Third District Court of Appeal

State of Florida

Opinion filed October 28, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D24-1485
Lower Tribunal No. F24-3402

Marvin Mesamours,
Appellant,

vs.

State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Ariel Rodriguez, Judge.

Carlos J. Martinez, Public Defender, and Maria E. Lauredo, Chief Assistant Public Defender, for appellant.

James Uthmeier, Attorney General, and Camilo Montoya, Assistant Attorney General, for appellee.

Before SCALES, C.J., and MILLER, J., and KOENIG, Associate Judge.

MILLER, J.

THIS OPINION IS NOT FINAL UNTIL DISPOSITION OF ANY FURTHER MOTION FOR REHEARING AND/OR MOTION FOR REHEARING EN BANC. ANY PREVIOUSLY FILED MOTION FOR REHEARING EN BANC IS DEEMED MOOT.

We grant rehearing, withdraw our opinion dated May 27, 2026, and substitute the following opinion.

Appellant, Marvin Mesamours, appeals from his conviction and sentence for resisting without violence, in violation of section 843.02, Florida Statutes (2024). He raises several issues on appeal. Because it is dispositive, we address only his claim that the trial court reversibly erred in overruling a Melbourne challenge to the State's peremptory strike of a prospective juror. See Melbourne v. State, 679 So. 2d 759 (Fla. 1996).

I

The facts are undisputed. Following a police chase, Mesamours was arrested and charged by information with fleeing and eluding a law enforcement officer and resisting without violence. The case proceeded to a jury trial. Before jury selection, each prospective juror completed a written questionnaire which was furnished to the parties. The venire included two members relevant to this appeal, Jones, a Black female, and Montes, a non-Black male.

During voir dire, the prosecutor asked Jones and Montes each a single question. Jones was asked whether she remembered the typical color of

police lights; she answered, "red and blue." Montes was asked, "what is some evidence that you might expect to see showing that someone purposely failed to stop a vehicle?" He responded, "[w]hen they just keep driving . . . ."

Defense counsel asked whether the jurors would view police officers as more credible than other witnesses. The following exchange ensued:

> DEFENSE: [J]ust to get back to the questions about police officers, I don't think we had heard from you. How do you feel about that? Do you think that, you know, police officers are any more or less likely to lie or tell the truth than the average person?
>
> PROSPECTIVE JUROR AZCUY: They're going to lie like everyone else.
>
> DEFENSE: Okay. Okay. And Juror No. 14, Ms. Jones, how do you feel about that?
>
> PROSPECTIVE JUROR JONES: I feel the same as he just stated.
>
> DEFENSE: Okay.
>
> PROSPECTIVE JUROR JONES: Police officers, they can lie just the same. Their profession doesn't make a difference.
>
> DEFENSE: Okay. So, you wouldn't be thinking, you know, just from the start, that it's more likely that they're telling the truth than anyone else?
>
> PROSPECTIVE JUROR JONES: Correct.

The defense then informed the venire that the officers involved in the case were the subject of an open misconduct investigation relating to a

shooting. Several jurors volunteered views on whether that fact would color their assessment of the officers' testimony. Jones was not among them.

During jury selection, the State exercised its first peremptory challenge against Jones. The defense raised a Melbourne objection and requested a race- and gender-neutral reason for the strike. The prosecutor proffered that Jones had revealed that "[t]he officer's credibility would be in question. It was when counsel was questioning about the investigation of the officer-involved shooting that the detectives are involved in. She stated that the officer's credibility would be in question."

When the defense disputed this contention, the trial judge offered a readback. The prosecutor declined it and changed course, offering instead that Jones had previously served on a jury that reached a decision in a criminal case. The defense objected anew, observing that this reason applied equally to "other members of the panel . . . that are not [B]lack females," including Montes, an unchallenged juror. The trial court found the second reason race-neutral and genuine, declined to rule on the first, and overruled the objection, stating, "[B]ased on that, the State has given a race-neutral reason on the second one that I find to be genuine and it will be—I'm going to allow it, okay? As for the other point, I just don't know. I don't have a note. The only way I could really verify is going back on the

record, but based on the second one, I think I meet Melbourne. So, I'm going to allow the strike." The jury found Mesamours guilty of the resisting charge, and this appeal ensued.

II

A

"The appropriate standard of appellate review for determining the threshold question of whether there is a likelihood of racial discrimination in the use of peremptory challenges is abuse of discretion." Nowell v. State, 998 So. 2d 597, 602 (Fla. 2008). This discretion, however, is not boundless; instead, it is closely circumscribed by precedent.

B

The peremptory challenge hails back to the common law. "Historically, peremptory challenges allowed dismissal of a potential juror based on no more than 'sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another.'" Jack Reiter & Sydney Feldman, The Neil Inquiry: Navigating the Peremptory Process, Fla. B.J., Nov. 2023, at 9 (quoting State v. Slappy, 522 So. 2d 18, 20 (Fla. 1988), receded from on other grounds, Melbourne, 679 So. 2d 759 (quoting 4 William Blackstone, Commentaries 353 (1807)). This practice was rejected, however, when the Florida Supreme Court decided State v. Neil, 457 So. 2d

481, 487 (Fla. 1984), holding that the exercise of a peremptory challenge solely on the basis of race violates the right to trial by an impartial jury guaranteed under article I, section 16 of the Florida Constitution.

Two years later, the United States Supreme Court issued its landmark opinion in Batson v. Kentucky, 476 U.S. 79 (1986), holding that the Equal Protection Clause of the United States Constitution forbids the exercise of peremptory challenges on the basis of race. See U.S. Const. amend. XIV, § 1; Batson, 476 U.S. at 89. Batson explained that an attorney cannot justify a peremptory challenge "merely by denying that he had a discriminatory motive or 'affirming his good faith in making individual selections.'" 476 U.S. at 98 (citation modified). As the Court cautioned, "[i]f these general assertions were accepted as rebutting the defendant's prima facie case, the Equal Protection Clause 'would be but a vain and illusory requirement.'" Id. (citation omitted).

After Batson, the Florida Supreme Court decided State v. Slappy, 522 So. 2d 18 (Fla. 1988). Slappy found that the test for evaluating peremptory challenges requires a "clear and reasonably specific" race-neutral explanation of "legitimate reasons." Id. at 22 (quoting Batson, 476 U.S. at 96–98 & n.20). It also endorsed five nonexhaustive factors that weigh against the legitimacy of a race-neutral explanation: "(1) alleged group bias

not shown to be shared by the juror in question, (2) failure to examine the juror or perfunctory examination, assuming neither the trial court nor opposing counsel had questioned the juror, (3) singling the juror out for special questioning designed to evoke a certain response, (4) the prosecutor's reason is unrelated to the facts of the case, and (5) a challenge based on reasons equally applicable to juror who were not challenged." Id.

The United States Supreme Court later clarified the structure of the inquiry in Purkett v. Elem, 514 U.S. 765 (1995), explaining,

> Under our Batson jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination. The second step of this process does not demand an explanation that is persuasive, or even plausible. "At this [second] step of the inquiry, the issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." . . .
>
> In habeas proceedings in federal courts, the factual findings of state courts are presumed to be correct, and may be set aside, absent procedural error, only if they are "not fairly supported by the record." 28 U.S.C. § 2254(d)(8). Here the Court of Appeals did not conclude or even attempt to conclude that the state court's finding of no racial motive was not fairly supported by the record. For its whole focus was upon the reasonableness of the asserted nonracial motive (which it thought required by step two) rather than the genuineness of the motive. It gave no proper

> basis for overturning the state court's finding of no racial motive, a finding which turned primarily on an assessment of credibility.

Id. at 767–69 (citations omitted).

The following year, in Melbourne, the Florida Supreme Court reduced the Neil framework to a three-step procedure:

> [1] A party objecting to the other side's use of a peremptory challenge on racial grounds must: a) make a timely objection on that basis, b) show that the venireperson is a member of a distinct racial group, and c) request that the court ask the striking party its reason for the strike. [2] If these initial requirements are met . . . the court must ask the proponent of the strike to explain the reason for the strike.
>
> At this point, the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation . . . . [3] If the explanation is facially race-neutral and the court believes that, given all the circumstances surrounding the strike, the explanation is not a pretext, the strike will be sustained . . . .

679 So. 2d at 764. "[T]hroughout this process," the court emphasized, "the burden of persuasion never leaves the opponent of the strike to prove purposeful racial discrimination." Id. Melbourne also receded from Slappy's requirement of a "reasonable" explanation in favor of a "genuine" one, while noting that "[r]easonableness is simply one factor that a court may consider in assessing genuineness." Id. at 764 & n.9.

The governing principle since then has been consistent; a decision to allow a peremptory strike will not be disturbed on appeal unless it is "clearly erroneous." Poole v. State, 151 So. 3d 402, 409 (Fla. 2014) (citing Nowell,

998 So. 2d at 602). To this end, we presume the peremptory challenge was exercised in a nondiscriminatory manner. Id. And because genuineness turns on credibility, we defer to "the superior vantage point of the trial judge, who is present, can consider the demeanor of those involved, and can get a feel for what is going on in the jury selection process." Files v. State, 613 So. 2d 1301, 1305 (Fla. 1992); see also Pitchford v. Cain, 608 U.S. 391, 398–99 (2026) ("America's trial judges operate at the front lines of American justice, and the job of enforcing Batson rests first and foremost with trial judges." (quoting Flowers v. Mississippi, 588 U.S. 284, 302 (2019))) (internal quotations omitted).

Deference, however, "does not imply abandonment or abdication of judicial review." Miller-El v. Cockrell, 537 U.S. 322, 340 (2003). The presumption of nondiscrimination has yielded in a myriad of Florida cases where the proffered reason for exercising a strike applied equally to an unchallenged juror who was not a member of a distinct class. See Daniel v. State, 697 So. 2d 959 (Fla. 2d DCA 1997); Brown v. State, 733 So. 2d 1128 (Fla. 4th DCA 1999); Hunter v. State, 225 So. 3d 838 (Fla. 4th DCA 2017); Stroia v. State, 119 So. 3d 1274 (Fla. 4th DCA 2013).

In Overstreet v. State, 712 So. 2d 1174 (Fla. 3d DCA 1998), this court applied the Slappy factors to reverse a conviction where the State's reason

for striking an African American juror applied equally to an unchallenged non-African American juror and the questioning of the stricken juror had been perfunctory. Under Slappy, we explained, "[t]he presence of one or more of these factors will tend to show that the proffered reason is an impermissible pretext." Id. at 1177 (citing Slappy, 522 So. 2d at 22). The circumstances there made it "abundantly clear that the State's proffered reason for [the] strike was [de facto] disingenuous and pretextual." Id.

C

Against this background, we turn to this case. The State's first proffered reason was that Jones had questioned the officers' credibility when she learned of the shooting investigation. The trial court never assessed the genuineness of that proffer, and the State, rather than defend it, pivoted. Our review is therefore confined to the reason the trial court accepted—that Jones had served on a criminal jury that reached a verdict. That precise reason applied equally to Montes, a non-Black male juror who was seated on the jury; and the State struck Jones while holding five unused peremptory challenges. This case thus falls squarely within the ambit of Overstreet.

Some Florida courts treat disparate treatment among equally situated jurors as dispositive. See Smith v. State, 799 So. 2d 421, 424 (Fla. 5th DCA 2001) ("Florida courts have repeatedly held that it is racially discriminatory to

exercise a peremptory challenge against a prospective juror in the minority where the proffered reason applies equally to a prospective juror in the majority."); Daniel, 697 So. 2d at 961 ("Where [the stricken juror's] response was shared by another juror who was not challenged by the prosecutor, the trial court erred in failing to reject the state's explanation as pretextual."). Our own approach is more measured. Disparate treatment is "a significant factor . . . in considering whether the reason given by the State is pretextual." Files, 613 So. 2d at 1304–05; see also Nowell, 998 So. 2d at 606 (holding the trial court erred in allowing the State's peremptory challenge because the State's proffered reasons "which may have appeared to be race-neutral, were pretextual" where, among other things, the State's proffered reason applied equally to other jurors who were not challenged and ultimately served on the jury); see also Norona v. State, 137 So. 3d 1096, 1097–98 (Fla. 3d DCA 2014) ("Circumstances relevant to the 'genuineness' inquiry include the gender or racial make-up of the venire, prior strikes exercised against the same gender or racial group, or singling out the juror for special treatment.") (citation omitted). We must therefore consider next under our precedent whether the State attempted to distinguish the similarly situated jurors and whether the strike implicated other Slappy factors.

Here, the State did not attempt to distinguish Jones from Montes, and the strike did implicate two additional Slappy factors. The asserted reason had nothing to do with the facts of the case, and Jones was asked but a single question on a topic unrelated to her prior jury service—the color of police lights. See Slappy, 522 So. 2d at 22; Files, 613 So. 2d at 304–05 ("[A]llowing other white jurors with similar characteristics to remain on the jury is a significant factor that must be considered by the trial judge in considering whether the reason given by the State is pretextual."); see also Miller-El v. Dretke, 545 U.S. 231, 246 ("[T]he State's failure to engage in any meaningful voir dire examination on a subject the State alleges it is concerned about is evidence suggesting that the explanation is a sham and a pretext for discrimination." (quoting Ex parte Travis, 776 So. 2d 874, 881 (Ala. 2000))). If the prior jury service troubled the State, one would expect questioning on the topic or Montes to have been stricken, as well. But neither occurred. Under Overstreet, this scenario warrants a finding of pretext.

We do not pretend that jury selection is a science. "[P]eremptories are often the subjects of instinct, and it can sometimes be hard to say what the reason is." Miller-El, 545 U.S. at 252 (citation omitted). And, as the dissent aptly observes, the trial court could have credited any number of considerations in allowing the strike. But "could have" does not equate with

"did." The State offered its first rationale, declined the opportunity to verify it, and abandoned it for the second. As an error-correcting court, rather than a factfinding one, we must heed the Supreme Court's caution that "a prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives . . . If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false." Miller-El, 545 U.S. at 252.

In closing, the dissent urges us to affirm on a justification that the trial court never ruled upon and the State declined to defend. If a strike survives on any after-the-fact rationalization that the appellate court can glean from the record, the genuineness inquiry becomes a mere formality. Any prosecutor can bypass it with a post-hoc rationale, rendering the Melbourne framework, in the words of Batson, "vain and illusory." Accordingly, we are constrained to reverse and remand for a new trial, consistent with Overstreet.

Reversed and remanded.

SCALES, C.J., concurring in result.

I concur in the reversal of Mesamours's conviction because I believe our review is limited to whether the trial court erred in adjudicating the State's *second* proffered race-neutral reason for striking Juror Jones, i.e., that Juror Jones had previously served on a jury. While Juror Jones had previously served on a jury, so had Juror Montes, a white male, whom the State did not strike. Thus, I agree with the majority that our opinion in Overstreet controls.

Before giving its "prior juror service" response to Mesamours's Melbourne objection to the strike of Juror Jones, though, the State did proffer what could have been a valid, race-neutral reason for striking Juror Jones: she questioned the credibility of police witnesses. During voir dire, Juror Jones agreed with another potential juror's comment that police witnesses "lie like everybody else." When further questioned, Juror Jones stated, "Police officers, they can lie just the same. Their profession doesn't make a difference."

After the State proffered this initial reason for its strike of Juror Jones, the trial court's notes did not reflect this response, and the State declined the trial court's invitation for a read-back of Juror Jones's voir dire responses.

The State then pivoted[1] and proffered its problematic "prior jury service" rationale for the strike. The trial court expressly accepted this rationale.[2]

Thus, the trial court never conducted a Melbourne inquiry regarding, nor did he ever adjudicate, the genuineness of the State's "police witness credibility" justification for the strike. Without citation to authority, the State suggests that this Court, *in the first instance*, can conduct the genuineness inquiry of the State's first proffered reason required by Melbourne and its progeny.

But the required genuineness inquiry necessarily involves demeanor assessments and credibility determinations of a potential juror (and counsel). As the majority notes, the trial court, not the appellate court, is in a better position to conduct the required Melbourne inquiry, which is essentially a fact-finding function.

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[1] On this record, reasonable people can disagree as to whether the State "abandoned" or, rather, as the dissent suggests, simply "supplemented" its first reason for striking Juror Jones. In my view, though, this issue is academic. Irrespective of the characterization of the State's second rationale for the strike, it is undisputed and the record plainly reflects that the State did not obtain from the trial court a specific genuineness ruling on its first reason.

[2] "The State has given a race-neutral reason on the second one that I find to be genuine – I'm going to allow it. As for the other point, I just don't know. I don't have a note. The only way I could really verify is going back on the record, but based on the second one, I think I meet Melbourne. So, I'm going to allow the strike."

Under the now three-decades-old Melbourne construct, the adjudication in the first instance of whether a proffered reason for a peremptory strike is genuine or pretextual is a function of the trial court. And, while I find the dissent's rationale tempting, and agree that the State's first proffered reason for exercising a peremptory strike on Juror Jones likely satisfied Melbourne's strictures, I am uncomfortable veering into what is clearly the trial court's lane to make that determination in the first instance.

KOENIG, Associate Judge, dissenting.

The Majority concludes that the trial court did not assess the credibility of the first proffered reason, police credibility, for the peremptory strike on Juror Jones, and that the trial court based its decision exclusively on the second proffered reason, that Juror Jones served on a criminal jury that reached a verdict. However, the record before us does not support this determination. The Majority also contends that the State abandoned its first rationale when it is clear in the record that it did not. After a review of all relevant circumstances, including *voir dire* as a whole, the record does not demonstrate that the trial court clearly erred in finding that Juror Jones was not stricken on the basis of race. Two race-neutral reasons were given for the strike, one of which, police credibility, was unique to Juror Jones, making this case distinguishable from Overstreet.

Appellant has the burden of establishing that the trial court erred. Melbourne v. State, 679 So. 2d 759, 764 (Fla. 1996). On review, "peremptories are presumed to be exercised in a nondiscriminatory manner," and the trial court's genuineness determination "turns primarily on an assessment of credibility and will be affirmed on appeal unless clearly erroneous." Id. at 764-65. Applying these principles to the present case,

Appellant has not established that the trial court did not consider the circumstances of the initial strike when considering the genuineness of the later, additional strike. The record simply belies Appellant's contention that this is so.

The resolution of this case centers on resolving competing principles established by the significant body of case law dealing with the subject matter involved. The principle that requires the appellate court to consider all circumstances surrounding a peremptory strike of a juror within the analysis framework of Melbourne, Slappy, and Overstreet is pitted against whether the first reason for the strike is to be considered at all when the trial court did not determine on the record the genuineness of the race neutral reason given. Put another way, is the appellate court to consider the facts and circumstances of the reason given for the first strike at all, without determining the genuineness of it in the first instance?

Tensions between other principles exist such as holding the prosecutor accountable for not doing more to pursue the first reason given for the strike, juxtaposed against the principles of deference to the trial court in these determinations, absent clear error on the part of the trial court. The principle of considering all facts and circumstances makes an appearance here as well, as does the principle of all courts "staying in their lane", not to mention

the overarching principle of the pursuit of truth and justice. The challenge for this court, on this record, is to apply the applicable principles and give the proper weight to them, as appropriate, based on the applicable law.

At the end of the day, the decision comes down to whether the trial court properly determined that racial discrimination was not the State's motivation for striking Juror Jones. The totality of the record before us clearly establishes that the State was not motivated by racial discrimination when it moved to strike Juror Jones. The record establishes legitimate race neutral reasons for striking her when they are properly considered together, and the record before us does not clearly establish that the trial court did not consider them together when reaching its decision.

The record shows that during jury selection, the State attempted to exercise its first peremptory strike on Juror Jones because she questioned the credibility of police witnesses. During *voir dire*, another prospective juror, Juror Azcuy, was asked, "[d]o you think that, you know, police officers are any more or less likely to lie or tell the truth than the average person?" Prospective Juror Azcuy responded: "They're going to lie like everybody else." Juror Jones said she felt the same way and stated: "Police officers, they can lie just the same. Their profession doesn't make a difference."

When attempting to exercise the peremptory strike, the State was mistaken, *only as to when*, during *voir dire,* Juror Jones stated that the officer's credibility would be in question, and neither defense counsel nor the court had notes to support this contention. In the interest of time, the State gave the court a second, additional race-neutral reason for its request to exercise a peremptory challenge to strike Juror Jones. Counsel stated: "The State will provide a *second* reason, Judge. She served on a criminal jury in the past that reached a decision. The State feels as though that's an *additional* basis for a peremptory challenge." (emphasis added).

The Majority concludes that the State abandoned its first argument about police credibility and stood solely on its second. The record does not support these conclusions. The record shows that the second, additional proffered race-neutral reason for the strike, prior jury service, was offered to supplement, rather than supplant, the race-neutral officer credibility rationale as a basis for granting the peremptory strike. Counsel for the State specifically stated the second basis was an *additional* basis for the trial court to consider. Despite this record, the Majority contends that the State "pivoted" from the initial proffer and "changed course". Isolating the first reason and all the facts and circumstances of it, placing it in a sealed box,

never to be heard from again, is the only way the Majority opinion holds up under scrutiny.

The Majority opines that the trial court never conducted a Melbourne inquiry regarding, nor did it adjudicate, the genuineness of the State's police witness credibility justification for the strike, and therefore this Court cannot conduct the genuineness inquiry of the State's first proffered reason in the first instance. It is true that only the trial court can determine the genuineness of the strike, but considering the circumstance of the initial strike is not akin to determining the genuineness of it in the first instance. We need only consider that the reason was given, and that the record supports that the *voir dire* exchange that occurred is consistent with the prosecutor's stated race neutral basis for the strike.

In order for the appellate court to conclude that the trial court rejected the initial strike for lack of genuineness, it must be clear from the record, and in this case it is not. The record simply does not support the conclusion that the trial court rejected the police credibility reason initially proffered by the State as being disingenuous; the court simply could not locate a reference to it in the notes taken during *voir dire*. The court stated: "As for the other point, I just don't know. I don't have a note. The only way I could really verify is going back on the record, but based on the second one, I think I meet

Melbourne. So, I'm going to allow the strike." The trial court "not knowing", or not being able to verify, is not a rejection of the State's initial police officer credibility reason for the peremptory strike. In fact, the record also shows that the trial court did not question the sincerity of the State's explanation that officer credibility was being offered as a genuine reason for the peremptory strike. The court stated: "I'm not discounting what you said---is whether she actually said it …. I'm not second guessing it. I'm just saying *I* don't know whether she said it. *I* don't have that recollection." (emphasis added). These statements demonstrate that the trial court assessed the credibility of the first proffered reason for the strike, and nothing in the record indicates that the trial court discounted the genuineness of the police witness credibility as justification for the peremptory strike of Juror Jones.

Appellant has not established that the trial court did not consider the circumstances of the initial strike when considering the genuineness of the later, additional strike. Nevertheless, the Majority confines its review solely to the one proffered reason for the strike, the fact that Juror Jones previously served on a criminal jury that reached a verdict, to conclude that the reason for striking Juror Jones applied equally to Juror Montes, a white male who had also sat on a criminal jury, to make a finding of pretext under Overstreet, as opposed to applying the proper legal standard of considering all of the

circumstances surrounding the strike. Although the Majority opinion suggests two additional Slappy factors, these factors would not hold up but for the isolation of the second proffered reason to the exclusion of all other circumstances surrounding the strike of Juror Jones, including the first reason given. The second reason given was disconnected from the facts of the case, but the first reason was central to the facts of the case. The single question unrelated to Juror Jones' prior jury service was related to the first proffered reason given, namely police credibility. When viewed in light of all circumstances surrounding the strike, these two factors do not apply. The entirety of the Majority opinion rests on the assertion that the State abandoned its first proffered reason. Without it, the argument regarding the two additional Slappy factors caves in on itself. It is ironic that both additional factors relate to the first proffered reason for the strike, which is the reason the Majority has refused to consider, because of their belief, in contrast with the record, that it was abandoned by the State.

A challenge based on reasons equally applicable to jurors who were not challenged is *a* factor in considering whether the reason given by the State is pretextual. Overstreet v. State, 712 So. 2d 1174, 1177 (Fla. 3d DCA 1998) (citing State v. Slappy, 522 So. 2d 18, 22 (Fla. 1988) (emphasis added). Although a strike based on a reason equally applicable to an

unchallenged juror is *one* factor which courts have found relevant to the genuineness inquiry, "the court should consider *all* relevant circumstances surrounding the strike." Melbourne, 679 So. 2d at 764 (emphasis added). In a Melbourne analysis, the circumstance of a juror being similarly situated to another, where one is a member of a protected class and the other is not, and the former is stricken and the latter is not, is only one factor considered by the trial court in determining whether the strike is a pretext for discrimination or whether it is genuine. However, the Majority opinion excludes all other factors and circumstances surrounding the strike of Juror Jones except for the one factor cited in Overstreet as one of the factors to be considered along with all other circumstances surrounding the strike. The result is to turn the Overstreet decision into a bright line, hard and fast rule that striking a juror who is similarly situated to another, where the former is a member of a protected class and the latter is not, is a pretext for discrimination, per se. Applying the Majority opinion, trial courts will look no further and consider nothing else. That is neither a sound nor proper application of the Overstreet decision or of the considerable body of case law on this subject.

After reviewing all relevant circumstances as we must, this case is distinguishable from Overstreet because the proffered reasons for exercising

a peremptory challenge against Juror Jones do not apply equally to Juror Montes. Although both prospective jurors previously served on juries, the State's initial explanation that it was striking Juror Jones because of her beliefs regarding police credibility is supported by the record. Juror Montes did not weigh in on the exchange during *voir dire* regarding whether police officers would lie, nor did he otherwise express beliefs about police officer credibility. No other juror kept by the State was similarly situated to Juror Jones in her feelings about a police officer's ability to lie.

Based on the record before us, we cannot say that the trial court only considered the second reason, prior jury service, to the exclusion of everything else that happened during *voir dire*. We cannot presume that the trial court did not take the police officer credibility proffer into account in determining that the peremptory strike against Juror Jones was non-pretextual and genuine. Two race-neutral reasons were given for the exercise of the peremptory challenge of Juror Jones, and when reviewing all the relevant circumstances, the record does not demonstrate that the trial court clearly erred in finding that Juror Jones was not stricken on the basis of race.

It defies logic and reason as well as basic principles of fairness, to say that the prosecutor was motivated by racial discrimination when it is clear

from this record that this entire issue originated with the prosecutor focusing on whether Juror Jones could be fair and impartial when considering the testimony of law enforcement. The concurring opinion acknowledges that the State did proffer what could have been a valid, race-neutral reason for striking Juror Jones: she questioned the credibility of police witnesses. This is clearly reflected in the record, and ignoring this results in an unfair characterization of the prosecutor's motives.

Although the trial court did not make specific findings with respect to each of the prosecutor's proffered grounds, "when the grounds for a trial court's decision are ambiguous, an appellate court should not presume that the lower court based its decision on an improper ground, particularly when applying a deferential standard of review." Snyder v. Louisiana, 552 U.S. 472, 487 (2008) (Thomas, J. dissenting). "Given the trial court's expertise in making credibility determinations and its firsthand knowledge of the *voir dire* exchanges, it is entirely proper to defer to its judgment." Id. at 490 (Thomas, J. dissenting). The record does not establish clear error by the trial court in allowing the strike, and thus, the trial court's determination should be left undisturbed. Accordingly, I would defer to the trial court and affirm the judgment below.