

No. SC93333

IN THE
Supreme Court of Missouri

STATE OF MISSOURI,

Respondent,

v.

STANLEY CARTER,

Appellant.

Appeal from the St. Louis City Circuit Court
Twenty-second Judicial Circuit
The Honorable Dennis Schaumann, Judge

RESPONDENT'S SUBSTITUTE BRIEF

CHRIS KOSTER
Attorney General

SHAUN J MACKELPRANG
Assistant Attorney General
Missouri Bar No. 49627

P.O. Box 899
Jefferson City, MO 65102
(573) 751 3321
Fax: (573) 751-5391
shaun.mackelprang@ago.mo.gov

Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 2

STATEMENT OF FACTS..... 4

ARGUMENT..... 10

 I..... 10

 The trial court did not clearly err in denying Mr. Carter’s *Batson* objections when the State used peremptory challenges to remove Venirepersons Moore, White, and Jones..... 10

 II..... 30

 The trial court did not plainly err in failing to *sua sponte* admonish the prosecutor or declare a mistrial during the state’s rebuttal closing argument..... 30

CONCLUSION..... 39

TABLE OF AUTHORITIES

Cases

<i>Felkner v. Jackson</i> , 131 S.Ct. 1305 (2011).....	11
<i>House v. Missouri Pacific R.Co.</i> , 927 S.W.2d 538 (Mo.App. E.D. 1996).....	13
<i>Kesler–Ferguson v. Hy–Vee, Inc.</i> , 271 S.W.3d 556 (Mo. banc 2008)	10
<i>Middleton v. State</i> , 80 S.W.3d 799 (Mo. 2002)	33
<i>Snyder v. Louisiana</i> , 552 U.S. 472 (2008)	11
<i>State v Parker</i> , 836 S.W.2d 930 (Mo. banc 1992)	12, 13, 26
<i>State v. Bateman</i> , 318 S.W.3d 681 (Mo. banc 2010).....	10, 11, 12, 28
<i>State v. Baumruk</i> , 280 S.W.3d 600 (Mo. 2009)	31
<i>State v. Baxter</i> , 204 S.W.3d 650 (Mo. 2006)	35
<i>State v. Brooks</i> , 960 S.W.2d 479 (Mo. 1997).....	26
<i>State v. Burnett</i> , 931 S.W.2d 871 (Mo. App. W.D. 1996)	33
<i>State v. Burnfin</i> , 771 S.W.2d 908 (Mo.App. W.D. 1989)	36, 37
<i>State v. Carter</i> , 889 S.W.2d 106 (Mo.App. E.D. 1994)	22
<i>State v. Clark</i> , 280 S.W.3d 625 (Mo.App. W.D. 2008).....	26
<i>State v. Edwards</i> , 116 S.W.3d 511 (Mo. 2003)	30
<i>State v. Forrest</i> , 183 S.W.3d 218 (Mo. 2006)	34
<i>State v. Hunter</i> , 802 S.W.2d 201 (Mo.App. E.D. 1991)	29
<i>State v. Kreutzer</i> , 928 S.W.2d 854, 872 (Mo. 1996)	33
<i>State v. Lloyd</i> , 205 S.W.3d 893 (Mo.App. W.D. 2006).....	31

State v. McFadden, 191 S.W.3d 648 (Mo. 2006)..... 28

State v. McFadden, 216 S.W.3d 673 (Mo. banc 2007)..... 11

State v. McFadden, 369 S.W.3d 727 (Mo. 2012)..... 30

State v. McFadden, 391 S.W.3d 408 (Mo. 2013)..... 35, 36

State v. Miller, 372 S.W.3d 455 (Mo. 2012) 30

State v. Minner, 311 S.W.3d 313 (Mo.App. W.D. 2010) 33

State v. Nylon, 311 S.W.3d 869 (Mo.App. E.D. 2010) 26

State v. Pointer, 215 S.W.3d 303 (Mo.App. W.D. 2007) 29

State v. Robinson, 811 S.W.2d 460 (Mo.App. E.D. 1991)..... 28

State v. Ruegge, --- N.W.2d ----, 2013 WL 4804289 (Neb.App. 2013)..... 31

State v. Salitros, 499 N.W.2d 815 (Minn. 1993)..... 34

State v. Silvey, 894 S.W.2d 662 (Mo. 1995) 31

State v. Taylor, 216 S.W.3d 187 (Mo.App. E.D. 2007) 37

State v. Thompson, 390 S.W.3d 171 (Mo.App. E.D. 2012)..... 31

State v. Waddy, 588 N.E.2d 819 (Ohio 1992) 35

State v. Weaver, 912 S.W.2d 499 (Mo. 1995) 34

State v. Williams, 956 S.W.2d 942 (Mo. App. W.D. 1997) 26

State v. Williams, 972 S.W.3d 101 (Mo.App. W.D. 2000) 26

STATEMENT OF FACTS

Mr. Carter appeals his convictions of assault in the first degree, § 565.050, RSMo 2000, and armed criminal action, § 571.015, RSMo 2000. Mr. Carter asserts that the trial court clearly erred in overruling three *Batson* challenges, and that the trial court plainly erred in failing to admonish the prosecutor or declare a mistrial when the State argued in closing that Mr. Carter was presenting the “standard package defense” offered in “every case” (App.Sub.Br. 13-14).

* * *

In May, 2008, Dion Thorpe managed Baphorah’s Car Wash on Natural Bridge at Fair (Tr. 217). On May 27, 2008, Mr. Thorpe got to work early, at about 6:30 a.m., to pick up some keys and to do work on the payroll (Tr. 219-220). After he entered the building, he locked the wooden door (Tr. 221). There was also an iron screen door (Tr. 219).

That same morning, at about the same time, Joel Mixton was on his way to his grandmother’s home (Tr. 280). He was stopped at a signal light at the intersection of Natural Bridge and Fair (Tr. 280). He could see the parking lot and the car wash (Tr. 282). Mr. Mixton saw a person carrying a box walking toward the front door of the car wash (Tr. 283).

Mr. Thorpe was on the telephone when he heard a knock at the door (Tr. 221). He was not expecting anyone (Tr. 225). He went to the door and

asked who was there but got no response (Tr. 222). He looked out the window, but he could not see who was at the door (Tr. 224). Mr. Thorpe went back to the door and asked again who was there, but he still did not get any response (Tr. 224). He opened the door a crack and braced it with his body (Tr. 224). He peeked out and saw Mr. Carter, a person whom he had seen just two days before at the car wash talking with a customer (Tr. 224-225). Mr. Thorpe opened the door (Tr. 225).

Mr. Carter pulled a gun out of a cardboard box and told Mr. Thorpe to lie down (Tr. 228-229, 231). Mr. Thorpe was in fear of his life and tried to close the door (Tr. 229, 231). Mr. Carter shot Mr. Thorpe (Tr.231). The bullet went through Mr. Thorpe's left leg (Tr. 231-232). Mr. Thorpe managed to close the door and lock it (Tr. 232). Mr. Carter fired two more shots, and the bullets went through the door and hit Mr. Thorpe in the chest (Tr. 232). Mr. Thorpe called the police (Tr. 233).

From his vantage point, Mr. Mixton saw Mr. Carter drop the box and fire a gun toward the door (Tr. 285). Mr. Carter then ran around the back of the building and ran onto Fair (Tr. 286). Mr. Carter met up with another person, and they both ran to a car and got in (Tr. 286, 288). There was a driver already in the car (Tr. 289-290). Mr. Mixton was not sure, but he thought the driver might have been a woman (Tr. 290). The car was a white, four-door Cadillac, and it turned right from Fair onto Natural Bridge (Tr.

288-289). Mr. Mixton was not able to get the license plate number (Tr. 289).

Meanwhile, after calling the police, Mr. Thorpe went into the garage where there was a pit bull that would provide some protection (Tr. 234). His shoe was full of blood from the wound to his leg (Tr. 234). When the police arrived, Mr. Thorpe told them he that he did not know Mr. Carter but that he would be able to identify him (Tr. 235-236). Mr. Thorpe told the police that the shooter was a black male wearing a white t-shirt (Tr. 252, 257). Mr. Thorpe went to the hospital in an ambulance (Tr. 235).

Mr. Thorpe recognized Mr. Carter but did not know his name (Tr. 236). He went to the police station the day after the assault, and he looked at pictures and identified Mr. Carter in one of the photographs (Tr. 238-239, 254-255). He then identified Mr. Carter in a physical line-up and at trial (Tr. 225, 240). At trial, Mr. Mixton described the shooter as a black male, 26 or 27 years old, with a short haircut (Tr. 284-285). He testified that he was too far away to give a more accurate description (Tr. 284). Mr. Mixton had given the police the same description, and he had told them that the shooter was wearing all black (Tr. 292). He did not recall a white t-shirt (Tr. 292).

Detective Kurtis McCoy worked with Detective Robert Sturn to investigate the shooting (Tr. 298, 299). They went to the car wash where they found bullet fragments inside the business (Tr. 302). Detective McCoy went to Barnes Hospital to talk to Mr. Thorpe (Tr. 302-303). Mr. Thorpe was in

pain and had been medicated, so Detective McCoy set up a follow-up interview the next day at the police station (Tr. 304-305).

At the meeting the next day, Mr. Thorpe explained that he recognized the shooter because he was at the car wash a few days before the shooting (Tr. 305). Mr. Carter had been talking to a person known on the street as “Lips” (Tr. 305-306). The police were able to identify “Lips” as Antonio Shaw (Tr. 306, 308). Looking for associates of “Lips,” the police located a person known as “Repeat,” whose real name was Richard Bobbett (Tr. 306, 309). Mr. Thorpe identified a picture of Antonio Shaw as the person he knew by the name “Lips,” and he identified a picture of Richard Bobbett as “Repeat” (Tr. 308, 309). The police identified Mr. Carter as an associate of “Lips” and “Repeat” (Tr. 310). Mr. Thorpe was shown a picture of Mr. Carter, and he identified him as the person who shot him (Tr. 311).

Officer Bartney Coats, an evidence technician, found three 9 millimeter shell casings at the scene of the shooting (Tr. 346-347, 351-352, 357). Subsequent analysis established that they had all been fired from the same gun (Tr. 347, 376). There was a bullet hole and two impact holes in the door (Tr.353). There was a projectile and a bullet fragment in the office area of the car wash (Tr.354).

Mr. Thorpe’s leg and chest bore scars from the incident (Tr. 242-243). He was in pain for about six or seven months after the assault and was not

able to move about much (Tr.242).

Mr. Carter testified at trial (Tr. 404). He said that he did not know Mr. Thorpe, but that he did know “Lips” and “Repeat” (Tr. 404-405). He said that Lips’s name was Antonio Shaw and that he “fluctuates” (sells drugs) in Mr. Carter’s father’s neighborhood (Tr. 420-421, 444). Mr. Carter testified that Repeat’s name was Rashad Bobbett and that he “fluctuated the area” (Tr. 422). Mr. Thorpe said that he sometimes drove down Natural Bridge and that he was familiar with the car wash but that he never went there (Tr. 420).

Mr. Carter said that he went to the hospital on May 22 because his wife, who was pregnant, needed a blood transfusion (Tr. 405). He testified that he stayed at the hospital and did not leave until May 26 (Tr. 405-406, 408, 410). He said that on May 26, they left the hospital at about 1:00 p.m., and that they then went to his wife’s stepmother’s home and stayed for three or four hours (Tr. 410-412). He said that from there they went to Mr. Carter’s stepfather’s home, where they arrived at about 5:00 p.m. (Tr.413). He said that they also visited friends who lived on that street (Tr.413). He said that they left to go home at about 6:30 p.m., that they arrived home at about 7:00 p.m., and that they stayed home until at least May 30 without ever leaving the house (Tr. 414-415, 419, 422).

Mr. Carter testified that on May 30 he found out from “Whirl,” a newspaper, that he was wanted (Tr. 424, 425). He said he called his probation

officer and was told that he was not wanted (Tr. 425, 426). He said he then called the police station and was told to come to the station (Tr. 427-428). He said that he told Detective McCoy that he had nothing to do with the shooting (Tr. 430).

Candice Carter testified that she and Appellant were married (Tr. 464). She testified that she was admitted to the hospital on May 21, 2008, and that she left on May 26 (Tr. 465). She said that Mr. Carter dropped her off at the hospital on May 21, and that he was there all day on May 22, 23, 24, and 25 (Tr. 467-468). She said they left the hospital about noon on May 26 (Tr. 469). She said they went home and remained home through May 28 (Tr. 473, 475).

Mykisha Reaves testified that she was Candice Carter's friend (Tr. 396). She said that on May 24, she was at St. Mary's Hospital with Ms. Carter, who had a baby (Tr. 397). She testified that she and Mr. Carter arrived at the hospital at about 12:30 p.m. (Tr. 397). She said that she left at about 5:30 p.m., but that Appellant remained at the hospital (Tr. 398).

The jury found Mr. Carter guilty of assault in the first degree and armed criminal action (Tr. 518). The trial court subsequently sentenced Mr. Carter to fifteen years for each offense and ordered that the sentences be served concurrently (Tr. 533-534).

ARGUMENT

I.

The trial court did not clearly err in denying Mr. Carter’s *Batson* objections when the State used peremptory challenges to remove Venirepersons Moore, White, and Jones.

Mr. Carter asserts in his first point that the trial court clearly erred in denying three *Batson* challenges he made to the removal of Venirepersons Kenneth Moore, Donald White, and Jamie Jones (App.Sub.Br. 15). He asserts that the prosecutor was engaged in purposeful, racial discrimination, and that the prosecutor’s stated reason for striking these three potential jurors—their familiarity with the area where the crime took place—was merely a pretext offered to cover his discriminatory conduct (App.Sub.Br. 15).

A. The standard of review

“‘In reviewing a circuit court’s decision concerning a *Batson* challenge, a circuit court is accorded great deference because its findings of fact largely depend on its evaluation of credibility and demeanor.’” *State v. Bateman*, 318 S.W.3d 681, 687 (Mo. banc 2010) (quoting *Kesler–Ferguson v. Hy–Vee, Inc.*, 271 S.W.3d 556, 558 (Mo. banc 2008)). “‘Therefore, the ‘court’s findings on a *Batson* challenge will be set aside [only] if they are clearly erroneous, meaning the reviewing court is left with the definite and firm conviction that a mistake has been made.’” *Id.* (quoting *State v. McFadden*, 216 S.W.3d 673,

675 (Mo. banc 2007)). See *Felkner v. Jackson*, 131 S.Ct. 1305, 1307 (2011) (“The trial court’s determination is entitled to ‘great deference,’ and ‘must be sustained unless it is clearly erroneous.’” (citations omitted)); *Snyder v. Louisiana*, 552 U.S. 472, 477 (2008) (“We have recognized that these determinations of credibility and demeanor lie ‘peculiarly within a trial judge’s province,’ . . . and we have stated that ‘in the absence of exceptional circumstances, we would defer to [the trial court].’” (citations omitted));

B. Mr. Carter failed to prove that the prosecutor engaged in purposeful racial discrimination

A *Batson* challenge generally follows a three-step procedure. First, the defendant must raise a *Batson* challenge with regard to one or more specific venirepersons struck by the state and identify the cognizable racial group to which the venireperson or persons belong. *State v. Bateman*, 318 S.W.3d at 689. The trial court will then require the state to come forward with reasonably specific and clear race-neutral explanations for each strike. *Id.* If the prosecutor states a race-neutral reason for a strike, the defendant must then show that the state’s reason for the strike was merely pretextual and that the strikes were racially motivated. *Id.*

“There is rarely a simple litmus test for examining pretext.” *Id.* at 690. “Rather, the trial court should take ‘into account a variety of factors’ [i]n determining whether the defendant has carried the burden of proof and

established the existence of purposeful discrimination.’” *Id.* Missouri courts have considered “a non-exclusive list of factors that may be relevant in any particular case.” *Id.* at 690-691. “For example, a court . . . should look at ‘[t]he degree of logical relevance between the proffered explanation and the case to be tried in terms of the kind of crime charged, the nature of the evidence to be adduced, and the potential punishment if the defendant is convicted’” *Id.* at 691. “The prosecutor’s ‘patterns of practice,’ e.g., questions and explanations and history of pretextual strikes, may be relevant, as may both the prosecutor’s ‘demeanor’ while engaging with venirepersons, and the demeanor of excluded venirepersons.” *Id.* (citations omitted). “‘Objective factors bearing on the state’s motive to discriminate on the basis of race, such as the conditions prevailing in the community and the race of the defendant, the victim, and the material witnesses, are also worthy of consideration.’” *Id.*

Another important factor—a factor that is sometimes considered “crucial”—can be the presence of a similarly situated juror of a different race who is not struck. *Id.* at 690. Of course, because the presence of a similarly situated juror is merely one possible factor to consider, “proof of a similarly situated Caucasian juror is not required in order to make a successful *Batson* challenge.” *Id.* Another important factor can be the “plausibility” of the prosecutor’s stated reason. *Id.*; see *State v Parker*, 836 S.W.2d 930, 939 (Mo. banc 1992). As with any factor, the mere fact that a prosecutor’s stated

reason is plausible or implausible is only one circumstance to consider. *See Bateman*, 318 S.W.3d at 690 (“in stating that pretext is to be determined by looking at ‘the plausibility of the prosecutor’s explanations in light of the totality of the facts and circumstances surrounding the case,’ *Parker*, 836 S.W.2d at 939, has made it clear that the trial court may not conclude the prosecutor acted without pretext merely because one or more common means of establishing the existence of pretext is not borne out by the record”).

Mr. Carter states that trial courts “should ‘[make] detailed findings on the record in support of a ruling on a peremptory challenge under *Batson*’ ” (App.Sub.Br. 17). But while it is “extremely beneficial to an appellate court to have findings or explanations for the court’s ruling,” there is no requirement that the trial court make findings of fact or provide detailed explanations. *House v. Missouri Pacific R.Co.*, 927 S.W.2d 538, 541 (Mo.App. E.D. 1996) (citing *State v. Parker*, 836 S.W.2d 930).

1. Venireperson Moore’s responses

During the State’s questioning in voir dire, Venireperson Moore stated that his cousin was a crime victim—that his cousin had been “jumped” by a group of guys (Tr. 54). He then stated, “I guess I would be very sympathetic toward the victim because I know what that’s like to be victimized” (Tr. 55). Nevertheless, Venireperson Moore stated that he could “[a]bsolutely” be fair to the defendant, and that he would not allow his sympathy for victims to

have “any undue influence on [his] analysis of this case” (Tr. 55).

During defense counsel’s questioning, Venireperson Moore stated that he was “very familiar with the area” where the crime took place (Tr. 120).¹ He also stated, “I have been told not to go around the area because people are shooting so frequently” (Tr. 120). He then added: “I just know that I have a frame of reference for that area, and I know my particular opinion of what that area is like. What type of mind set is there” (Tr. 121). He then reiterated that he had “a little sympathy for victims” (Tr. 121). But he said that his sympathy “really won’t affect [his] decision making because [he] think[s] anybody would make themselves to be a victim, depending on how the story is told in certain cases” (Tr. 121). He concluded, “But somebody that was impacted by a certain situation and cause, that caused them harm, I would be sympathetic towards them” (Tr. 121).

¹ Venireperson Moore’s responses were incorrectly attributed to Venireperson Motawa in the transcript (*see* Tr. 120-122), but it is apparent from the parties’ subsequent discussion (Tr. 183-184), and from other questions that referred back to a cousin victim and “sympathy” for victims (*see* Tr. 121), that it was Venireperson Moore giving the responses on pages 120-122 that were attributed to Venireperson Motawa.

2. Venireperson White’s responses

During the State’s questioning, Venireperson White stated that his “little brother got jumped” three months before trial (Tr. 67). He stated that he was “not sure” if the police did their job (Tr. 67). He said that his brother was no longer frustrated by the incident, and that he had no lasting injuries because it was “mainly just a beating” (Tr. 67-68). He stated that he would not hold that crime against the defendant (Tr. 68).

In response to defense counsel’s questioning about familiarity with the area, Venireperson White said, “I know that area kind of well” (Tr. 122-123). He stated that he would not be unfair or partial to either side (Tr. 123).

3. Venireperson Jones’s responses

During the State’s questioning, Venireperson Jones stated that she had been arrested for a traffic warrant three years before trial (Tr. 93). She said she was treated fairly, that she had no problem with the prosecutors, and that she had no anger toward the police or prosecutor (Tr. 93).

In response to defense counsel’s questioning about familiarity with the area, Venireperson Jones said that she was familiar with Natural Bridge, but she expressed some uncertainty about the 400 block (Tr. 118). Defense counsel then clarified that he was asking about the intersection of Natural Bridge and Fair—“That particular area right by Fairmont Park”—and Venireperson Jones indicated that she knew the area (Tr. 118). She stated

that she has “family members that live on Fair and Harris,” and she indicated that she is “in tune with the area over there” (Tr. 118-119). She also indicated that she was in tune with “the community and social upbeat in the community” (Tr. 119). When asked if she had an opinion about the area, she stated, “Right now I might be in the process of moving to that area” (Tr. 119). She stated that nothing about the area would affect her decision (Tr. 119).

4. Other responses from potential jurors familiar with the area

In response to defense counsel’s questioning, seven potential jurors disclosed familiarity with the area where the crime took place: Venirepersons Jones, Brown, Taylor, Moore, Quawrells, White, and Palmer (Tr. 118-123). Eventually, all of these jurors were either struck for cause or removed by peremptory challenge (Tr. 172-173, 178-179, 182-192). Venirepersons Brown and Palmer were struck for cause, and defense counsel said he had “[n]o objection” to the strikes (Tr. 172-173, 178-179). (Venireperson Brown was sleeping during voir dire, and Venireperson Palmer was familiar with the case and had read about it in the newspaper (Tr. 172-173, 178-179).)

In response to the State’s questioning about the burden of proof, Venireperson Taylor stated that she would “require more than one witness,” but she then conceded that it was “possible” one witness would be enough to convince her (Tr. 45). Ms. Taylor stated that she was a crime victim because she had been “assaulted by a guy that couldn’t accept no for an answer when

[she] didn't want to talk to him" (Tr. 56). She stated that the criminal justice system and the police had done a good job, and she stated that she would not be unfair to the defendant (Tr. 57).

In response to defense counsel's questioning, Venireperson Taylor said that she was "familiar with the area" where the crime took place (Tr. 120). She said that she "wouldn't be unfair about anything" (Tr. 120). She then reiterated that one testifying witness would not be enough to support a guilty verdict (Tr. 131).

In response to the State's questioning about the burden of proof, Venireperson Quawrells stated, "It's always got to be more than one witness. Always" (Tr. 47). She then conceded that one witness would be enough, "[i]f [she] believed him" (Tr. 48). She also stated that her mother had been raped and murdered, but that the case had not been resolved at trial because "[t]hey didn't have enough evidence" (Tr. 63). She said that she did not think the city police were doing their job, but she said that she would not hold it against the police in this case (Tr. 64-65).

In response to defense counsel's questioning, Venireperson Quawrells said, "I'm familiar already with the area. My grandmother stays right around the corner" (Tr. 122). She also stated, "I'm very familiar with that area. I don't know him. I don't know the victim. But I'm familiar with that area" (Tr. 122). Finally, she stated, "Actually knowing where the area is now and exact

location, it actually makes me not to be sympathetic to either party until I hear everything. Just because of knowing that area” (Tr. 122).

5. The trial court did not clearly err in finding that the prosecutor’s reason for striking Venirepersons Moore, White, and Jones was not pretextual

After the state made its peremptory challenges, defense counsel raised a *Batson* objection to each of the prosecutor’s strikes (Tr. 183). The prosecutor stated that he had struck Venireperson Moore because “he is extremely familiar with the area that this occurred in” (Tr. 183). The prosecutor stated that “his parents and or relatives informed him not to go in that area it was so dangerous, there’s lot of shootings” (Tr. 183). The prosecutor thought he would “have a problem with both people who are in that area,” and he stated his belief that “he will hold that against the victim in this case” (Tr. 183).

Defense counsel responded that Venireperson Moore had said that he could be fair to both sides, and he pointed out that Venireperson Moore had said “he would have sympathy for the victim because of the victim’s [sic] in the area” (Tr. 184).

The trial court stated that its notes showed that Venireperson Moore had “stated a bad feeling about the case for the victim but fair to the defendant” (Tr. 184). The trial court then found that “the reasons stated by the State . . . are not racially motivated and not pretextual [sic]” (Tr. 184).

The trial court did not clearly err.

It was apparent from Venireperson Moore’s responses that he had quite strong feelings about the area where the crime occurred. In particular, he stated, “I just know that I have a frame of reference for that area, and I know my particular opinion of what that area is like. *What type of mind set is there*” (Tr. 121) (emphasis added). Venireperson Moore’s reference to the “type of mind set” in the area was broad, and the prosecutor reasonably feared that Venireperson Moore could have an unfavorable view of the people involved in the case, including the victim. That the prosecutor would reasonably have such a concern was further supported by Venireperson Quawrells’s responses during voir dire; she stated, “Actually knowing where the area is now and exact location, *it actually makes me not to be sympathetic to either party until I hear everything. Just because of knowing that area*” (Tr. 122) (emphasis added). In other words, rather than having any natural sympathy for the victim, Venireperson Quawrells harbored no such sympathy “[j]ust because of knowing that area.” The trial court did not clearly err in crediting the prosecutor’s race-neutral explanation for striking Venireperson Moore.

The prosecutor stated that he struck Venireperson White because, like “some of the other people that were struck,” he “stated he was also familiar with the area” (Tr. 188-189). The prosecutor stated that “every person [who] stated they were familiar with the area, a known area of violence, stated by

multiple people, has been struck for cause or peremptorily struck by the State” (Tr. 189). The prosecutor stated that “[a]s a whole, the State decided to remove people familiar with that area and would have struck other people familiar with that area if there had been anybody else left on the peremptory, the list of people that could, the State could strike peremptorily” (Tr. 189).

Defense counsel responded by asserting that “a lot of individuals here indicated they were familiar with the area, and none of them were struck” (Tr. 189). Defense counsel then argued by implication that the State’s reason was pretextual because “[t]here’s no other reason to strike them other than the fact that of their race, because knowing of violence in the area is probably not enough to strike them at all” (Tr. 190). Defense counsel then pointed out that Venirepersons Moore and White had both indicated that they could be fair to both parties (Tr. 190).

The prosecutor then made a particularized record in support of his statement that every similarly-situated venireperson had been removed from the pool of potential jurors (Tr. 190). The prosecutor pointed out that Venireperson Brown had been removed for cause, that Venireperson Moore had been removed by peremptory challenge, that Venireperson Taylor had been removed by peremptory challenge (for the additional reason that she would require the state to produce more than one witness), that Venireperson Quawrells was removed by peremptory challenge (for the same reason

Venireperson Taylor was removed), and that Venireperson White was being challenged because he also had stated he was familiar with the area (Tr. 190-191). The prosecutor then asserted that no other potential juror among the first twenty-four potential jurors had indicated any familiarity with the area (Tr. 190). (This was correct, as Venireperson Jones was in the pool of three alternates (Tr. 181).)

Defense counsel did not refute any part of the prosecutor’s argument. Instead, defense counsel stated, “The record speaks, Your Honor” (Tr. 191).

The trial court then found that the prosecutor’s reasons were “not pretextual [sic] or racially motivated” (Tr. 191). The trial court did not clearly err.

The record fully supports the prosecutor’s arguments and the trial court’s ruling. Every potential juror who expressed familiarity with the area was struck for cause or removed by peremptory challenge (Tr. 172-173, 178-179, 182-192). It is also apparent that the prosecutor was truly concerned about the potential jurors’ familiarity with the area, as the prosecutor took care to ensure that every potential juror who expressed familiarity with the area had been struck for cause or removed by peremptory challenge. Indeed, if the prosecutor had *not* attempted to strike every similarly situated juror, he undoubtedly would have been accused on appeal (as he was at trial) of improperly striking one African-American juror for that reason while

ignoring others who had also expressed familiarity with the area. The trial court did not clearly err in crediting the prosecutor’s race-neutral reason for striking Venireperson White.

In striking Venireperson Jones from the smaller pool of three potential alternate jurors, the prosecutor stated that Venireperson Jones “was familiar with the area,” and that she had “family members there” (Tr. 191). The prosecutor then reiterated that “the State, in exercising what it believed to be the best for the case, has struck everyone who was familiar with the area” (Tr. 191). The prosecutor stated that the strike was made according to the same “theory” or reason offered for striking the other jurors who were familiar with the area (Tr. 191-192).

Defense counsel responded by reiterating his previous argument (Tr. 192). He stated, “We again believe that those reasons [are] pretextual [sic] and basically struck simply because of their race” (Tr. 192).

The trial court again found that the State’s reasons were “not pretextual [sic] or racially motivated” (Tr. 192). The trial court did not clearly err.

Initially, because Venireperson Jones was struck from the pool of alternates, and because the alternate juror did not participate in deliberations (*see* Tr. 197, 519-520), any error related to Venireperson Jones was immaterial. *State v. Carter*, 889 S.W.2d 106, 109 (Mo.App. E.D. 1994)

(“*Batson* does not stand for the proposition there is a Constitutional right to be an alternate juror.”).

But even if Venireperson’s Jones’s status as a potential alternate juror is ignored, the record supports the trial court’s finding that the prosecutor was not engaged in purposeful discrimination. As outlined above, the record showed that Venireperson Jones was intimately familiar with the area where the crime took place (Tr. 118). She stated that she has “family members that live on Fair and Harris,” and she indicated that she is “in tune with the area over there” (Tr. 118-119). She also indicated that she was in tune with “the community and social upbeat in the community” (Tr. 119). When asked if she had an opinion about the area, she stated, “Right now I might be in the process of moving to that area” (Tr. 119). In light of these responses, the prosecutor’s concern about familiarity with the area was real, and the prosecutor properly sought to remove Venireperson Jones along with the other potential jurors who had been removed for that reason. Indeed, if the prosecutor had simply ignored Venireperson Jones’s intimate familiarity with the area, he would have been accused of arbitrarily giving weight to that reason for some potential jurors while ignoring it with others—a fact that then would have been used to prove that the prosecutor’s concern was not real, and that it was simply the pretext chosen to eliminate some jurors on the basis of race.

Mr. Carter points out that it was defense counsel who asked about familiarity with the area, and he asserts that “[i]f the State was truly and legitimately concerned with whether anyone on the panel was familiar with the area and thought it might somehow create unsuitable jurors from its perspective, it would have asked that question” (App.Sub.Br. 22). But the mere fact that the prosecutor’s concern was generated by defense counsel’s questioning does not make the concern any less substantial. There is no rule of voir dire that concerns generated by opposing counsel’s questions are off limits for the other party. And to the extent that defense counsel believed it was a legitimate subject of inquiry, Mr. Carter should not be heard to now complain that the questions were either improper or improperly injected an insignificant issue into the case.

Moreover, although Mr. Carter attempts to simplify the prosecutor’s concern to nothing more than the potential jurors’ “familiarity” with the area, it was not mere familiarity with the area that gave rise to the prosecutor’s concerns. Rather, the prosecutor’s concern centered upon certain opinions expressed by some of the potential jurors, namely, that they might hold unfavorable views toward the people in the area, including the victim. As set forth above, Venireperson Moore stated, “I just know that I have a frame of reference for that area, and I know my particular opinion of what that area is like. *What type of mind set is there*” (Tr. 121) (emphasis added). Similarly,

Venireperson Quawrells stated, “Actually knowing where the area is now and exact location, *it actually makes me not to be sympathetic to either party until I hear everything. Just because of knowing that area*” (Tr. 122). In other words, contrary to the common feeling that victims deserve sympathy, Venireperson Quawrells would not harbor such feelings “[j]ust because of knowing that area.” Thus, in striking Venireperson Moore, the prosecutor expressed his concern that “he will have a problem with both people who are in that area,” and “he will hold that against the victim in this case” (Tr. 183). This was a legitimate concern, and the prosecutor’s concern that others might hold similar views—along with the prosecutor’s express desire to use the State’s peremptory challenges in a consistent manner—was not proof of purposeful discrimination.

Mr. Carter asserts that the prosecutor’s stated reason has a “suspicious tendency to apply to African Americans” because, according to census tracts he looked up on the internet, “[a] full one hundred percent of the 3,394 people in census tract 1103 [where the crime took place] identify as black” (App.Sub.Br. 21). But there are at least two problems with this argument.

First, Mr. Carter did not make this argument at trial, and he did not present any evidence of population statistics to the trial court (Tr. 184-192). An accusation of clear error on the part of the trial court cannot be supported with arguments and evidence that were never presented to the trial court.

See *State v. Clark*, 280 S.W.3d 625, 631 (Mo.App. W.D. 2008) (“refusing to consider arguments about pretextual strikes which are raised for the first time on appeal”); see generally *State v. Williams*, 972 S.W.3d 101, 121 (Mo.App. W.D. 2000) (failure to challenge the State’s explanation preserves nothing for review).

Second, while the fact that certain reasons for a strike might have a disparate impact on a racial group can be considered in determining whether a strike was motivated by race, “disparate impact alone does not convert a facially race-neutral explanation into a per se violation of equal protection.” *State v. Brooks*, 960 S.W.2d 479, 488 (Mo. 1997) (citing *State v. Parker*, 836 S.W.2d at 934). Here, it is undisputed that the prosecutor’s reason was facially race-neutral. See *State v. Nylon*, 311 S.W.3d 869, 882 (Mo.App. E.D. 2010); *State v. Williams*, 956 S.W.2d 942, 947 (Mo. App. W.D. 1997) (“A venireperson’s familiarity with the scene of the crime is a legitimate, race-neutral reason for exclusion of the panel member from the jury.”). The question, then, is whether the alleged disparate impact upon African Americans rendered the trial court’s findings clearly erroneous.

Here, Mr. Carter has not made a substantial showing of any disparate impact. By relying on census information, Mr. Carter’s argument erroneously assumes that the only people who would be familiar with an area are people who actually live in the area. In fact, however, many people of any race living

outside of an area could be familiar with an area and hold negative views about that area. People can be familiar with an area by reputation (as opposed to first-hand experience from living in the area), and the views those people hold can be as strong, or in some cases even stronger, than the views of people who actually live in the area. In short, a person's negative view about a place is not a characteristic of race, and a negative view about a place is not confined to a group of people living in a particular location.

Additionally, Mr. Carter's assertion that "every person who was familiar with the area around Fairground Park was African American" (App.Sub.Br. 22, citing Tr. 182, 190-191), is not supported by his citation to the record. Of the seven venirepersons who disclosed familiarity with the area, the race of only five is revealed by the record (Venirepersons Moore, Taylor, Quawrells, White, and Jones). The record does not reveal whether Venirepersons Brown and Palmer were African Americans. In short, it is not apparent that only African Americans responded to defense counsel's question, and even if those seven people were all African Americans, there is no reason to believe that only African Americans would have familiarity with the area where the crime took place.

Mr. Carter also points out that Venireperson Moore "*twice* stated on the record that he would be likely to sympathize with the victim in this case" (App.Sub.Br. 22). He argues that these responses were inconsistent with the

prosecutor’s stated concern (App.Sub.Br. 22). But Venireperson Moore’s comments about having sympathy toward victims were not inconsistent with the prosecutor’s concern. As outlined above, in addition to expressing “a little sympathy for victims,” he also said that his sympathy “really won’t affect [his] decision making because [he] think[s] anybody would make themselves to be a victim, depending on how the story is told in certain cases” (Tr. 121). In other words, consistent with the prosecutor’s concern, it was possible that Venireperson Moore could take a dim view of the victim in any given case.

Mr. Carter also points out that the prosecutor used five of his six strikes against African Americans (App.Sub.Br. 23). He then points out that it is appropriate to consider the number of strikes used against African Americans, the percent of eligible African Americans removed by the prosecutors strikes, and the number of African American venireperson remaining after the prosecutor’s strikes (App.Sub.Br. 23, citing *State v. Robinson*, 811 S.W.2d 460, 463 (Mo.App. E.D. 1991); *State v. McFadden*, 191 S.W.3d 648, 657 (Mo. 2006); and *State v. Bateman*, 318 S.W.3d at 691).

As to the first of these arguments—the number of strikes used against African Americans—the record reveals that the prosecutor used five of the State’s six strikes against African Americans. But that fact alone does not prove that the trial court clearly erred in crediting the prosecutor’s race-neutral reason. To the contrary, while not dispositive, the fact that the

prosecutor did not use all of the State’s strikes against African American veniremembers “helps to undercut any inference of impermissible discrimination.” *State v. Hunter*, 802 S.W.2d 201, 204 (Mo.App. E.D. 1991). As to the second and third arguments, the record here does not reveal what percentage of eligible African Americans were removed by the State’s challenges or how many remained on the jury.

Mr. Carter finally argues that the state’s reason was “not related to the case on trial, was not clear and reasonably specific, and was not legitimate” (App.Sub.Br. 25). But, in fact, it was all of those things. Familiarity with the area where the crime occurred was plainly related to the case. The prosecutor’s reason was also clear and specific, and, as discussed above, it was a legitimate reason.

In short, Mr. Carter failed to carry his burden of proving purposeful discrimination. At trial, aside from stating that the prosecutor’s reason was pretextual, defense counsel offered no substantial argument or proof that the prosecutor was engaged in purposeful, racial discrimination. His observation that the challenged jurors had stated that they could be fair was irrelevant because every juror at that point was qualified to serve. *See State v. Pointer*, 215 S.W.3d 303, 307-308 (Mo.App. W.D. 2007). The trial court did not clearly err in finding that the prosecutor’s reasons and motives were race neutral. This point should be denied.

II.

The trial court did not plainly err in failing to *sua sponte* admonish the prosecutor or declare a mistrial during the state’s rebuttal closing argument.

In his second point, Mr. Carter asserts that the trial court plainly erred in failing to *sua sponte* admonish the prosecutor or declare a mistrial after the prosecutor argued on rebuttal that Mr. Carter was presenting the “standard package defense” offered in “every case” (App.Sub.Br. 27). Mr. Carter concedes that he did not object to the prosecutor’s argument or include this claim in his motion for new trial; he requests plain error review (App.Sub.Br. 27).

A. The standard of review

“‘A conviction will be reversed based on plain error in closing argument only when it is established that the argument had a decisive effect on the outcome of the trial and amounts to manifest injustice.’” *State v. Miller*, 372 S.W.3d 455, 475 (Mo. 2012) (quoting *State v. Edwards*, 116 S.W.3d 511, 536-537 (Mo. 2003)). The defendant “bears the burden to prove the decisive effect.” *State v. McFadden*, 369 S.W.3d 727, 750 (Mo. 2012).

B. The trial court did not plainly err in refraining from taking *sua sponte* action in closing argument

“‘Statements made in closing argument rarely constitute plain error.’”

State v. Baumruk, 280 S.W.3d 600, 618 (Mo. 2009) (quoting *State v. Lloyd*, 205 S.W.3d 893, 908 (Mo.App. W.D. 2006)). “Without an objection by counsel, a trial court’s options are narrowed to uninvited interference with summation, which may itself constitute error.” *Id.*

In particular, if the trial court were to declare a mistrial *sua sponte* it could interfere with trial strategy, injure a defendant who believed that the trier of fact was favorably inclined to the defense, and potentially bar retrial on double jeopardy grounds. *See State v. Thompson*, 390 S.W.3d 171, 176 (Mo.App. E.D. 2012). Because of these concerns, it is well settled that “[t]rial judges are not expected to assist counsel in trying cases, and trial judges should act *sua sponte* only in exceptional circumstances.” *Id.* The trial court did not plainly err in failing to declare a mistrial *sua sponte*.

Additionally, because this claim was not preserved, it is within this Court’s discretion to decline to review for plain error. *State v. Silvey*, 894 S.W.2d 662, 670 (Mo. 1995) (refused to review for plain error the prosecutor’s closing argument that “the defense had been telling the jury half a story all along”). *See also State v. Ruegge*, --- N.W.2d ----, 2013 WL 4804289, *8 (Neb.App. 2013) (declining to review unpreserved claim that the prosecutor erred in arguing that “[Defense counsel], in his defense of . . . [the defendant], has taken up the standard defense that I’ve seen throughout my career. I label it transference. He’s transferred guilty from . . . [the defendant] to . . .

[the victim] and wants you to buy into that”).

In any event, the trial court did not plainly err in failing to *sua sponte* intervene in this case because the prosecutor’s argument was not improper. In closing argument, defense counsel argued that the victim’s identification was not reliable because of the limited time Mr. Thorpe had to observe Mr. Carter (Tr. 499-500). Counsel argued that Mr. Thorpe’s identification was not credible because of the differences between Mr. Thorpe’s description of Mr. Carter and the description provided by Mr. Mixon (Tr. 500, 502). Counsel also argued that the police influenced Mr. Thorpe’s identification by suggesting that the shooter was Mr. Carter (Tr. 501). And, finally, counsel argued that the police did not fully investigate the case (Tr. 501-502, 508). Defense counsel argued that the police had not used “due diligence,” and that they were more interested in catching drug dealers than in investigating the shooting (Tr. 510-511).

On rebuttal, the prosecutor responded to defense counsel’s argument as follows:

That’s it, ladies and gentlemen. I heard the standard package defense argument for every case that I’ve done. Okay. Cops incompetent. Don’t do a good job. Victim must be lying. That’s it. Sometimes they pick one, sometimes they go with both.

(Tr. 511). This passing comment was not plain error resulting in manifest

injustice.

“A prosecutor has considerable leeway to make retaliatory arguments in closing. A defendant may not provoke a reply and then assert error.” *Middleton v. State*, 80 S.W.3d 799, 814 (Mo. 2002). It is also well settled that a prosecutor “may comment on the evidence and the credibility of the defendant’s case.” *State v. Kreutzer*, 928 S.W.2d 854, 872 (Mo. 1996). In *Kreutzer*, this Court observed that “[c]ounsel may even belittle and point to the improbability and untruthfulness of specific evidence.” *Id.* Here, the prosecutor’s argument was intended to attack the weakness of the defense’s claim that the police had done a shoddy job and that the victim had lied when he identified Mr. Carter.

The prosecutor’s comment was not intended to engender prejudice or to excite passion against Mr. Carter, and it was not a personal attack upon defense counsel. Rather, the comment was aimed at the tactics employed by the defense. “[W]hen statements are ‘directed at the tactics or techniques of trial counsel rather than counsel’s integrity or character’ the arguments are permissible.” *State v. Minner*, 311 S.W.3d 313, 326 (Mo.App. W.D. 2010); see *State v. Burnett*, 931 S.W.2d 871, 875 (Mo. App. W.D. 1996) (holding that the prosecutor’s argument that defense counsel had “deliberately” used “smoke screens, mirrors, and other assorted tricks . . . in a conscientious effort to trick you” was directed at defense counsel’s tactics, not at defense counsel

personally, and therefore was proper argument); *see also State v. Weaver*, 912 S.W.2d 499, 513 (Mo. 1995) (argument that the misidentification defense was a “cock and bull story” and a “smokescreen” was “well within the range of the prosecutor’s adversarial responsibilities in making closing argument”).

Citing *State v. Salitros*, 499 N.W.2d 815 (Minn. 1993) (App.Sub.Br. 30), Mr. Carter points out that the Minnesota Supreme Court reversed in a case where the prosecutor made arguments that suggested that “the arguments of defense counsel are part of some sort of syndrome of standard arguments that one finds defense counsel making in ‘cases of this sort.’” *See id.* at 818. But even if the Minnesota court’s view about this sort of argument were correct, that case would not compel reversal here. In *Salitros*, the court did not find any prejudice from the prosecutor’s comments; rather, the court reversed “prophylactically” to deter “prosecutors who persist in employing such tactics.” *Id.* at 820.

In Missouri, it is well settled that “[i]n situations involving prosecutorial misconduct, the test is the fairness of the trial, not the culpability of the prosecutor.” *State v. Forrest*, 183 S.W.3d 218, 227 (Mo. 2006). This is particularly true in cases involving allegations of plain error, for in such cases, the defendant bears the burden of proving that he suffered a manifest injustice. *See State v. Baxter*, 204 S.W.3d 650, 652 (Mo. 2006).

Mr. Carter also argues that the prosecutor “argued matters not in

evidence, [by] attempting to discredit the defense based upon, allegedly, what he has observed in ‘every case I’ve done’ ” (App.Sub.Br. 31). But to the extent that the prosecutor referred to matters not in evidence, the trial court did not plainly err in failing to *sua sponte* take some sort of curative action.

The jurors would have understood that the prosecutor was employing hyperbole when he referred to “every case” he had ever done, and it is a matter of common knowledge that defendants will often try to argue or prove that the police did a shoddy job, or that the victim lied or was mistaken in identifying the defendant. These were not shocking or unusual propositions, and they did not depend upon any special knowledge held solely by the prosecutor. “[A] prosecutor is free to argue matters of common knowledge.” *State v. McFadden*, 391 S.W.3d 408, 424 (Mo. 2013).

In short, the prosecutor’s comment was a brief response to defense counsel’s closing argument, and it did not result in manifest injustice. The comment did not engender prejudice or passion, and any reference to matters not in evidence was merely a reference to matters of common knowledge, namely, that defendants often try to cast doubt on an investigation or a witness’s identification testimony. The trial court did not plain err in failing to intervene *sua sponte*. See *State v. Waddy*, 588 N.E.2d 819, 829 (Ohio 1992) (although the prosecutor’s suggestion that a defense was “common” based on the prosecutor’s experience, the comment did not deprive the defendant of a

fair trial because the comment was isolated and the remainder of the prosecutor’s argument focused on the evidence at trial).

Mr. Carter argues that “[i]t is likely, based on the prosecutor’s assertions that the defense was a kind of prepackaged, generic argument, that the jury did not listen or fully consider the defense” (App.Sub.Br. 33). But this is baseless speculation, and there is no reason to believe that the jury ignored its duty to carefully consider the evidence. The prosecutor plainly did not give any credence to the defense, but his comments did nothing to relieve the jury of its duty to consider all of the evidence and draw its own conclusions. “Juries are presumed to follow the instructions, and there is no indication in this case that the jurors did not.” *State v. McFadden*, 391 S.W.3d at 420-421.

Mr. Carter cites *State v. Burnfin*, 771 S.W.2d 908 (Mo.App. W.D. 1989), as an example of a case where error in closing argument warranted a new trial (App.Sub.Br. 31). But *Burnfin* is distinguishable. There, the prosecutor argued evidence of various uncharged crimes, and the prosecutor told the jury to consider the defendant’s past violent acts, his experience with knives, and his propensity to commit other assaults when determining his guilt. *Id.* at 912. The court of appeals observed that “[n]ot only was the argument inflammatory and an ill-disguised appeal to the jury’s prejudice, it was in direct violation of the court’s instruction that the jury not consider evidence

from Burnfin’s medical record as proof that Burnfin was guilty of the charge against him.” *Id.* at 912. The prosecutor also conducted personal attacks on defense counsel by arguing that the defense was “trying to hide the truth from the jury,” that defense counsel had “trashed” a witness because he could not read, and that the defense had “coached its witness.” *Id.* The court concluded that “the effect of the multiple errors in the prosecutor’s argument [were] cumulative and egregiously prejudicial.” *Id.* at 912-913. Here, the prosecutor did not make the various sorts of mistakes condemned in *Burnfin*.

Mr. Carter’s case is also distinguishable from *State v. Taylor*, 216 S.W.3d 187 (Mo.App. E.D. 2007), a case Mr. Carter cites as an example of closing argument resulting in plain error (App.Sub.Br. 32). In that case, although it was not the basis for the charged offense, and although there was “not a scintilla of evidence” to support the proposition, the prosecutor argued in closing that the jury should convict the defendant of possession of a controlled substance based on the defendant’s possessing a purse that contained cocaine. *Id.* at 194-195. Under those circumstances—and where the non-specific verdict director did not exclude the possibility—the court held that “[b]ecause the jury, in reliance on the State’s theory and argument, may have convicted the defendant based on his possession of items in his wife’s purse, of which there was no evidence, we hold that a miscarriage of justice has occurred.” *Id.* No such argument was made in Mr. Carter’s case under

circumstances suggesting that the jury may have been misled on a material element of the offense. This point should be denied.

CONCLUSION

The Court should affirm Mr. Carter’s convictions and sentences.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/ Shaun J Mackelprang

SHAUN J MACKELPRANG
Assistant Attorney General
Missouri Bar No. 49627

P.O. Box 899
Jefferson City, MO 65102
Tel.: (573) 751-3321
Fax: (573) 751-5391
shaun.mackelprang@ago.mo.gov

Attorneys for Respondent

CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that the attached brief complies with Rule 84.06(b) and contains 8,868 words, excluding the cover, the table of contents, the table of authorities, this certification, and the signature block, as counted by Microsoft Word; and that an electronic copy of this brief was sent through the Missouri eFiling System on this 16th day of September, 2013, to:

JESSICA HATHAWAY
1010 Market Street, Suite 1100
St. Louis, MO 63101
Tel.: (314) 340-7662
Fax: (314) 340-7685
jessica.hathaway@mspd.mo.gov

CHRIS KOSTER
Attorney General

/s/ Shaun J Mackelprang

SHAUN J MACKELPRANG
Assistant Attorney General
Missouri Bar No. 49627

P.O. Box 899
Jefferson City, MO 65102
Tel.: (573) 751-3321
Fax: (573) 751-5391
shaun.mackelprang@ago.mo.gov

Attorneys for Respondent