

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Horry County

Honorable Robert E. Hood, Circuit Court Judge
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ODOM BRYANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000332
—————

PETITION FOR WRIT OF CERTIORARI
—————

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ISSUE PRESENTED

Whether the PCR court erred in finding that trial counsel was not ineffective where counsel failed to argue that the trial court improperly shifted the burden of proof to defense counsel in deciding the State's motion pursuant to *Batson v. Kentucky*¹?

¹ 476 U.S. 79 (1986)

STATEMENT OF THE CASE

In August and September of 2012, Sandy Locklear, Nehemiah Evans, and Petitioner were arrested for the execution style murders of Amos and Thomas Hatfield. App. 76, l. 1-App.79, l. 10. The State alleged that Locklear, Amos' wife and Thomas' stepmother, arranged the murders-for-hire in order to collect Amos' life insurance policy. App. 148, ll. 10-16; App. 342, ll. 1-16. On January 12, 2015, the State, represented by Bradley Richardson and Monica Wooten, called the case to trial before the Honorable Benjamin Culbertson and a jury. Petitioner was represented by Dean Mureddu and Casey Brown. App. 1.

After the selection of the jury, the State made a motion pursuant to *Batson v. Kentucky*, 746 U.S. 79 (1986). The State argued that Counsel Mureddu had used his strikes on white, predominantly male, jurors. However, the State acknowledged that one white male and several white females had been sat on the jury. App. 32, l. 23-App. 33, l. 4. The trial court reviewed each juror with Counsel Mureddu who in turn gave a race and gender-neutral reason for striking the juror.

Juror 259 was struck because he was a comptroller, and the defense was looking to avoid people who worked in a government related field. App. 33, ll. 10-20. Juror 199 was struck because he worked as a security guard which was a quasi-law enforcement position. App. 33, ll. 22-25. Juror 26 was struck because his wife was a youth pastor at a church. App. 34, ll. 3-8. Juror 42 was struck because she was the CEO of HTC, a local utility, and there was to be telephonic evidence in the case that the defense was challenging. App. 34, ll. 9-19. Juror 49 was struck because he affiliated with the National Guard and one of the victims, as well as some law enforcement officers, were retired military. App. 34, l. 22-App. 35, l. 4. Juror 121 was struck because of his demeanor and body language. App. 35, ll. 7-21.

After giving race and gender neutrals reasons for each strike, the court stated, “I think the burden shifts to the State to show that those are not valid reasons or not...I forget the actual term that the appellant courts use.” App. 35, l. 22- App. 36, l. 1. The State then pointed out what it believed were similarly situated jurors that were sat on the panel. The State presented facts on three female jurors: Juror 78, who was retired from Georgia Power and was married to a pilot for the Georgia State Patrol; Juror 13, who was retired military; and Juror 50, who worked for Waccamaw Mental Health and was married to a former military member. App. 36, ll. 2-22.

Counsel Mureddu responded that he had considered not only his notes about the jurors but “the feeling” he got from a juror based upon their demeanor and how they had presented themselves during the selection process. Counsel Mureddu further informed the court that ninety-two percent of Horry County was white which meant that there would not be a significant amount of ethnic diversity in the jury pool. Counsel Mureddu concluded by informing the trial court that he had selected the jury he believed would be fair and impartial to Petitioner and his selection process had been done with no ulterior or illegal motives. App. 37, l. 37-App. 38, l. 10.

The trial court granted the State’s motion ruling,

I think the law requires that there be an articulated reason that shows that it is both race and sexually neutral reason for striking potential jurors. As I understand, once you see a pattern and the pattern here is struck white males predominately, then you have to give the reason the burden shifts to the State, State has shown that there were people employed in the government that were seated, and there were people in the military that were seated. There were females versus males, which is the reason you gave for striking Jurors 259, 199, 42, and 49. So then the reason comes back to you. I understand what you are saying, but I have to go on whether or not there is an articulated justification for striking a juror that is racially and gender neutral, and I don’t really see a reason as to why you seated females that have military ties and didn’t seat males that had military ties, so I’m going to grant the motion.

App. 38, l. 11-App. 39, l. 4.

Counsel Mureddu objected to the court's ruling but did not specify under what authority he was objecting. App. 39, l. 25-App. 40, l. 2. The original jury was released. App. 42, l. 2-7. The following day the parties picked a new jury and began the trial. App. 123-127; App. 131. Petitioner was ultimately found guilty of two counts of murder and sentenced to concurrent terms of life imprisonment. App. 593, ll. 18-25; App. 601, ll. 18-23.

Petitioner appealed his convictions and sentences. One issue that was raised on appeal was whether the trial court erred by failing to follow the proper *Batson* procedure by shifting the burden to the defense, and thereafter improperly granting the State's *Batson* motion resulting in a member of the venire struck by the defense from being on the jury. App. 686. The Court of Appeals held that the question of whether the trial court employed the incorrect *Batson* procedure was not preserved for review. *State v. Bryant*, Op. No. 2017-UP-302 (S.C. Ct. App. filed July 26, 2017).

Petitioner filed the present PCR action on May 23, 2018. App. 604-612. The State filed a return and partial motion to dismiss on August 22, 2018. App. 613-625. PCR counsel for Petitioner filed an amended application dated October 25, 2021, alleging, *inter alia*, that Counsel Mureddu was ineffective for failing to properly argue the appropriate procedure regarding a *Batson v. Kentucky* challenge to the jury selection. App. 626-632. An evidentiary hearing was convened before the Honorable Robert E. Hood on October 27, 2021. The State was represented by Chelsey Marto and William Ray. Petitioner was represented by Matthew Swilley. App. 633.

When questioned about the *Batson* motion, Counsel Mureddu stated that the State alleged that he was striking white men from the jury. He provided the trial court with race and gender-neutral reasons for his strikes but testified that "the judge wasn't satisfied with any independent

reason that I gave as to why I struck the jurors that I struck.” App. 647, ll. 8-16. He stated that to his understanding the procedure of a *Batson* motion was

[W]hichever party alleges a violation, they have the burden of proof. I mean, they have to - I mean, well, ultimately, they're making an allegation, so -- and then it shifts. And then if a judge determines that they have satisfied the -- I guess the low level of the challenge, then the attorney who is -- whose choice -- jury choices are being reviewed has to give a neutral reason, and if it's based on race or whatever, you have to give a reason other than the improper motive as to why you struck the individual juror.

App. 648, ll. 2-10.

When asked if he believed the trial judge followed the proper procedure, Counsel Mureddu testified

Well, I didn't really review exactly what he did or that part of the transcript. I can remember that, basically, we went down the list, to my recollection, and he was asking me my reasons why I, you know, specifically struck each juror that I struck. And, honestly, it's like -- I have never had a *Batson* motion in all the -- I have never had one even filed against me in all the cases I litigated. I understand, you know, that, if there's a challenge, that they want some type of detailed reason as to why, other than an improper reason to strike somebody. But, whenever I pick a jury, it was always my practice -- I just got a feel for what I was looking for, and, you know, I guess I'll be honest and say I do it mostly by feel. I look at the person. You know, I make notes on or they -- do they have a northern accent? Do they have a southern accent? I get an idea of the jury type that I'd like to have, one that I think is friendly, and what kind of -- blue collar, white collar, those type of things. And as you well know, Mr. Swilley, we're all looking for a sympathetic juror. But I do it more by feel than some detailed, scientific processes.

App. 648, l. 13-App. 649, ll. 17.

Counsel Mureddu testified that he did not believe the State had made the requisite *prima facie* showing that the strikes were based on race and/or gender. When asked if he expressed that belief to the trial court, he simply stated that whatever he had said to the trial court, it was not enough to convince the court that either it or the State was wrong. App. 650, ll. 1-22. On

cross-examination, Counsel Mureddu testified that to his understanding the judge had properly conducted the *Batson* hearing. App. 669, ll. 5-13.

Petitioner took the stand and testified to various deficiencies he attributed to Counsel Mureddu. However, Petitioner did not offer any relevant testimony on the issue of the *Batson* motion. At the end of the hearing, the PCR court took the matter under advisement. App. 683.

An order of dismissal was filed on March 9, 2022. App. 685-706. The order found that Counsel Mureddu was not deficient in his handling of the *Batson* motion, as he had given race and gender-neutral reasons for the strikes, but the trial court had ruled against him. Additionally, counsel testified he would have objected if he thought there was something procedurally improper about how the trial court handled the *Batson* hearing. The PCR court further found that there was no prejudice, as Petitioner had not shown that the results of the trial would have been different had Counsel Mureddu succeeded in opposing the *Batson* motion. App. 699-700.

ARGUMENT

The PCR court erred in finding that trial counsel was not ineffective where counsel failed to argue that the trial court improperly shifted the burden of proof to defense counsel in deciding the State's motion pursuant to *Batson v. Kentucky*.

During the PCR hearing, Counsel Mureddu testified that he had never handled a *Batson* motion before, but to his understanding the trial court had employed the proper procedure in deciding the motion. However, the trial court did not apply the proper procedure as it placed the ultimate burden upon Counsel Mureddu to show that his strikes were race and/or gender neutral. Counsel Mureddu's failure to object to the improper shifting of the burden of proof was deficient performance.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a [juror] on the basis of race or gender." *McCrea v. Gheraibeh*, 380 S.C. 183, 186, 669 S.E.2d 333, 334 (2008) (citing *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001)); *see also Batson*, 476 U.S. 79, 89 (1986). The United States Supreme Court has promulgated a three-step inquiry for evaluating challenges pursuant to *Batson*. *See Purkett v. Elem*, 514 U.S. 765, 767–68 (1995). As this Court explained in *State v. Inman*,

First, the party asserting the *Batson* challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the party opposing the *Batson* challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the party asserting the challenge has proved purposeful discrimination. **The ultimate burden always rests with the party asserting the *Batson* challenge to prove purposeful discrimination.**

Inman, 409 S.C. 19, 26, 760 S.E.2d 105, 108 (2014) (citations omitted) (emphasis added).

While the party opposing the *Batson* challenge is required to give a race or gender-neutral explanation for exercising the strike, there is no requirement that the explanation be persuasive or even plausible. *Inman* at 26, 760 S.E.2d at 108 (citations omitted). “The explanation must only be ‘clear and reasonably specific such that the [party asserting the *Batson* challenge] has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty [in step three] to assess the plausibility of the reason in light of all the evidence with a bearing on it.’ ” *Id.* quoting *State v. Giles*, 407 S.C. 14, 21–22, 754 S.E.2d 261, 265 (2014). The trial court is then required to “carefully evaluate whether the party asserting the *Batson* challenge has proven racial discrimination by demonstrating that the proffered race-neutral reasons are mere pretext for a discriminatory intent.” *Id.* at 27, 760 S.E.2d at 108.

In Petitioner’s case, the State, being the party that asserted the *Batson* challenge, had the burden to prove that Counsel Mureddu acted with purposeful discrimination in striking the challenged jurors. However, the trial court granted the State’s *Batson* motion by finding that Counsel Mureddu, the opponent of the motion, had failed to articulate a race and gender-neutral reason for striking the jurors. That was an error of law. Upon making the improper ruling, Counsel Mureddu should have objected and argued that the law placed the burden on the State to prove purposeful discrimination.

Having never handled a *Batson* challenge, Counsel Mureddu was unfamiliar with the proper procedure and seemingly did not know that the law placed the ultimate burden on the party asserting the *Batson* challenge. Instead of requesting a break to educate himself on the proper procedure, Counsel Mureddu proceeded through an important hearing with little working knowledge of how the hearing should have been conducted. Such actions and unfamiliarity of the law cannot be considered reasonable under prevailing professional norms. *See Strickland v.*

Washington, 466 U.S. 668, 688 (1984) (Stating that under the first prong of an ineffective assistance claim, “[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms”). Counsel Mureddu was deficient in his handling of the *Batson* motion.

The PCR court found that Petitioner had not shown prejudice² because he had not shown that “but for Counsel being unsuccessful in executing his preferred peremptory strikes, the outcome at trial would have been different.” App. 700. Such a broad reading of the *Strickland* standard was incorrect. As the United States District Court stated in *Juniper v. Zook*,

Within the *Strickland* framework, *Juniper* must show that his trial counsel's conduct during the *Batson* challenge fell below the “objective standard of reasonableness” by failing to live up to “prevailing professional norms.” *Padilla v. Kentucky*, 559 U.S. 356, 366, 130 S.Ct. 1473, 176 L.Ed.2d 284 (2010) (quoting *Strickland*, 466 U.S. at 688, 104 S.Ct. 2052). *Juniper* must also show that, absent these “unprofessional errors, the result of the proceeding would have been different.” *Id.* **In this setting, the relevant proceeding is the trial court's consideration of the *Batson* challenge. Accordingly, *Juniper* must show that, but for his trial counsel's ineffectiveness in failing to make certain arguments, the result of the *Batson* challenge would have been different, i.e., the trial court would have found the prosecutor in violation of *Batson*.**

Zook, 117 F. Supp. 3d 780, 792 (E.D. Va. 2015) (emphasis added). The outcome of the relevant proceeding that the PCR court should have examined was not the trial verdict but the outcome of the *Batson* motion.

The State challenged Petitioner's juror strikes based on race. It argued that Counsel Mureddu had struck white jurors. While most of the stricken jurors were male, the challenge included a white female juror; it can therefore be surmised that the challenge was to the striking of white jurors. There is nothing in the record that reflected similarly situated jurors of a

² The PCR court additionally ruled that there was sufficient evidence to convict Petitioner regardless of who was on the jury panel. Petitioner asserts this is also an improper prejudice analysis under the current law.

different race were placed on the panel. Further, the record reflected that Counsel Mureddu sat male and female white jurors. Had the proper burden been applied in the case, the State would not have been able to prove purposeful discrimination and would not have prevailed on the *Batson* motion. Absent Counsel Mureddu's failure to argue that the State had the ultimate burden to prove purposeful discrimination, the results of the *Batson* motion would have been different. Petitioner has shown adequate prejudice.

The PCR court's ruling was based on an error of law and is not supported by the facts. Petitioner has shown that Counsel Mureddu did not object to the trial court improperly shifting the burden to him because counsel did not know the proper procedure for handling a *Batson* challenge. These failures were deficient performance. Petitioner has shown prejudice under the proper standard of review. Respectfully, Petitioner is entitled to a new trial.

CONCLUSION

Based on the foregoing arguments, Petitioner's respectfully request that this Court grant the writ of certiorari to allow full briefing on this issue.

Jessica M. Saxon
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Appellate Defender

ATTORNEY FOR PETITIONER

This 22nd day of August, 2022.