

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
February 22, 2023 Session

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STATE OF TENNESSEE v. STEPHEN M. MOBLEY

Appeal from the Criminal Court for Hamilton County
No. 301720 **Barry A. Steelman, Judge**

No. E2022-00440-CCA-R3-CD

A Hamilton County jury convicted the Defendant, Stephen M. Mobley, of two counts of first-degree premeditated murder, one count of attempted first-degree murder, one count of aggravated assault, and one count of employing a firearm during the commission of a dangerous felony. The trial court merged the attempted first degree murder and aggravated assault convictions and imposed an effective sentence of life imprisonment plus twenty-six years. In his first appeal, the Defendant contended that the trial court erred when it failed to make requisite findings based on *Batson v. Kentucky* regarding the State’s use of a peremptory challenge to strike an African-American potential juror during voir dire. *State v. Stephen Maurice Mobley*, No. E2020-00234-CCA-R3-CD, 2021 WL 3610905, at *1 (Tenn. Crim. App., at Knoxville, Mar. 31, 2021). This court remanded the case for the trial court to make appropriate findings pursuant to *Batson*. On remand, the trial court concluded that the State’s exercise of the peremptory challenge did not violate *Batson*. The Defendant again appeals, contending that the trial court erred. After our review, we affirm the trial court’s judgments.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., P.J., and JOHN W. CAMPBELL, SR., J., joined.

Steven E. Smith, District Public Defender; M. Todd Ridley, Assistant Public Defender (on appeal), Franklin, Tennessee; Mike A. Little, Steve Brown, Carson Fallo, and Eliza Williams, Assistant District Public Defenders (at hearing), Chattanooga, Tennessee, for the appellant, Stephen M. Mobley.

Jonathan Skrmetti, Attorney General and Reporter; Brent C. Cherry, Senior Assistant Attorney General; Coty Greer Wamp, District Attorney General; and Cameron B. Williams, Executive Assistant District Attorney General; and P. Andrew Coyle, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Facts

The evidence presented at trial established that the Defendant shot the victims, Ms. Jasmine Hines, Mr. Rashaud Taylor, and Ms. Zirrhaddia Scott, multiple times during a party at a home in Chattanooga, Tennessee, during the early morning hours of September 5, 2016. Ms. Hines and Mr. Taylor died as a result of their injuries, and Ms. Scott was seriously injured. The Defendant fled the scene and turned himself in to the police a few days later.

The jury convicted the Defendant of two counts of first-degree premeditated murder and one count each of attempted first degree murder, aggravated assault, and employing a firearm during the commission of a dangerous felony. The trial court merged the attempted first degree murder and aggravated assault convictions and imposed an effective sentence of life imprisonment plus twenty-six years.

A. First Appeal

The Defendant appealed, contending among other things that the trial court improperly denied the Defendant's challenge to the State's striking a prospective juror as violating *Batson v. Kentucky*, 476 U.S. 79 (1986). This court addressed the issue as follows:

During voir dire, the prosecutor asked prospective juror number 10 ("Juror 10"), who was retired, whether she was looking forward to being sequestered, and Juror 10 replied that she was not. After the trial court explained sequestration, Juror 10 asked whether she would be required to go to the hotel that night, and the trial court affirmed that she would. Juror 10 stated that she did not drive and that she did not have anyone to drive her to the hotel because her son was out of the country. The trial court stated that it was possible that someone from the sheriff's department could drive Juror 10 to the hotel. Juror 10 affirmed that she would not be distracted by staying at a hotel but that her only issue was the lack of transportation to the hotel. She also affirmed that she could be fair and impartial. Later during voir dire, Juror 10 again expressed concern that she did not have transportation to the hotel.

At the conclusion of voir dire, the State struck Juror 10, and defense counsel objected based upon *Batson*. The following exchange occurred:

THE COURT: No, it's premature at this point because they've only used one challenge. The Court doesn't find there's a pattern.

[DEFENSE COUNSEL]: A pattern.

THE COURT: The Court has to find a pattern of discriminatory action before the State has to provide any race-neutral explanation.

[DEFENSE COUNSEL]: I thought if we made a *prima facie* case, they would have to answer what their neutral basis was?

THE COURT: One person doesn't make a *prima facie* case.

[DEFENSE COUNSEL]: Judge, juror number 10 was African American, and she gave no reasons for being struck and that's why I'm making a challenge.

THE COURT: Well, the State doesn't have to give a reason yet. I think there has to be a pattern—

[DEFENSE COUNSEL]: I have an objection.

THE COURT: --and I don't think one person constitutes a pattern.

After the Defendant was convicted of the offenses, he alleged in his motion and amended motion for new trial that the trial court erred in denying his *Batson* claim. Although the State filed a written response to the Defendant's motion, the State did not address the *Batson* issue.

During a status hearing prior to the hearing on the motion for new trial, the trial court stated that it had conducted additional research on the *Batson* issue and had reviewed the trial transcript. The trial court stated, "I did not recall this, but that juror was an elderly woman who had—she could not drive and she had issues related to her transportation. That was not provided as a race-neutral reason, but it certainly would have been one." The trial court continued, "I, in looking at the law, don't believe that there was any *prima facie* showing of any kind of pattern of discrimination, which has to be shown."

During the hearing on the motion for new trial, defense counsel argued that the trial court erred in finding that the defense was required to establish a pattern of discrimination in order to demonstrate a *prima facie* case under *Batson*. Defense counsel also argued that Juror 10 was African American, that the State gave no reasons for striking the juror, and that the trial court failed to make adequate findings in denying the *Batson* challenge. The trial court responded:

I do recall from reading the transcript in preparation for this hearing, and because the Court did not make any further statement in the record at the time of the trial related to this proceeding, as I went back and read it, that the juror who was excused had expressed—I believe she was an elderly woman—I think she was in her eighties—and she also indicated that she did not drive, and there was going to be—there had already been something come up about traveling to and from court to home and to the hotel, and I think I had indicated whether or not—my thought process about whether or not the sheriff could assist her with that, so the State never gave a reason, but I think it is significant that those things existed also at the time.

The trial court asked the prosecutor why the juror was stricken, and the prosecutor responded, “Just that that was the reason for—that was the reason she was struck, because of her issues, I guess, with transportation, and her age. It had nothing to do with the fact that she was African American.” The trial court stated, “While the Court does not want to discriminate—would not be based on age either—and certainly, I know that at the time I had it in my mind as well that the situation of sequestration could be a hardship on a person of that age.” The trial court noted that one of the jurors who sat on the jury was African American. The trial court did not make any further findings on the *Batson* issue and did not address the issue in its written order.

Mobley, 2021 WL 3610905, at *15-16.

Based upon these facts, and the law, this court held:

During a post-trial status hearing, the trial court . . . incorrectly stated that the Defendant was required to make a “*prima facie* showing of any kind of pattern of discrimination.” The trial court exacerbated the error by taking it upon itself to determine a reason for excluding the juror and to find that the reason was “race-neutral,” instead of requiring the State to provide its

reasons for excluding the juror. By doing so, the trial court assumed the State's role and burden of providing a race-neutral reason for striking the juror. The purpose of the three-step inquiry in *Batson* is not to determine whether any race-neutral justification existed for excluding the juror but to ascertain the State's actual reason for excluding the juror and determine whether the reason articulated by the State — and not by the trial court — is race-neutral.

During the hearing on the Defendant's motion for new trial, the trial court repeated the reasons that the court had found justified excluding the juror and then asked the State for its reasons for excluding the juror. The prosecutor unsurprisingly agreed with the reasons that the trial court had articulated and previously found to be race-neutral. However, the prosecutor's response was equivocal, stating that he "guess[ed]" the juror was excluded due to her advanced age and transportation issues. The trial court failed to provide the Defendant with the opportunity to respond to the reason for excluding the juror determined by the trial court and somewhat acquiesced in by the State. The trial court made no further findings on the issue either during the hearing or in its order denying the Defendant's motion for new trial.

The trial court failed to comply with the three-step inquiry for determining a *Batson* violation and failed to make adequate findings to determine the validity of the Defendant's objection to the State's exclusion of the juror. Therefore, we remand the case to the trial court for a hearing to address the three-part test under *Batson*. . . . At the hearing, the Defendant should be given the opportunity to proceed with his efforts to establish a violation. The trial court shall make specific findings, applying the principles set forth in this opinion. If the trial court concludes that the Defendant has met his burden of establishing a *Batson* violation, the trial court shall grant the Defendant a new trial. If the trial court concludes that the State's exercise of the preemptory challenge did not violate *Batson*, the Defendant shall have the right to appeal the trial court's decision.

Mobley, 2021 WL 3610905, at *16-18 (citations omitted).

B. Hearing After Remand

On remand, the trial court held a hearing in accordance with our opinion during which it considered whether there was a *Batson* violation using the three-part test enumerated in *Batson*. The trial court noted that the Defendant had established a *prima*

facie case of discrimination by demonstrating that the prosecution excluded a member of a cognizable racial group from the jury pool. As such, the burden shifted to the State to offer a race-neutral explanation for challenging the juror.

The State then offered five race-neutral explanations for striking Juror 10. The first was that she indicated that she had served on a jury before in Connecticut and that the jury had found the defendant in that case not guilty. The second race-neutral explanation was that Juror 10 responded to a question about juror impartiality by saying that she would “not want to be the judge, but if the evidence presented itself that a person is guilty, I would have no qualms about saying guilty.” This “equivocating about not wanting to be the judge” provided a second race-neutral reason to strike Juror 10. The third race-neutral reason offered by the State was that, when asked if she could keep an open mind, the juror responded, “It could be a case of being at the wrong place at the wrong time” The fourth reason offered had to do with Juror 10’s concern about transportation. She did not drive, and her son had recently left the country, so she was concerned about being able to get to the hotel. And, finally, the fifth race-neutral reason had to do with sequestration. Juror 10 said “No” when asked if she was looking forward to sequestration.

The Defendant responded to these reasons by stating that the trial court reassured Juror 10 that she would have necessary transportation. The Defendant went on to more generally argue that the issue before the trial court was not whether there existed a possible race-neutral reason for excluding Juror 10, as viewed in hindsight, but whether the prosecutor’s actual reason for excluding Juror 10 was race-neutral.

The court reiterated that Juror 10 was elderly, at least eighty years old, and did not have transportation. The jury was going to be sequestered and subject to long hours in court. Those factors did also concern the court. The court said that it was “readily obvious” that serving would be a hardship on Juror 10, which was partly why it did not require more explanation at the time from the prosecutor. The trial court stated that this was only relevant to the extent that it corroborated the State’s articulated race-neutral reason for excluding Juror 10.

The Defendant argued that the prosecutor, four years after the trial, could not accurately give the race neutral reason it excluded Juror 10 four years before. Further, he argued that the other factors enumerated in *Batson* could not be assessed four years after the voir dire ruling. He went on to contend that there was no “cure” for this issue, and the case must be retried.

The prosecutor for the State, who was also the prosecutor during the voir dire hearing, then stated that Juror 10 said that she had served on a jury previously and voted “not guilty” in that case. The prosecutor said that this statement provided a ground to strike

her, as he struck all jurors who indicated that they had previously voted “not guilty” in a case. The prosecutor further stated that Juror 10’s statement that she would not want to be in a position to judge someone provided a ground to strike her, because that is exactly the position Juror 10 would be in if she served on the jury. Further, Juror 10’s statement that someone could be in the wrong place at the wrong time provided a ground to strike her because the Defendant’s defense was based on the fact that he was in the wrong place at the wrong time. The prosecutor felt that Juror 10 would be more amenable to accept that defense than other members of the venire. The prosecutor said that Juror 10’s transportation difficulties, which Juror 10 indicated would distract her from the evidence, was a ground to strike her because other potential jurors did not have that type of distraction. Finally, Juror 10’s indication that she was not looking forward to being sequestered provided a ground to strike her because jurors who indicate unwillingness to be sequestered could be distracted, and the prosecutor felt there were other jurors on the panel that would be better equipped to decide the case at hand.

Based upon this the trial court found:

The Court must determine whether the prosecution has clearly and reasonably offered a specific explanation of the lawyer’s legitimate reasons for exercising the challenge.

I understand from reading the *Zakour* case . . . that there were explanations given about a mistaken belief that a particular juror had cancer when the juror did not. There was an explanation given about body language and the court was cautioned about how to evaluate complaints about body language

The Court, as I understand the reading of the cases – and I don’t think it will get any clearer for the Court than it is about the prima facie case – the Court finds that a prima facie case has been established

The burden having shifted to the State to offer a neutral explanation for challenging a juror, the Court does not find that a discriminatory intent is inherent in the explanation that’s been given by the prosecutor, and that those explanations were just stated related to a prior jury service with a not-guilty verdict; not wanting to be the judge; that the case could be a case of someone being in the wrong place at the wrong time; that there – in her mind, at least initially – were hurdles that existed about her transportation; and that she initially indicated she was not looking forward to serving on the jury or jury service.

The Court finds that those are not only explanations in which no discriminatory intent is inherent, but also that those explanations are legitimate reasons for exercising a challenge.

....

The Court . . . must examine a lawyer's justification for the challenge in context to ensure that the reason is legitimate and not merely pretextual, and as I understand "pretext," I understand that to mean that that's a false reason that is put forth to hide the real reason.

And as the Court of Criminal Appeals wrote in *State v. Joan O'Dell*, citing *Hernandez* at 500 U.S. 353, 365 . . . "The decisive question will be whether counsel's race-neutral explanation for a peremptory challenge should be believed . . ."

I find that . . . those reasons that are given are believable and the Court believes them. I make that finding.

The Court, in making the finding also about pretext, has to evaluate the prosecutor's credibility, and the prosecutor's demeanor is the best evidence of that. I understand the defense position that it's – the defense position is it's too late for that determination to be reasonably made, and I understand that, but following the directions of the Supreme Court in the case that I cited, and going on and making that determination, the Court, having observed the demeanor of General Williams, who is the executive assistant district attorney, the Court has not observed anything about his demeanor in offering this explanation that would indicate that . . . these are pretextual reasons, false reasons put forth to hide the real reason for excluding [Juror 10].

While the State has offered one of their reasons being this issue related to transportation, which is something that the court did raise, as noted by the Court of Criminal Appeals, this Court finds that an actual reason, a non-pretextual reason like transportation that's been offered by the State, can be the same as the Court's and not necessarily be nonlegitimate or noncredible. In fact, it can be credible when, as here, as I have explained earlier, the race-neutral aspect of that involving what the Court observed – and that's where the court's observations of [Juror 10], I think, are relevant. She was an elderly lady. Where that race-neutral reason is obviously apparent to the Court that the Court, in error, jumped out ahead, I don't think that prohibits

the State from stating the same reason again today, even though it was a reason articulated by the Court, because it was, and the Court observes and states for the record, it was readily apparent to the Court that that was something that ought to be considered about that lady's jury service in a sequestered jury trial.

So for those reasons, the Court finds that concern about a not-guilty verdict is reasonable and credible and not pretextual.

The Court finds that a person indicating that – or saying something that would indicate to the State that they would not be comfortable sitting in judgment is credible, legitimate, and non[-]pretextual.

The Court finds that indicating that, after a not-guilty verdict, that this could be a case of being in the wrong place at the wrong time is legitimate and credible and not pretextual.

The Court finds that the issue related to the transportation to the hotel under sequestration, the Court having observed the same thing, certainly finds that that's a credible, legitimate, non[-]pretextual reason.

And the Court finds that indicating that she's not looking . . . forward to serving is also a credible, legitimate, non[-]pretextual reason.

And considering the totality of the circumstance and the circumstances involved here, articulates those reasons supporting the finding that there was no purposeful discrimination, which the [D]efendant has the ultimate burden of establishing, and therefore, that the, according to the *Mobley* decision again, the trial court, having concluded that the [D]efendant has not met his burden of establishing a *Batson* violation by the State's exercise of the peremptory challenge, the motion for new trial, based on that, is denied.

It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant asserts that the State has not offered a race-neutral explanation for striking Juror 10. He asserts that the State never offered its "actual" reason for striking Juror 10 but instead offered possible reasons. He further contends that the State's belatedly offered reasons are "vague, equivocal, inconsistent, and unsupported by

the record.” Further, he states that the trial court’s findings cannot salvage the State’s failure to offer a legitimate, non-discriminatory reason for striking Juror 10. As such, there exists an inference of discriminatory intent that requires a new trial.

The State counters that the prosecutor offered five reasons for striking Juror 10. The State notes that the trial court determined that each of these grounds provided a sufficient race-neutral reason for striking Juror 10 and that they were not, in the court’s opinion, pretextual. The State notes that a prosecutor is not limited to one reason for a strike but may rely on any number of reasons, as long as they are race-neutral, noting that peremptory challenges are often the subjects of instincts.

In reply, the Defendant contends that the State failed to address that the prosecutor never gave his “actual” reason for striking Juror 10 and instead gave possible reasons. He further contends that the State failed to address that the reasons articulated by the State are vague and inconsistent and unsupported by the record.

At the hearing, the prosecutor stated, “I would submit five race-neutral explanations for striking Juror [10].” After articulating the five reasons, the prosecutor stated, “So I think that’s at least five race-neutral explanations for the State’s challenge to Juror [10].” The trial court asked defense counsel if he wished to be heard, and defense counsel said that the purpose of the remand was not to determine whether there existed any race-neutral reason but whether the State’s “actual” reason for excluding the juror was race-neutral. Defense counsel noted that the State, at the time of the voir dire hearing, agreed with the trial court that Juror 10’s age and transportation issues were the reason for the strike, so it could not come back, four years later, with additional reasons for the strike.

The trial court turned to the State and asked the prosecutor to explain how each of the five proffered race-neutral reasons provided grounds for striking Juror 10. The prosecutor specifically explained why he would have stricken Juror 10 based on any one of those five reasons. The trial court then stated that it must determine whether the State offered “a specific explanation of the lawyer’s legitimate reasons for exercising the challenge.” It then found that the State had sufficiently and credibly articulated such reasons.

In *Batson v. Kentucky*, 476 U.S. 79 (1986), the United States Supreme Court held that “the Equal Protection Clause [of the United States Constitution] forbids the prosecutor to challenge potential jurors solely on account of their race” *Id.* at 89; *See State v. Hugueley* 185 S.W.3d 356, 368 (Tenn. 2006.). The Court crafted a three-pronged analysis for determining whether the suspect challenges were impermissibly based on the potential juror’s race. *Rice v. Collins*, 546 U.S. 333, 338 (2006). First, the trial court must determine whether the defendant has made a prima facie showing that the prosecutor exercised a

peremptory challenge on the basis of race. *Id.* (citing *Batson*, at 96-97). Second, if the showing is made, the burden shifts to the prosecutor to present a race-neutral explanation for striking the juror in question. *Id.* Although the prosecutor must present a comprehensible reason, “[t]he second step of this process does not demand an explanation that is persuasive, or even plausible”; so long as the reason is not inherently discriminatory, it suffices. *Purkett v. Elem*, 514 U.S. 765, 767-768 (1995) (per curiam). Third, the court must then determine whether the defendant has carried his burden of proving purposeful discrimination. *Batson*, at 98. This final step involves evaluating “the persuasiveness of the justification” proffered by the prosecutor, but “the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike.” *Purkett*, at 768.

On appeal, a trial court’s ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous. *See Hernandez v. New York*, 500 U.S. 352, 369 (1991) (plurality opinion). The trial court has a pivotal role in evaluating *Batson* claims. Step three of the *Batson* inquiry involves an evaluation of the prosecutor’s credibility, *see* 476 U.S., at 98, n.21, “the best evidence [of discriminatory intent] often will be the demeanor of the attorney who exercises the challenge,” *Hernandez*, 500 U.S., at 365 (plurality opinion); *State v. Ellison*, 841 S.W.2d 824, 827 (Tenn. 1992) (quoting *Batson*, 476 U.S. at 98 n.21). Both this Court and the United States Supreme Court have previously recognized that “[t]here will seldom be much evidence bearing on th[e] issue [of discriminatory intent], and the best evidence often will be the demeanor of the attorney who exercises the challenge.” *Id.* (quoting *Hernandez*, 500 U.S. 352, 365). We remain cognizant of *Batson*’s holding that the ultimate burden of establishing purposeful discrimination lies with the party objecting to the peremptory challenge. 476 U.S. at 93; *see also Purkett*, 514 U.S. at 768 (recognizing that “the ultimate burden of persuasion regarding racial motivation rests with, and never shifts from, the opponent of the strike”).

When articulating *Batson*’s failings, Justice Breyer of the United States Supreme Court stated, “For one thing, the prosecutor’s inability in this case to provide a clear explanation of why she exercised her peremptory challenges may well reflect the more general fact that the exercise of a peremptory challenge can rest upon instinct not reason. Insofar as *Batson* asks prosecutors to explain the unexplainable, how can it succeed?” (citing *Miller-El v. Dretke*, 545 U.S. 231, at 267-268 (2005) (BREYER, J., concurring) (The majority in *Miller-El* held that Texas state court’s factual findings as to non-pretextual nature of state’s race-neutral explanations for its use of peremptory challenges to excuse ten of eleven black venire persons were shown to be wrong by requisite clear and convincing evidence, so as to warrant grant of federal habeas relief.)

In his brief and reply brief, the Defendant first takes issue with the fact that the five reasons articulated by the prosecutor may not be the “actual” reasons that the prosecutor

struck Juror 10 but only “possible” reasons. We turn to a decision from the Alabama appellate court in which that court addressed a case in which the prosecutor, on remand, could not recall the reason for striking the juror. *Bui v. State*, 627 So.2d 855 (Ala. 1992). In *Bui*, the prosecutor could not recall, five years after jury selection, its reasons for its 11th strike, which was one of the State’s thirteen strikes and one of the nine used to remove nine of the thirteen black venire members. The *Bui* court affirmed the trial court’s finding of an absence of racial discrimination with respect to the state’s 11th strike, reversing the appellate court, which had held that *Batson* dictated that the defendant’s conviction be reversed because the prosecutors could not recall why they had stricken one of the black persons from the venire (the state’s 11th strike). *Id.* at 860. It’s reasoning is instructive to our case at hand:

Recently, in *Huntley v. State*, 627 So.2d 1013 (Ala. 1992), this Court held that in reviewing allegations that the prosecutor exercised the state’s peremptory strikes in a racially discriminatory manner, “the reviewing court’s inquiry . . . shall not be restricted by the mutable and often overlapping boundaries inherent within a *Batson*-analysis framework, but, rather, shall focus solely upon the ‘propriety of the ultimate finding of discrimination [or not].’” 627 So.2d at 1015, quoting *United States v. Forbes*, 816 F.2d 1006, 1010 (5th Cir.1987), in turn quoting *Merrill v. Southern Methodist University*, 806 F.2d 600, 605 n. 6 (5th Cir.1986). In *United States v. Forbes*, the Fifth Circuit Court of Appeals, upholding the defendants’ convictions, noted:

“The Eleventh Circuit has observed, correctly we think, ‘Failure by a prosecutor to explain every peremptory strike of black jurors is not necessarily fatal to the prosecutor’s ability to rebut a prima facie case; likewise, explanation of most of the strikes on nonracial grounds does not necessarily’ satisfy his burden. *United States v. David*, 803 F.2d 1567, 1571 (11th Cir. 1986).

“In this case, the prosecutor’s third strike, though unexplained, seems unlikely to have been the result of intentional discrimination. The confluence of the following facts leads to this conclusion: (1) the black/white ratio on the jury mirrored that of the venire; (2) the prosecutor adequately explained two strikes; (3) the prosecutor did not use all his strikes; (4) there were two blacks left on the jury. Although the existence of fewer than all or most of these circumstances might be insufficient to prevent or rebut an inference of intentional

discrimination, *see Flemming v. Kemp*, 794 F.2d 1478, 1483 (11th Cir.1986) (‘[N]othing in *Batson* compels the district court’s conclusion that constitutional guarantees are never abridged if all black jurors but one or two are struck because of their race.’), the Court is mindful of Justice Holmes’s comment in a different context that ‘we cannot let the [bundle of sticks bound together] be destroyed by taking up each item . . . separately and breaking the stick.’ *Edwards v. Chile Copper Co.*, 270 U.S. 452, 46 S. Ct. 345, 346, 70 L. Ed. 678 (1926). There is significance, perhaps determinative significance, in the coexistence of these facts.”

816 F.2d at 1011 n. 7.

In *Ex parte Demunn*, 627 So.2d 1010 (Ala. 992) (released the same day as *Huntley v. State*), we applied the rationale of *United States v. Forbes* and *United States v. David* in affirming Demunn’s conviction. In *Demunn*, the prosecutor gave race-neutral reasons for striking two black persons from the venire, but he could not recall why he had stricken the third. Even so, after carefully considering all of the circumstances surrounding the selection of the jury, we concluded that the record supported the inference that the prosecutor had not exercised any of the state’s peremptory strikes in a racially discriminatory manner, and we affirmed the judgment of the Court of Criminal Appeals, on the authority of *Huntley*.

Bui, 627 So.2d at 859-60.

Considering the factors present in the case under submission, we cannot hold that the trial court’s finding of an absence of racial discrimination with respect to the State’s striking of Juror 10 was clearly erroneous. The State offered multiple compelling reasons for striking Juror 10, including her prior jury service resulting in a not guilty verdict, her hesitation about sequestration, and her transportation issues, all of which were accepted by the trial court and which we conclude are individually and collectively adequate “actual” reasons articulated by the State as a race-neutral reason for its exercise of its peremptory challenge to strike Juror 10. Additionally, much of this determination hinges on the State’s credibility, and the trial court found the State credible. The trial court also, *sua sponte*, said that there were obvious concerns with Juror 10’s fitness for the role of juror, lending more credibility to the State’s proffered reasons for the exclusion of Juror 10.

We do not find persuasive the Defendant’s contention that the State was “equivocal” in its articulation of reasons for the strike. Perhaps most compelling and least equivocal,

was the State's reliance on the fact that Juror 10 had previously acted as a juror and voted to find the defendant in that case "not guilty." This is a clearly articulated, understandable, and reasonable basis to strike Juror 10. The other reasons articulated by the State and found credible by the trial court similarly rest on a foundation of sound reasoning.

As such, we conclude that the trial court did not err when it found that the State did not engage in purposeful discrimination when it struck Juror 10. The Defendant is not entitled to relief on this issue.

III. Conclusion

For the foregoing reasons, we affirm the trial court's judgment.

ROBERT W. WEDEMEYER, JUDGE