the law is firmly settled that peremptory strikes may not be based on race in either criminal or civil cases. See Batson v. Kentucky, 476 U.S. at 89, 106 S.Ct. at 1719 (dealing with prosecutor's strikes); Georgia v. McCollum, 505 U.S. 42, 59, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992) (dealing with defense strikes in criminal trials); Edmonson v. Leesville Concrete Co., 500 U.S. 614, 631, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991) (dealing with civil trials); State v. Collier, 553 So.2d 815, 817 (La.1989) (holding that un-rebutted prima facie case requires reversal; La. C. Cr. P. art. 795(c)). If it appears that one party is using its peremptory strikes in a discriminatory manner, the other party may raise the issue by making what has come to be known as a Batson objection.
>
> In Batson, the United States Supreme Court established a three-part framework to be employed in evaluating an equal protection challenge to a prosecutor's use of a peremptory strike. First, the defendant must make a prima facie showing of discrimination in the prosecutor's use of the strike. If he fulfills this requirement, then the prosecutor must offer a race-neutral explanation for the challenge. This is a burden of production, not one of persuasion. Then, the trial court must decide whether the defendant has carried the ultimate burden of proving that the strike constituted purposeful discrimination on

the basis of race. See Batson, 476 U.S. at 89, 106 S.Ct. at 1719; Hernandez v. New York, 500 U.S. 352, 358-59, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991).

The combination of factors needed to establish a prima facie case are: (1) the defendant must demonstrate that the prosecutor's challenge was directed at a member of a cognizable group; (2) the defendant must then show the challenge was peremptory rather than for cause (i.e., "peremptory challenges constitute a jury selection practice that permits 'those to discriminate who are of a mind to discriminate' "); and (3) finally, the defendant must show circumstances sufficient to raise an inference that the prosecutor struck the venireperson on account of race. Batson, 476 U.S. at 96, 106 S.Ct. at 1723.

Green,[94-0887 (La.5/22/95), 655 So.2d 272] 655 So.2d at 287-88, this court held that the sole focus of the Batson inquiry is upon the intent of the prosecutor at the time he exercised his peremptory strikes and outlined several factors that could lead to a finding that a prima facie case has been made pursuant to Batson:

> The defendant may offer any facts relevant to the question of the prosecutor's discriminatory intent to satisfy this burden. Such facts include, but are not limited to, a pattern of strikes by a prosecutor against members of a suspect class, statements or actions of the prosecutor which support an inference that the exercise of peremptory strikes was motivated by impermissible considerations, the composition of the venire and of the jury finally empaneled, and any other disparate impact upon the suspect class which is alleged to be the victim of purposeful discrimination. See State v. Collier, 553 So.2d 815 (La.1989); State v. Thompson, 516 So.2d 349 (La.1987), cert. denied, 488 U.S. 871, 109 S.Ct. 180, 102 L.Ed.2d 149 (1988), rehearing denied, 488 U.S. 976, 109 S.Ct. 517, 102 L.Ed.2d 551 (1988).
>
> If the defendant fails to make out a prima facie case, then

> the Batson challenge fails and it is not necessary for the prosecutor to articulate race-neutral explanations for the strikes. Green, 655 So.2d at 287-88.

Although the State's explanation must be based on more than an assumption or a hunch, State v. Collier, 553 So.2d 815 (La.1989), to be facially valid it need not be persuasive, or even plausible. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered by the State will be considered race-neutral. State v. Hobley, 98-2460 (La. 12/15/99), 752 So.2d 771, 782, cert. denied., 121 S.Ct. 102 (2000). When faced with a race-neutral explanation, the defendant must prove purposeful discrimination. "The proper inquiry in the final stage of the Batson analysis is whether the defendant's proof, when weighed against the prosecutor's proffered race-neutral reasons, is sufficient to persuade the trial court that such discriminatory intent is present." State v. Tilley, 99-0569, (La. 7/6/00), 767 So.2d 6, *petition for cert. filed 11/29/00*; State v. Green, 94-0887 (La. 5/22/95), 655 So.2d at 290. The focus of the Batson inquiry is upon the intent of the prosecutor at the time he exercised his peremptory strikes. The trial court should examine all of the available evidence in order to discern patterns of strikes and should consider the prosecutor's statements or actions during voir dire examination that support or reject a finding of discriminatory intent. State v. Tilley, 767 So.2d at 12-

13; State v. Tyler, 97-0338 (La. 9/9/98), 723 So.2d 939, cert. denied, 526 U.S. 1073, 119 S.Ct. 1073 (1999). "Because the factual determination pertaining to intentional discrimination rests largely on credibility evaluations, the trial court's findings are entitled to great deference by the reviewing court." State v. Snyder, 98-1078 (La. 4/14/99), 750 So.2d 832.

The defendant claims that the proper procedures were not followed. The trial court did not make findings of fact. Instead it expressed its frustration with Batson challenges. The defendant contends that the State excluded three of the four jurors for "inattentiveness, " a ground he disputed as an insufficient racially neutral reason. The fourth juror, Isabella Martin, was excluded because her son had been in jail (a fact discovered by the State in another case) even though she denied any problems with police officers. The defendant argues that reason given was racially biased because a higher percentage of African American males are incarcerated than any other racial group. The defendant claims that the State's pattern of challenging African American prospective jurors (even though the jury chosen had five African American jurors) was sufficient to assert a prima facie case. He contends that the trial court did not make the second inquiry into whether the "inattentive" reason was a subterfuge for a racially discriminatory reason. The defendant also argues that each prospective juror whom he excluded had

been a crime victim. He contends that the trial court erred by accepting the State's general reasons for challenges while it denied his similarly general reasons for using his challenges.

In this case eighteen citizens were called, seated in the jury box, and sworn by the trial court. Twelve prospective jurors were African American, and six were Caucasian. The trial court noted that the fifth juror, John Sullivan, was informally excused by both sides when he arrived in the courtroom because he had received a message from his wife that there was a medical emergency and he was reporting to the hospital. The court generally explained the case and introduced the defense attorney and the two Assistant District Attorneys. Then the State began questioning the prospective jurors. During a discussion of possession, Nellie Lindsey answered one question and Gilbert Morgan had a lengthy discussion with the prosecutor. Isabella Evans also discussed an element of the crime.

Then the State asked if any juror had been the victim of a crime. Mary Hales stated that her house had been burglarized twice, and the perpetrator(s) had not been caught. Arthur Robertson said that his house and his shop had been burglarized, and someone attempted to steal his truck several times. Thomas Priestley stated that his car had been stolen twice. The State then asked the jurors if they could put aside what had happened to

them and give the defendant a fair and impartial trial. The following then ensued:

PROSPECTIVE JUROR, MR. ARTHUR ROBERTSON:

I'm not sure. It's still somebody's vehicle. You – if that's their way of working, that's – puts them in a bind.

MS. CONOSCIANI:

Okay. So do you think that today maybe that would kind of – your feelings about someone stealing another person's vehicle may get in the way?

PROSPECTIVE JUROR, MR. ARTHUR ROBERTSON:

Could.

MS. CONOSCIANI:

It could? And I thank –

PROSPECTIVE JUROR, MR. ARTHUR ROBERTSON:

But I –

MS. CONOSCIANI:

It's okay. I thank you for your honesty. What about you, Mr. Priestley?

PROSPECTIVE JUROR, MR. THOMAS PRIESTLEY:

Um, well, I had, like, the number one stolen car in America, so –

MS. CONOSCIANI:

And what would that be?

PROSPECTIVE JUROR, MR. THOMAS PRIESTLEY:

A Honda Accord.

MS. CONOSCIANI:

Oh, okay. Um –

PROSPECTIVE JUROR, MR. THOMAS PRIESTLEY:

So – but, no, I won't have no, ah, nothing against them.

MS. CONOSCIANI:

I mean, let me ask you this: Would you want to hear what happened in this situation and make your own determination of whether the State has proved their case beyond a reasonable doubt?

PROSPECTIVE JUROR, MR. THOMAS PRIESTLEY:

Yes.

MS. CONOSCIANI:

Okay. All right.
And Mr. Prudhomme?

PROSPECTIVE JUROR, MR. WILLIAM PRUDHOMME:

I had my car stolen, also.

MS. CONOSCIANI:

Okay. And was it an Accord?

PROSPECTIVE JUROR, MR. WILLIAM PRUDHOMME:

No, at the time it was the number one.

MS. CONOSCIANI:

Okay. All right.

PROSPECTIVE JUROR, MR. WILLIAM PRUDHOMME:

It was a Cutlass Supreme.

MS. CONOSCIANI:

Okay. Same thing. Same –

PROSPECTIVE JUROR, MR. WILLIAM PRUDHOMME:

I could be impartial.

MS. CONOSCIANI:

Okay. So you wouldn't – what happened to you, you wouldn't hold that against Mr. Taylor today?

PROSPECTIVE JUROR, MR. WILLIAM PRUDHOMME:

No.

MS. CONOSCIANI:

Okay. Thank y'all for your honesty.

Then Charles Favrot stated that he had been the victim of an armed robbery and several home burglaries. The State then asked if the prospective jurors could put aside what happened to them and give the defendant a fair trial. Mary Hales and Charles Favrot indicated that they could. Gilbert Morgan then stated that his home and his car had been burglarized within the same week. He then stated: "I can be fair." Stacey Edwards declared that

his home had been burglarized and his car was stolen twice in one month. However, he stated: “I would be fair and impartial.”

Discussion of credibility and an explanation of the burden of proof as well as questioning of the prospective jurors continued. The State then asked whether any of the prospective jurors expected the State to prove the elements of the crime beyond a shadow of a doubt or 100 percent. Arthur Robertson stated: “It would have to be very close to 100 percent.” He said that the State would “really have to convince him.” The trial court interjected: “That’s what a reasonable doubt is.” The court continued: “—not 100 percent, not beyond all doubt but very close. All we can tell you is it’s a doubt based on reason and common sense. That’s all the law would allow us to say formally in that regard.”

Defense counsel began his explanation of the burdens and his questioning of the prospective jurors. When discussing reasonable doubt, counsel asked Robert Fullmer for his concept of a reasonable doubt. Fullmer stated: “If I’m not, I’m not sure about something, if I, you know, question something like that, I’m not willing to give that person the benefit of the doubt.” Defense counsel asked Fullmer to explain what he meant when he said that he would give the defendant the benefit of the doubt. Fullmer explained: “Well, I mean, I got to hear both sides of the story.”

Fullmer further explained that he would not say: "Well, he's guilty." Later on at one point defense counsel asked if any prospective juror believed that whites or blacks had a stronger inclination to commit crime. None responded. Counsel then asked Robertson if he meant that he would have to be 100 percent convinced. He responded: "Yeah, I'm going to have to be 100 percent convinced." Robertson agreed with defense counsel that his concept was not the same as the State having to prove 100 percent. He reiterated that the State would "have to prove it" to him and "to convince" him. He conceded that "it might not be 100 percent with the State or whatever." In the end he did say again that the State was "going to have to convince" him "100 percent."

According to the transcript, the jurors were then selected in chambers and the trial court noted that the State objected to the defendant's use of peremptory challenges to strike four Caucasian males (Fullmer, Robertson, Prudhomme, and Favrot) from the jury. In selecting an alternate juror, the defendant used a fifth peremptory challenge to strike Stacey Edwards, a Caucasian male. The court indicated that the defense had used only four challenges; all four excluded Caucasian males. Although the court noted that the State had used five peremptory challenges to strike African American citizens, only four challenges were used. Both remaining citizens,

Joyce Reed and Danielle Torregano, were African American.

The court then asked defense counsel for his reasons for his challenges. Counsel declared that Fullmer was challenged because he was "inattentive or not attentive to what was going on." As to Robertson, counsel stated: "Mr. Robertson, he has a house burglary, your Honor, and he also had a home burglary, and he also had a pickup, he said, that tried to be stolen, and in questions regarding whether or not he could be fair, he said, `I'm not sure I could because of the fact of my pickup' --" As to William Prudhomme, defense counsel said: "Mr. Prudhomme had said that he had a car stolen, a Cutlass Supreme. He did say that that would not – different from Mr. Robertson, he did say that that would not affect him, but he had a car stolen. This is a – it's not a car theft case, but it's the allegation involving a vehicle --" Counsel continued that the defendant was allegedly "in possession of what was a stolen vehicle." As to Favrot, defense counsel stated: "He was a victim of an armed robbery, several home burglaries, and when he said those things, what I detected was it was something that was – I don't know fresh with him, but something that he's noted, and it was something, the way he said it or kind of what I detected thought might be something which might impact his ability to be fair."

The trial court stated that it was not dealing with the alternate juror at

that time. Instead the court asked the sitting jurors if any of them had been victims of crime, especially if their cars had been stolen. The State noted that Mary Hales and Thomas Priestley, African American citizens, had both been victims of crime along with Gilbert Morgan. The court allowed the peremptory challenges of Robertson and Fullmer; however, the court would not allow the defense to challenge Prudhomme and Favrot "because those citizens, the only reason you have given is that they have been victims, and other citizens who have been selected are victims, as well." The court ordered Prudhomme to sit on the jury, which was then complete without Favrot. Defense counsel argued that he had given the court the specific reason for Prudhomme; his car had been stolen. The court countered that Priestley's car had also been stolen. Counsel noted that Prudhomme had said that his car was the number one stolen car. The court declared that the defense was successfully challenging Arthur Robertson because he had made additional comments. The court stated that it saw no reason that Prudhomme should not serve. Defense counsel then asserted his Batson challenge as to the State's use of its peremptory challenges to strike the African American citizens. The trial court asked the State to provide its reasons for its challenges. The State claimed that Nellie Lindsey was challenged because she was "not attentive to either side during questioning."

The court indicated that it had allowed the defense to challenge Fullmer for the same reason of inattentiveness; it would allow the State to exclude Lindsey. As to Emma Martin, the State explained that she had not been attentive or responsive; additionally, it was learned in a prior case the same month that Martin's son was in jail. Defense counsel objected because he was not aware of that information. Emma Martin was brought into the room. The court asked her if her son was in jail. She stated that he was out, but he had been in jail for gambling earlier in the month. Martin stated that she would not hold that against either side. She answered negatively when she was asked whether the fact that her son had been in jail would affect her. She then said that police officers "lie in certain occasions." She stated that she had nothing against the police, but she did answer affirmatively when she was asked whether they sometimes might lie. She did not think that police officers were more likely to lie than any other segment of society. Martin stated that her beliefs about the police would not impact her ability to be fair. She said that she could be fair. The court then allowed the State's challenge to Martin to remain and noted an objection for the defendant. The State claimed that Dawn Mitchell, who was listed as a caseworker, was challenged because she was inattentive, had not responded to questioning by either side, and had expressed no opinion. The State said that it could not

decide whether she would be impartial. Defense counsel argued that he had "a completely opposite reaction with respect to Ms. Mitchell." Counsel stated that he was not aware that prospective jurors had to affirm or comment and claimed that the reason was a pretense by the State.

At that point the trial court declared that it wanted this Court to know its frustration relating to Batson challenges. The court stated that it was to the point that it would select the jury from the first six prospective jurors regardless of race and not allow the use of peremptory challenges. The court expressed its "frustration because the Court can't get into the minds of any of you, but I see the pattern here for both of you, to be quite honest with you. You've excused all the black citizens, and you've excused all the whites, and I've seen that pattern in the past." Then the proceedings continued.

The State claimed that Isabella Evans was challenged because she had prior jury service in a theft of an automobile, and there had been a not guilty verdict. Evans answered negatively when defense counsel asked her if anything about her prior jury service would impact her ability to be fair. She answered affirmatively when she was asked if she could put aside what she did previously and decide the instant case on evidence presented in the courtroom. Later on the trial court declared: "I think the law would clearly say that that can be used as a peremptory challenge…."

Both sides declared that they had not used their challenges based on race. The State then indicated that it was totally happy with the five black jurors on the six-person jury. The trial court ruled that it would not allow the challenge to Prudhomme. The court decided not to choose an alternate juror. It noted that there were five black jurors and one white juror. The chosen jurors were Harold Weber, Mary Hales, Jean Buckles, Thomas Priestley, Joseph Quezergue, and William Prudhomme.

Here as in State v. Tilley, at p. 5, 2000WL900583, the trial court did not make a ruling as to whether the State or the defendant had made a prima facie showing of purposeful discrimination. Once the trial court had demanded race-neutral reasons from the State and the defendant for their peremptory strikes, the issue of a prima facie case of discrimination became moot. See State v. Tilley, 99-0569 (La. 7/6/2000), 767 So. 2d 6, citing State v. Green, 655 So.2d at 290, applying Hernandez v. New York, 500 U.S. at 352, 111 S.Ct. at 1859. A trial court's "demand that a prosecutor justify his use of peremptory strikes is tantamount to a finding that the defense has produced enough evidence to support an inference of discriminatory purpose." State v. Green, 655 So.2d at 288. This Court must then decide whether the State or the defendant offered race-neutral reasons for their peremptory challenges, and whether the trial court ruled properly by refusing

one of the defendant's strikes while accepting the State's challenges.

The reasons for the challenges need not rise to the level of cause, but must be more than the assertion of the prosecutor's or defense counsel's good faith or an explanation amounting to nothing more than a pretext for discrimination. The neutral explanation must be one that is clear, reasonably specific, legitimate and related to the particular case. State v. Collier, 553 So.2d at 820; State v. Knighten, 609 So.2d 950, 952 (La. App. 4 Cir. 1992). Responses by the State qualify as race-neutral unless a discriminatory intent is inherent is inherent in the prosecutor's explanation. State v. Taylor, 99-1311 (La. 1/17/01), __ So.2d __, 2001WL43962, citing Hernandez v. New York, 500 U.S. at 352, 111 S.Ct. at 1669.

Defendant's Challenges

The trial court asked defense counsel to provide reasons for the use of four peremptory challenges to strike Caucasian males. Defense counsel stated that Robert Fulmer was excluded because he was inattentive. The reason appears to be race-neutral. Although such a general reason may cause some concern, the Louisiana Supreme Court has noted that the trial record cannot reflect the attention of the prospective jurors, and the trial court, which possesses broad discretion in making the ultimate factual determination regarding purposeful discrimination, is in the best position to

know if that reason was race-neutral. See State v. Hobley, 752 So.2d at 784. Additionally, the transcript indicates that Fulmer was not clear as to the definition of reasonable doubt. At one point he declared that he would not be willing to give the defendant the benefit of the doubt. The State did not offer facts to prove the defendant's discriminatory intent. It does not appear that the trial court erred by allowing the defendant's peremptory challenge of Fulmer.

Defense counsel explained that Arthur Robertson was excluded because he had a house burglary, someone had tried to steal his truck, and he was not sure that he could be fair. Robertson had said that his house and his shop had been burglarized, and his truck had almost been stolen several times. Robertson had declared that he was "not sure" whether he could put his feelings aside. The trial court correctly noted that the defense could successfully challenge Robertson because he had made comments in addition to being a victim of a crime. The reasons appeared to be race-neutral and legitimate. The State provided no proof of any discriminatory intent. It does not appear that the trial court erred by upholding the defendant's challenge to Arthur Robertson.

Defense counsel stated that William Prudhomme had been excluded because his car had been stolen; however, counsel conceded that

Prudhomme had stated that the theft of his car would not affect him. Counsel noted that this case involved a car that had been stolen; the defendant had been in possession of a stolen vehicle. Counsel explained that he challenged William Favrot because Favrot had been the victim of an armed robbery and several home burglaries. Counsel noted "something" in the prospective juror that might impact his ability to be fair, but did not provide any objective observation to substantiate that statement. Favrot had said that he had been armed robbed and his house had been burglarized. The trial court justified its decision to deny the challenges to Prudhomme and Favrot, two Caucasian males who had been victims of crime because three African American citizens, Mary Hales, Thomas Priestley, and Gilbert Morgan, who had been chosen jurors, all acknowledged that they had also been victims of crime. Under the circumstances, it does not appear that the trial court erred by denying the defense challenges to Prudhomme and Favrot, and allowing Prudhomme to be seated as a juror.

State's Challenges

The defendant also objected to the State's peremptory challenges. The trial court asked the State to provide reasons for its challenges. The State explained that Nellie Lindsey was challenged because she was inattentive. The reason appeared race-neutral. The trial court stated that it

would allow that challenge because it had allowed the State to challenge Fulmer for the same reason. The defendant mistakenly relies on State v. Hobley, 752 So.2d at 784, because the Supreme Court there stated that the generality of an explanation such as inattentiveness merits concern. However, the Court went on to say that the trial record cannot reflect the attention of the prospective jurors, and the trial court, which possesses broad discretion in making the ultimate factual determination regarding purposeful discrimination, is in the best position to know if the reason was race-neutral. Id. It would be difficult to conclude that the trial court erred when the reason was race-neutral and it allowed each side to strike a prospective juror on that basis.

The State explained that it challenged Emma Martin because she was inattentive and non-responsive; the State had also discovered in a case earlier that month that her son was in jail at that time. Those reasons appeared to be legitimate and race-neutral. Defense counsel only argued that he was not aware of the information, which had not been developed during voir dire examination in this case. The trial court spoke directly to Martin, and both sides questioned her. It was discovered that her son had been released from jail. She stated that she would not hold that fact against either side. Although Martin said that she could be fair, she clearly stated that

police officers do lie in certain situations. Defense counsel did not argue (as in brief here) that the exclusion of Emma Martin, an African American, because she had a son in jail betrayed a cultural classification that might serve as proxy for an impermissible classification. Under the circumstances, it does not appear that the trial court erred by allowing the State to peremptorily challenge that juror.

The State said that Dawn Mitchell (listed as a case worker) was very inattentive and had not responded to questioning by either side; she had expressed no opinion as to the elements of the crime, the burden of proof, the presumption of innocence, or the credibility of the witnesses. The State declared that it did not know if Mitchell could be impartial. The reason appears to be race-neutral. Defense counsel argued that he had a completely different reaction to Mitchell, and he said that he recalled "her affirming…," but went on to say that he did not think that was part of voir dire examination or jury selection. Defense counsel claimed that using inattentiveness as a reason was just a pretense by the State. A review of the transcript shows no answers, responses, or questions by Dawn Mitchell throughout the voir dire examination. As noted above, the trial court is in the best position to determine whether lack of attention is a race-neutral reason to exclude a particular prospective juror. It would be difficult to

conclude that the trial court erred by allowing the State's challenge to Dawn Mitchell.

The State explained its challenge to Isabella Evans because she had been a juror in a prior case involving the theft of a car where the verdict was not guilty. The reason appeared to be race-neutral. The trial court questioned Evans about the prior case and allowed both sides to question her. She said that nothing from the earlier case would impact the present case or her ability to be fair in this present case. Defense counsel stated that the fact that Evans served on a prior jury in a car theft case and voted to acquit needed to be developed because Evans had proclaimed that the prior case would not impact this case. The trial court correctly noted that the reason could be used to support the State's peremptory challenge. See State v. Dabney, 91-2051 (La. App. 4 Cir. 3/15/94), 633 So.2d 1369, writ denied, 94-0974 (La. 9/2/94), 643 So.2d 139. Defense counsel did not provide any proof of discriminatory intent on the part of the prosecutor. The trial court did not err by allowing the challenge to Evans.

Although the defendant argues that the trial court did not make the second inquiry required under Batson, he does not support that allegation. The trial court considered whether to allow the State's challenges after the prosecutor provided the race-neutral reasons for excluding the prospective

jurors and the defense presented its argument (or was allowed to present and did not). There was nothing in the prosecutor's comments during voir dire examination to show a discriminatory intent. The trial court apparently concluded that the defendant's proof, when weighed against the State's race-neutral reasons, was not sufficient to prove the existence of discriminatory intent on the part of the prosecutor. On the other hand, the trial court appears justified in its decision to deny the defense challenges to two Caucasian male citizens, Prudhomme and Favrot, solely because they were victims of crime, while three African American citizens, who were also victims of crime, had been selected as jurors. After a careful review of the entire record of the voir dire examination, it appears that the trial court did not err in its rulings. Accordingly, we affirm the defendant's conviction and sentence.

AFFIRMED