NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 1463

STATE OF LOUISIANA

VERSUS

TORRELL BROWN

Judgment Rendered: March 23, 2012

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Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Case No. 506,059

The Honorable Timothy C. Ellender, Judge Presiding

* * * * * * * *

Joseph L. Waitz, Jr. **District Attorney** **Ellen Daigle Doskey** **Assistant District Attorney** **Houma, Louisiana**	**Counsel for Appellee** **State of Louisiana**
Bertha M. Hillman **Thibodaux, Louisiana**	**Counsel for Defendant/Appellant** **Torrell Brown**
Torrell Brown **Angola, Louisiana**	**Defendant/Appellant** ***Pro Se***

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

Hughes, J., dissents with reasons.

GAIDRY, J.

Defendant, Torrell Brown, was charged by grand jury indictment with one count of second degree murder (Count 1), in violation of La. R.S. 14:30.1, and with one count of attempted second degree murder (Count 2), in violation of La. R.S. 14:27 and 14:30.1. After a trial by jury, defendant was found guilty as charged on both counts. Defendant filed motions for a new trial and for post-verdict judgment of acquittal, but they were denied by the trial court. On Count 1, defendant was given the mandatory sentence of life imprisonment at hard labor, without benefit of parole, probation, or suspension of sentence. On Count 2, defendant was sentenced to fifty years at hard labor, without benefit of parole, probation, or suspension of sentence. The sentences were ordered to run concurrently. Defendant now appeals, alleging one counseled and two *pro se* assignments of error. For the following reasons, we affirm defendant's convictions and sentences.

FACTS

Several days prior to March 30, 2008, Cortez Watkins ("Watkins") met defendant for the first time at the mobile home where defendant lived with his girlfriend, on Patrick Drive in Schriever, Louisiana. At the time of this visit, Watkins was accompanied by his mother, Darlene Watkins ("Darlene"), and his mother's boyfriend, Leslie Ross ("Ross"). Watkins, Darlene, and Ross were attempting to find Ross's sister, Dawn Ross ("Dawn"), who lived in the apartment complex across the street from defendant and who they knew to be an acquaintance of defendant's girlfriend. Defendant answered the door and indicated that Dawn was not at his mobile home. Defendant and Watkins then had a brief conversation wherein defendant indicated that he sold ecstasy and Watkins indicated that he would be interested in buying ecstasy from defendant in the future, when

he had money to do so. After this conversation, Watkins, Darlene, and Ross left defendant's mobile home.

On Saturday, March 29, 2008, Watkins, Darlene, and Ross began to drink beer around 10:00 a.m. or 11:00 a.m. They then visited a bar and shot pool for approximately four to five hours before leaving around 10:00 p.m. to pick up Dawn from a nursing home where she worked. Watkins, Darlene, Ross, and Dawn stopped briefly at Dawn's apartment in order for Dawn to change her clothes, and they all soon left again to visit a club in Thibodaux. They stayed at the club until it closed at 2:00 a.m. on Sunday, March 30, 2008, at which point they returned to Dawn's apartment. Upon arriving at Dawn's apartment complex, Watkins noticed that the light in defendant's mobile home was still on, so he and Ross went to defendant's mobile home to buy two ecstasy pills. At that time, defendant also gave Ross a phone number that they could call before coming over to buy ecstasy in the future. Watkins and Ross returned to Dawn's apartment, where they took the ecstasy pills and continued drinking.

Around 8:30 a.m. on Sunday morning, Watkins and Ross decided to visit defendant's mobile home in order to buy more ecstasy. Prior to their visit, Darlene called defendant to let him know that Watkins and Ross would be coming to his mobile home. As Watkins and Ross approached defendant's mobile home, Watkins heard footsteps approaching the front door. Soon thereafter, Watkins saw defendant's front door open, revealing a glimpse of a gun, and defendant began shooting. Watkins felt a bullet enter his stomach, and he began to run away from defendant before he eventually fell to the ground unconscious. Watkins also suffered less-severe gunshot wounds to his right arm and leg. The gunshot wound to Watkins's abdomen caused extensive bleeding and resulted in injuries to his liver, large

intestines, small intestines, and pancreas, requiring extensive surgeries to correct. Ross suffered gunshot wounds to his left arm and chest, the latter of which penetrated his heart and caused him to bleed to death where he fell, in the middle of Patrick Drive. No witnesses saw Watkins or Ross carrying any weapons on their approach to defendant's mobile home, nor did police find any weapons in the vicinity of the incident.

After the shooting, defendant fled the scene, but he later turned himself in to the police. Defendant gave a statement to the police in which he admitted to shooting at both Watkins and Ross, but he claimed that he was scared of the men and acted in self-defense. Defendant did not testify at trial, but his counsel reiterated defendant's claim of self-defense in closing arguments. Defendant was ultimately found guilty of the second degree murder of Ross and of the attempted second degree murder of Watkins by an 11-1 vote on each count.

COUNSELED ASSIGNMENT OF ERROR

In his only counseled assignment of error, defendant contends that the trial court erred in denying challenges for cause related to three potential jurors, requiring defendant to exhaust all of his allotted peremptory challenges.

An accused in a criminal case is constitutionally entitled to a full and complete voir dire examination and to the exercise of peremptory challenges. La. Const. art. I, § 17(A). The purpose of voir dire examination is to determine prospective jurors' qualifications by testing their competency and impartiality and discovering bases for the intelligent exercise of cause and peremptory challenges. *State v. Burton*, 464 So.2d 421, 425 (La. App. 1st Cir.), writ denied, 468 So.2d 570 (La. 1985). A challenge for cause should be granted, even when a prospective juror declares his ability to

remain impartial, if the juror's responses as a whole reveal facts from which bias, prejudice, or inability to render judgment according to law may be reasonably implied. A trial court is accorded great discretion in determining whether to seat or reject a juror for cause, and such rulings will not be disturbed unless a review of the voir dire as a whole indicates an abuse of that discretion. *State v. Martin*, 558 So.2d 654, 658 (La. App. 1st Cir.), writ denied, 564 So.2d 318 (La. 1990). A trial court's ruling on a motion to strike jurors for cause is afforded broad discretion because of the court's ability to get a first-person impression of prospective jurors during voir dire. *State v. Brown*, 2005–1676 (La. App. 1st Cir. 5/5/06), 935 So.2d 211, 214, writ denied, 2006–1586 (La. 1/8/07), 948 So.2d 121.

A defendant must object at the time of the ruling on the refusal to sustain a challenge for cause of a prospective juror. See La. Code Crim. P. art. 800(A). Prejudice is presumed when a challenge for cause is erroneously denied by a trial court and the defendant has exhausted his peremptory challenges.[1] To prove there has been reversible error warranting reversal of the conviction, the defendant need only show (1) the erroneous denial of a challenge for cause; and (2) the use of all his peremptory challenges. *State v. Robertson*, 92-2660 (La. 1/14/94), 630 So.2d 1278, 1280-81. It is undisputed that defense counsel exhausted all of his peremptory challenges in this case and that objections were made to the trial court's denial of each challenge for cause. Therefore, we need only determine the issue of whether the trial judge erred in denying defendant's challenges for cause for any of the three prospective jurors identified by defendant.

[1] "The rule is now different at the federal level. See *United States v. Martinez–Salazar*, 528 U.S. 304, 120 S.Ct. 774, 145 L.Ed.2d 792 (2000) (exhaustion of peremptory challenges does not trigger automatic presumption of prejudice arising from trial court's erroneous denial of a cause challenge)." *State v. Taylor*, 2003-1834 (La. 5/25/04), 875 So.2d 58, 62 n.2.

The grounds upon which a challenge for cause can be made are set forth in La. Code Crim. P. art. 797, which provides:

> The state or the defendant may challenge a juror for cause on the ground that:
>
> (1) The juror lacks a qualification required by law;
>
> (2) The juror is not impartial, whatever the cause of his partiality. An opinion or impression as to the guilt or innocence of the defendant shall not of itself be sufficient ground of challenge to a juror, if he declares, and the court is satisfied, that he can render an impartial verdict according to the law and the evidence;
>
> (3) The relationship, whether by blood, marriage, employment, friendship, or enmity between the juror and the defendant, the person injured by the offense, the district attorney, or defense counsel, is such that it is reasonable to conclude that it would influence the juror in arriving at a verdict;
>
> (4) The juror will not accept the law as given to him by the court; or
>
> (5) The juror served on the grand jury that found the indictment, or on a petit jury that once tried the defendant for the same or any other offense.

Defendant asserts that the trial court erred in denying his challenges for cause of prospective jurors Colleen Terhune, Jerome Theriot, and David Rodrigue.

Colleen Terhune

Defendant argues that the trial court erred in denying his challenge for cause of prospective juror Colleen Terhune because of her former employment relationship with Juan Pickett, the assistant district attorney who was prosecuting the case.

Terhune was twenty-one years old at the time of trial, and she was working as a waitress while attending college at Nicholls State University. When she was questioned by the trial judge during voir dire, Terhune stated that she knew Pickett because her mother once worked at the law office that

he maintained apart from his job as an assistant district attorney. When Pickett later questioned her, Terhune stated that her mother was Pickett's former secretary and that she used to babysit his daughter. However, Terhune said that she did not remember babysitting Pickett's daughter until he brought it up to her during voir dire. Terhune said that her relationship with Pickett would not make any difference in her ability to decide defendant's case fairly.

Defendant cites *State v. Fairley*, 25,951 (La. App. 2d Cir. 5/4/94), 645 So.2d 213, writs denied, 94-1940 (La. 11/11/94), 645 So.2d 1152 & 94-2909 (La. 3/24/95), 651 So.2d 287, as support for the contention that the trial court erred in denying his challenge for cause to prospective juror Terhune because of her employment relationship with Pickett. In *Fairley*, the trial court denied a challenge for cause of a prospective juror who worked for the assistant district attorney as a babysitter four days a week, for several years. *Fairley*, 645 So.2d at 216. The Second Circuit noted that "a significant portion" of the prospective juror's livelihood depended upon the assistant district attorney and that "the nature of her employment . . . involve[d] a very personal part of the prosecutor's life." *Fairley*, 645 So.2d at 216-17. Accordingly, despite the prospective juror's statement that she could follow the law and be impartial, the Second Circuit found that the nature of her employment led to the reasonable conclusion that her employment relationship with the prosecutor would influence the prospective juror's ability to arrive at a fair verdict. *Fairley*, 645 So.2d at 217.[2]

The law does not require a jury to be composed of individuals who are totally unacquainted with the defendant, the prosecuting witness, the

[2] On rehearing, however, the Second Circuit found the denial of defendant's challenge for cause as to this prospective juror to be harmless error due to the fact that the jury panel was ultimately completed without her and before defendant would have needed to exercise a peremptory challenge on her. *State v. Fairley*, 645 So.2d at 221.

prosecuting attorney, and the witnesses who may testify at trial. It requires only that the jurors be fair and unbiased. See *State v. Shelton*, 377 So.2d 96, 102 (La. 1979). In the instant case, while it is clear that Terhune knew Pickett by virtue of both her mother's and her own employment by him, the nature of those relationships were not such that it is reasonable to conclude that they would have influenced her in arriving at a verdict. Terhune's mother was his former secretary from his law practice, so she no longer depended on Pickett as a source of income, and she never assisted him in criminal matters. Further, unlike in *Fairley*, the record in this case reveals that Terhune was herself a former employee of Pickett and, even considering that fact, she had to be reminded that she once babysat his daughter. Compared to the prospective juror from *Fairley*, who worked for the assistant district attorney four days a week for several years and who presumably derived her main source of income from this employment, the nature of Terhune's employment relationship with Pickett was very limited.

The trial court did not abuse its broad discretion in denying defendant's challenge for cause as to Terhune. Terhune demonstrated a willingness and ability to decide the case impartially according to the law and the evidence, and her responses as a whole did not reveal facts from which bias, prejudice, or inability to render judgment according to the law could reasonably be inferred.

Jerome Theriot

Defendant argues that the trial court erred in denying his challenge for cause of prospective juror Jerome Theriot because of his "strong anti-drug sentiments" and because he believed that defendant should testify at trial.

At the time of trial Jerome Theriot was married and employed by International Marine Systems. During voir dire, Theriot revealed to the

court that he had a brother who was in jail for a child sex offense and for drug offenses. When Theriot was asked by the court whether he believed that his brother "has gotten what he deserves or do you think he has been railroaded," Theriot replied that his brother got what he deserved. Defense counsel later asked whether anyone believed whether "a person who does drugs deserves whatever harm they come to, any harm at all." Theriot raised his hand and said that he had seen his "share of people with drugs, including [his] brother; and what they bring upon themselves, lot of times comes back to them." He later explained that his brother "abused drugs and due to that, he stole from my parents; and he became a child sex offender. And I have a bad problem with people who use drugs."

Theriot later had the following colloquy with defense counsel and the trial judge:

> [Theriot]: The only thing I have is – I already have a feeling that if someone is innocent, they should profess their innocence. And that is just the feeling I have.
>
> [Defense counsel]: Do you understand that there may be reasons a person might not want to testify? For example, maybe he is lacking in education; maybe he doesn't speak very well, and he is afraid of how you would perceive him; would you see that as maybe being a possibility of why somebody would choose not to take the stand?
>
> [Theriot]: Possible.
>
> * * * *
>
> [Court]: All right, Mr. Theriot –
>
> [Theriot]: Yes?
>
> [Court]: I think it was not this panel, but the last panel, I said that in this case, I am the referee and you are going to be the judge – okay?
>
> [Theriot]: Okay.
>
> [Court]: So you are going to make the decisions. So, as a Judge, you are not a member of the Legislature. The

> Legislature makes the law. There are some laws that I have to enforce in here that I don't like. And the question is not whether you think that they should testify, but whether if you are told, by the Court, that you are not to take their failure to testify into consideration, whether you can comply with it; whether you like it or not. Can you?
>
> [Theriot]: Yes.
>
> [Court]: Good enough.

Defendant contends that this colloquy highlights the inability of Theriot to recognize defendant's right not to testify at trial. Defendant also argues that the trial court attempted to rehabilitate Theriot only as to his statements addressing defendant's right not to testify and that it failed to rehabilitate Theriot with reference to his "strong anti-drug sentiments."

If a prospective juror is able, after examination by counsel, to declare to the court's reasonable satisfaction that he is able to render an impartial verdict according to the law and evidence, it is the trial court's duty to deny a challenge for cause. See *State v. Claiborne*, 397 So.2d 486, 489 (La. 1981). In *State v. Eastin*, 419 So.2d 933, 937 (La. 1982), the trial court denied a challenge for cause against a prospective juror who stated, "I don't like drugs. I don't like people that use drugs. I don't like them around me." The Louisiana Supreme Court found that the trial court did not abuse its discretion in denying the challenge for cause to this juror because, upon further inquiry by the trial court, the juror evidenced an ability to try the case impartially despite his personal distaste for drugs. *Eastin*, 419 So.2d at 937.

A review of the record as a whole indicates that the trial court did not abuse its broad discretion in denying defendant's challenge for cause as to Theriot. Defendant contends that the trial court never rehabilitated Theriot for his anti-drug statements and that there was insufficient rehabilitation for Theriot's statements indicating that defendant should profess his innocence.

However, the record indicates that the trial court did not attempt to immediately rehabilitate any prospective jurors who gave troubling answers during voir dire of the second jury panel. Instead, the trial court waited until after both the state and defense had completed their respective questionings of the prospective jurors before attempting to rehabilitate any second-panel jurors. Theriot was the first prospective juror on his panel to be rehabilitated by the trial court, and he informed the trial court that he could apply the law as it was given to him by the court. Although the issue is a close one, we find that the trial court successfully rehabilitated Theriot and did not abuse its discretion in denying defendant's challenge for cause.

David Rodrigue

Defendant argues that the trial court erred in denying his challenge for cause of prospective juror David Rodrigue because of his concerns about sitting as a juror on a criminal case and because of his statement that an innocent person should testify.

At the time of defendant's trial, Rodrigue was married and a fleet mechanic for Pepsi America. Defense counsel asked as her final voir dire question whether there was anything that the prospective jurors thought she should know before she was finished. In response, Rodrigue had the following colloquy with the trial court and defense counsel:

> [Rodrigue]: David Rodrigue – I have never sat on this type of trial before, so I really couldn't tell you if I could be – you know what I am saying fair or whatever. I just – I don't know. I just don't know – my gut feeling would be – you know, because of my beliefs, more or less – should I say.
>
> [Court]: What's that, sir?
>
> [Rodrigue]: My beliefs – you know – I am just – I don't know if I could handle this. That's what I am saying. You know –
>
> [Court]: You know somebody has got to do it, you know.

[Rodrigue]: Yes, I realize that.

[Court]: We have duties, but we also have – we have rights but we have responsibilities.

[Rodrigue]: But what I am saying is to be fair; that's what I am trying to be honest with you.

[Court]: Yes.

[Defense counsel]: Do you think you could sit here and you could listen and look at the evidence; and listen to the law as the Judge gives it to you, and use that to make a determination? Do you feel that you could do that?

[Rodrigue]: Uhh, I would hope to; yes. I would think I would hope to.

* * * *

[Court]: Okay, ladies and gentlemen, - Mr. Rodrigue, you are having some doubt as to whether you can do this; right?

[Rodrigue]: Yes, sir.

[Court]: Okay, just answer this question. Would you favor one side or the other, or would you listen to the evidence and make a determination based on what comes from the witness stand?

[Rodrigue]: I would listen to the evidence, yes.

[Court]: Okay, that's all I want you to do.

Earlier in defense counsel's voir dire, Rodrigue stated, "I just feel like if you – you know, if you are innocent and all, you want to speak for yourself. You know, and you just have to plead your innocence – you know, that's how I feel about it."

Again, a review of the record of voir dire as a whole indicates that the trial court did not abuse its broad discretion in denying defendant's challenge for cause as to prospective juror Rodrigue. Although Rodrigue expressed his personal belief that an innocent person should speak for himself and initially declared a doubt in his ability to serve as a juror in this case, the trial court rehabilitated Rodrigue to its satisfaction when Rodrigue

stated that he would listen to all of the evidence and make his determination on what came from the witness stand. The totality of Rodrigue's responses demonstrated a willingness and ability to decide the case impartially according to the law and the evidence, and his responses as a whole did not reveal facts from which bias, prejudice, or inability to render judgment according to the law could reasonably be inferred. Defendant's counseled assignment of error is without merit.

PRO SE ASSIGNMENTS OF ERROR

In his first *pro se* assignment of error, defendant argues that the trial court erred in denying his *Batson*[3] challenge, finding that the defense failed to establish a pattern of racial discrimination. In his second assignment of error, defendant contends that the state violated his "equal protection rights under the Sixth and Fourteenth Amendments by its use of peremptory challenges to strike three African Americans from the jury." Because these *pro se* assignments of error are related, we address them together.

In *Batson v. Kentucky*, 476 U.S. 79, 96-98, 106 S.Ct. 1712, 1723-24, 90 L.Ed.2d 69 (1986), the United States Supreme Court outlined a three-step process for evaluating claims that a prosecutor has used peremptory challenges in a manner violating the Equal Protection Clause. *State v. Mitchell*, 99–0283 (La. App. 1st Cir. 6/22/01), 808 So.2d 664, 669. Under *Batson*, a defendant must first establish a prima facie case of discrimination by showing facts and relevant circumstances which raise an inference that the prosecutor used his peremptory challenges to exclude potential jurors on account of their race. *State v. Tilley*, 99–0569 (La. 7/6/00), 767 So.2d 6, 12, cert. denied, 532 U.S. 959, 121 S.Ct. 1488, 149 L.Ed.2d 375 (2001). The combination of factors needed to establish a prima facie case are: (1) the

[3] *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

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; and (3) finally, the defendant must show circumstances sufficient to raise an inference that the prosecutor struck the prospective juror on account of race. *State v. Myers*, 99–1803 (La. 4/11/00), 761 So.2d 498, 501.

The defendant may offer any facts relevant to the question of the prosecutor's discriminatory intent. 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 during voir dire that support an inference that the exercise of peremptory strikes was motivated by impermissible considerations, the composition of the venire and of the jury finally empanelled, and any other disparate impact upon the suspect class that is alleged to be the victim of purposeful discrimination. *State v. Rodriguez*, 2001–2182 (La. App. 1st Cir. 6/21/02), 822 So.2d 121, 128, writ denied, 2002–2049 (La. 2/14/03), 836 So.2d 131.

No formula exists for determining whether the defense has established a prima facie case of purposeful racial discrimination. A trial judge may take into account not only whether a pattern of strikes against African American prospective jurors has emerged during voir dire, but also whether the prosecutor's questions and statements during voir dire examination and in exercising his challenges may support or refute an inference of discriminatory purpose. *Rodriguez*, 822 So.2d at 128.

If the requisite showing has been made by the defendant, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question. The second step of this process does not demand an explanation that is persuasive, or even plausible. Rather, at the second step

of the inquiry, the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in a prosecutor's explanation, the reason offered will be deemed race neutral. *Mitchell*, 808 So.2d at 669–70. This is a burden of production, not one of persuasion. *State v. Harris*, 2001–0408 (La. 6/21/02), 820 So.2d 471, 473.

Faced with a race-neutral explanation, the defendant then must prove to the trial court purposeful discrimination. The proper inquiry in this 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. Thus, the focus of the *Batson* inquiry is upon the intent of the prosecutor at the time he exercised his peremptory strikes. *Tilley*, 767 So.2d at 12. The ultimate burden of persuasion is on the defendant. *State v. Young*, 551 So.2d 695, 698 (La. App. 1st Cir. 1989). The trial court should examine all of the available evidence in an effort to discern patterns of strikes and other statements or actions by the prosecutor during voir dire that support or reject a finding of discriminatory intent. *Tilley*, 767 So.2d at 12–13.

In the instant case, two *Batson* objections were urged. Defendant's first *Batson* objection was urged after the second panel of jurors was questioned. The record contains no information about the number of African American jurors on the first panel. There were four African American jurors on the second panel.[4] Millie Davis was successfully challenged for cause by the defense due to her stated inability to sit in judgment of anyone. The trial judge also noted that she was ill. Linda Joseph was accepted as a juror by both the state and the defense. George

[4] Millie Davis; George Nevis, III; Linda Joseph; and Christopher Williams were on the second panel.

Nevis, III, and Christopher Williams were peremptorily challenged by the state.

After the state peremptorily challenged Williams, defense counsel urged a *Batson* objection alleging that the state was using its peremptory challenges in a discriminatory manner to exclude African Americans from the jury and asking that the state give race-neutral reasons for his challenges of Nevis and Williams. The trial court noted that the prospective jurors on the first panel were not questioned about their race, so the court asked how defense counsel could establish a pattern of racial discrimination if there was no record of the racial composition of the first panel. Before the trial court could rule on whether defendant had demonstrated a prima facie case of racial discrimination, the assistant district attorney stated that he peremptorily challenged Nevis because of Nevis's uncertainty about whether he might be related to defendant. The assistant district attorney also stated that he peremptorily challenged Williams because of Williams's own belief that he might be too young to sit on a jury. The trial court responded that it found no pattern of racial discrimination and that the assistant district attorney offered sufficient race-neutral reasons for both jurors that he excused.

Defendant also urged a *Batson* objection after the state peremptorily challenged Annie Faulks, a member of the third jury panel who was characterized by defense counsel as African American. Although Faulks was described as African American by defense counsel, she was never questioned on the record about her race. In fact, none of the members of the third jury panel were at all questioned about their race, so the racial composition of this panel, too, is unknown. In support for his second *Batson* objection, defendant argued only that two African American members of the

second panel were peremptorily challenged by the state. The trial court denied defendant's second *Batson* objection, noting that it found the previous peremptory challenges to be race neutral and that the state's peremptory challenge of Faulks did nothing to establish a pattern of racial discrimination. Defendant now argues that the trial court erred in its conclusion that there was no pattern of racial discrimination shown in the state's peremptory challenges of Nevis, Williams, and Faulks.

Considering the record as a whole, we cannot conclude that the trial court erred in denying both of defendant's *Batson* objections. We note first that the record is largely devoid of any information concerning the race of most prospective jurors. Each jury panel had eighteen members. The record provides no information about the racial composition of the first or third panel, outside of defense counsel's description of Faulks as African American. This dearth of information makes it difficult for this Court to review defendant's *pro se* assignments of error.

We do note, however, that the second panel was composed of four individuals who identified themselves as at least partially African American.[5] Of the African American members of the second panel, one was successfully challenged for cause by the defense; one was accepted as a juror; and two were peremptorily challenged by the state. Defendant's first *Batson* objection was supported by no stated reasons, and defense counsel merely asked the state to provide race-neutral reasons for its peremptory challenges of Nevis and Williams. Because defendant made no attempt to make a prima facie case of racial discrimination with respect to his first *Batson* challenge, this objection was properly denied by the trial court. Defendant's second *Batson* objection was supported only by statistics related

[5] Nevis answered that he was partially African American and partially American Indian.

to the peremptory challenges exercised by the state on jurors in the second panel. However, the Louisiana Supreme Court has noted that a defendant's "reliance on bare statistics to support a prima facie case of . . . race discrimination is misplaced." *State v. Duncan*, 99-2615 (La. 10/16/01), 802 So.2d 533, 550, cert. denied, 536 U.S. 907, 122 S.Ct. 2362, 153 L.Ed.2d 183 (2002). Defendant offered no further support, outside of statistics, with respect to his second *Batson* challenge, so this objection was also properly denied by the trial court.

For the above reasons, we reject defendant's claim that the trial court erred in ruling that defendant failed to establish a pattern of racial discrimination under *Batson*. For the same reasons, we also reject defendant's claim that the state violated "defendant's equal protection rights under the Sixth and Fourteenth Amendments by its use of peremptory challenges to strike three African Americans from the jury." Defendant's *pro se* assignments of error are without merit.

CONCLUSION

For the foregoing reasons, defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

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VERSUS

TORRELL BROWN

HUGHES, J., dissenting.

Juror Theriot was never rehabilitated on the drug use issue and insufficiently on the right to not testify issue (a one-word answer to a long leading question). Juror Rodrigue was never rehabilitated on the right to not testify issue.