STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES C. TYNER,

APPELLANT

APPELLATE CASE NO. 2012-212324

INITIAL BRIEF OF APPELLANT

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II. The Trial Court erred in refusing to quash the jury panel pursuant to Appellant's Batson motion where (1) the State only struck young black jurors; (2) the State struck one female black juror based upon her alleged attitude; and (3) the State struck another female black juror based upon her residence.

STATEMENT OF THE CASE

On March 22, 2011, Appellant James C. Tyner was indicted by the Chesterfield County Grand Jury for (1) assault and battery of a high and aggravated nature in violation of S.C. CODE ANN. § 16-3-600(B); and (2) strong armed robbery. R.*.

A trial was held before the Honorable Paul M. Burch and a jury from June 18-20, 2012. Tr. 1. Tyner was represented by Trey Cockrell and Jason Turnblad, and the State was represented by Assistant Solicitor Chris Jones. Id.

On June 20, 2012, the jury found Tyner guilty of (1) assault and battery of a high and aggravated nature; and (2) strong armed robbery. Tr. 178, ll. 17-25. Judge Burch sentenced Tyner to fifteen years imprisonment for strong armed robbery and three years consecutive on the assault and battery of a high and aggravated nature. Tr. 188, ll. 10-15.

Tyner timely filed and served his Notice of Appeal on June 21, 2012.

STATEMENT OF FACTS

On December 31, 2010, Ralph Chapman and his wife heard someone beating on their door between 6:00 and 6:30 a.m. Tr. 50, ll. 20-15. Chapman went outside his house to check to see if anyone needed help. He saw a car parked on the side of the road about a hundred yards away and thought perhaps someone's car had broken down. Chapman decided to go get in his truck and drive down to the car to see what was the matter. Tr. 51, ll. 4-19.

After Chapman walked to his truck and unlocked it, he said two guys grabbed him and according to Chapman: "[T]hey slammed me into the truck and then they started beating on my head pretty good. And finally took me down. I guess I was in more or less a fetal position, had my head down, and one of them was choking me. He had his hand over my mouth and nose where I couldn't breathe." Tr. 52, ll. 2-8.

The two men finally got his billfold out of Chapman's pocket and ran off toward the highway. Tr. 53, ll. 18-24. The two men got into the car Chapman saw parked on the side of the road. The vehicle drove away. Chapman said there were three men in the vehicle as it drove away. Tr. 54, ll. 1-22.

Chapman recognized one of his attackers as Bruce Walters. Tr. 52, ll. 20-22. Two days before the attack, Chapman ran into Bruce Walters at a truck stop. Walters wanted Chapman to take him to Society Hill for a job interview. When Walters got into Chapman's truck, Walters started asking Chapman for money. Tr. 55, l. 16 – 56, l. 12. Chapman told Walters he did not have any money to lend him. Tr. 56, ll. 12-14.

The two finally pulled up at a trailer where Walters got out and asked Chapman if he could wait on him for a little bit. Walters then came out and asked Chapman for just two

dollars, which Chapman gave him. Chapman said when he pulled out his billfold, Walters would have seen that Chapman was carrying a lot of bills in it, including a $100 bill, six or seven $20 bills, a bunch of $5 bills, and a stack of $1 bills. Tr. 57, ll. 7 – 25.

After Chapman gave Walters the two dollars, he told Walters he had to leave and was not waiting on him any longer. Chapman thought that must have made Walters mad, mad enough to get even with him "big time" two days later on December 31. Tr. 58, ll. 3-12.

After the attack, Chapman informed the police that he thought it was Walters who was one of the attackers. Tr. 58, ll. 13-20.

At trial, two of Tyner's alleged accomplices, Adam Raymond Quick and Bruce Walters, told conflicting stories. Quick testified that after midnight on December 31, 2010, he, Walters, and Tyner were up late drinking when Walters said he needed a ride to his uncle's house to borrow some money. Tr. 110, l. 1 – 111, l. 10. Walters told Quick, who testified that he was driving the car, to park on the side of the road. Tr. 111, ll. 21-23.

Quick said Walters asked Tyner to go with him up to the house and Tyner did. Quick said they came back about fifteen minutes later, and since they were not breathing heavy or sweating, he did not think anything of it. Tr. 112, ll. 7-15. Quick testified that Walters said his uncle had given him some money. Tr. 112, ll. 21-22.

Walters testified that Tyner said he needed to make some money and Walters told him about seeing Chapman with a "pocket full of money." Tr. 123, ll. 3-20. Walters said he drove Quick and Tyner to Chapman's house and pulled up on the side of the road. He said Quick and Tyner jumped out of the car and walked around the house. He said Quick and Tyner came back running and yelling that they had the wallet. Tr. 125, ll. 1 – 24.

At trial, Chapman said that he could not physically or visually put Tyner at the scene of the attack. Tr. 60, ll. 13-17; 62, ll. 7-11.

Walters pled guilty to strong armed robbery and assault and battery of a high and aggravated nature. Tr. 129, ll. 4-13. He received a ten year sentence on each charge to run concurrent. Tr. 130, ll. 1 – 11. Quick did not receive any jail time in exchange for his testimony against Tyner. Tr. 120, ll. 2-3; 121, l. 8 – 122, l. 9. Tyner proceeded to trial where he was convicted of assault and battery of a high and aggravated nature and strong armed robbery. This appeal follows.

ARGUMENT

I. Appellant was entitled to a directed verdict on the charge of assault and battery of a high and aggravated nature where the State did not establish that the alleged acts of Appellant caused "great bodily injury to another person" or used "means likely to produce death or great bodily injury" as required by S.C. CODE ANN. § 16-3-600(B)(1).

At trial, Appellant Tyner moved for a directed verdict on the assault and battery of a high and aggravated nature (ABHAN) charge because the State did not establish that the alleged acts of Tyner caused "great bodily injury to another person" or used "means likely to produce death or great bodily injury." Tr. 134, l. 23 – 135, l. 2; 142, l. 19 – 143, l. 25.

The offense of ABHAN was codified by the South Carolina Legislature in June 2010. Under S.C. CODE ANN. § 16-3-600(B)(1), a person commits ABHAN "if the person unlawfully injures another person, and: (a) great bodily injury to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury."

"Great bodily injury" is defined as "bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." § 16-3-600(A)(1).

Chapman testified that the two attackers grabbed him and started "beating on [his] head pretty good." Tr. 52, ll. 2-5. After the attack, Chapman went into his kitchen to sit at the table, but upon realizing that he was bleeding, walked outside to sit on the back door steps to wait for the deputies and the EMT. Tr. 55, ll. 6-11.

The EMTs arrived and looked over Chapman and told him, "Mr. Chapman, unless you want us to take you to the emergency room, there is really nothing we can do for you." Chapman replied, "No, I don't see any need of that. I mean I'm just beat up. " Tr. 62, ll. 16-24. Chapman did not go to the hospital. Tr. 62, ll. 15-16.

Chapman sustained some bruises and bleeding in the attack, but he did not break any bones and never went at any time to see a doctor about his injuries. Tr. 62, l. 25 – 63, l. 6.

Chapman's wife testified that her husband's face was very bloody and that he told her, "Two guys just beat the hell out of me . . . ." Tr. 71, ll. 8-16.

The offense of ABHAN requires bodily injury which "causes a substantial risk of death" or which results in "serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." § 16-3-600(A)(1). Chapman did not sustain any injuries rising to that level.

Other courts have found that the type of injuries suffered by Chapman did not constitute an injury which created a "substantial risk of death" or resulted in protracted disfigurement or protracted impairment of any bodily member or organ. In People v. Snipes, 112 A.D.2d 810 (N.Y. App. Div. 1985), the court held that there was insufficient evidence to conclude that the victim suffered serious physical injury so as to support a conviction for assault in the second degree where the victim suffered bruises, swollen eyes and multiple contusions and pain which lasted for two days, but there was no physical injury which created a substantial risk of death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

The Supreme Court, Appellate Division of New York also found no physical injury which "creates a substantial risk of death, or which causes . . . serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ" where a victim testified that the defendant "came up behind her, grabbed the phone out of her hand, covered her nose and mouth and dragged her through a fenced-in area and into a bathroom by the horse stalls." The defendant then

"threw her to the ground, ripped her pants off, punched her in the face and ribs, and attempted to rape her." Finding no serious physical injury resulting in the above-referenced definition, the court noted the record revealed that the victim was "conscious and communicative when she arrived at the hospital after the attack, with normal vital signs and neurological state, despite extensive bruising, lacerations and pain." The victim also suffered no internal bleeding or bone fractures. The victim's hospital discharge summary indicated that her lacerations would heal without surgical intervention. People v. Felipe, 79 A.D.3d 1454, 1454-56 (N.Y. App. Div. 2010).

The Louisiana Court of Appeal also held that the evidence did not show the victim suffered any "protracted and obvious disfigurement, any protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or was put at a substantial risk of death" where the defendant came into the victim's bedroom and while she was holding a baby, "grabbed her, slammed her to the ground, and started hitting and kicking her in her face and arms." The victim also testified that the defendant had his hands around her neck and was choking her. The victim had swollen eyes, a busted lip, and a cut on her face. In finding that the evidence was insufficient to sustain the second degree battery conviction, the court noted that the record indicated that the victim never lost consciousness at any time or sought medical attention for her injuries. State v. Vidaurri, 919 So.2d 803, 804-08 (La. Ct. App. 2005).

As in these above-referenced cases, Chapman, while sustaining bruises and bleeding from the attack, did not sustain any bone fractures or any protracted impairment of any bodily member or organ. He never lost consciousness during the attack. Other than the EMTs who looked him over and informed Chapman that there was nothing they could do

for him, Chapman never sought any medical attention for his injuries. The State did not present sufficient evidence of great bodily injury to another person" or used "means likely to produce death or great bodily injury" to obtain a conviction of ABHAN against Tyner.

In ruling on Tyner's directed verdict motion, the Trial Court stated that in its opinion the State presented sufficient evidence as to whether "means likely to produce death or great bodily injury" were used where Chapman testified that one of the attackers was choking him and had his hand over Chapman's mouth and nose. Tr. 52, ll. 2-8; 142, ll. 21-25.

However, courts from other jurisdictions finding that choking or strangling was an action creating a substantial risk of death have pointed to evidence such as unconsciousness and severe bruises and marks on the victim's neck and have even noted physician testimony that the victim was only minutes from death. None of that type of evidence is present in this case.

In People v. Perron, 172 A.D.2d 879 (N.Y. App. Div. 1991), the court held the defendant's actions created a substantial risk of death where the victim testified that after the defendant raped her, he told her, "I'm not going to let you go back there. I'm not going to let you tell them," and thereafter "strangled her into unconsciousness." The physician who examined the victim testified "that the pressure applied to the victim's windpipe, which cut off her oxygen supply, was significant in time and quantity as to be 'life threatening.'" The physician also testified that the victim had severe bruises on her neck and was "choked to an extent sufficient to cause unconsciousness and that 'it's just a matter of minutes between someone whose going to be unconscious to someone who's going to be dead.'" See also State v. Sorrell, 568 A.2d 376, 378 (Vt. 1989) (finding defendant's actions constituted a substantial risk of death to the victim where defendant choked his victim while

swearing he would kill her and the victim passed out twice).

The Texas Court of Appeals also held that a defendant's actions created a substantial risk of death where the defendant choked the victim with a towel, a belt, and his hands and told the victim that he was trying to kill her. The victim testified she nearly blacked out. The investigating police officer testified that the victim sustained large bruises and red marks around her neck and that he could see fingerprints on her throat and marks where some object had been around her throat. The office observed that these injuries were consistent with injuries suffered by those who have been strangled. Akbar v. State, 660 S.W.2d 834, 835-87 (Tex. Ct. App. 1983).

In People v. Brown, 243 A.D.2d 749, 749-50 (N.Y. App. Div. 1997), the court also sustained the assault conviction where the defendant choked the victim to the point where her tongue hung out of her mouth, she could not breathe, and almost passed out. After the incident, the victim also had visible marks on both sides of her neck and had a hard time swallowing.

Unlike the evidence in these cases, Chapman only testified that he was being choked and that one of the attackers had his hand over Chapman's nose and mouth. Chapman did not indicate how long this "choking" may have occurred or how long the attacker had his hands over Chapman's nose and mouth. Chapman did not become unconscious or come even close to passing out, he did not have any marks on this neck, and he never indicated that he had any pain in his neck or throat area. He was conscious and communicative after the attack. This evidence is simply not sufficient to establish the presence of an act accomplished by "means likely to produce death or great bodily injury." The Trial Court therefore erred in refusing to grant Tyner's directed verdict motion on the ABHAN charge.

II. The Trial Court erred in refusing to quash the jury panel pursuant to Appellant's Batson motion where (1) the State only struck young black jurors; (2) the State struck one female black juror based upon her alleged attitude; and (3) the State struck another female black juror based upon her residence.

During jury selection, the State struck a total of four jurors, one young black male and three young black females. Tr. 21, l. 16 – 27, l. 12. Following jury selection, defense counsel for Tyner made a motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) challenging the State's strike of the four black jurors. Tr. 26, l. 24 – 27, l. 5. The Trial Court then requested the solicitor to offer a race-neutral reason for striking each juror. Tr. 27, ll. 13-16.

The State stated that it struck Juror 98, a young black male, because he was unemployed. The State asserted it struck Juror 60, a young black female, because she had a prior assault conviction. Tr. 27, ll. 17-22.

With respect to Juror 39, a young black female, the solicitor said he "consulted with the victim on that as to with all the jury strikes, and she indicated that she had an attitude. She didn't think she would participate in jury discussions." Tr. 27, l. 23 – 28, l. 1.

As to Juror 101, another young black female, the solicitor gave the following explanation:

> And Juror Number 101 that juror had a lip ring. And I believe talked to the victim and co-counsel lives in the area where - - and don't think she would participate in a jury discussion.

Tr. 28, ll. 3-7.

After further questioning by the Trial Court, the solicitor said he did not have previous knowledge of Juror 39 having an attitude, but something just "developed in Court. It was the overall demeanor. She appeared like she didn't want to be here . . . ." Tr. 28, ll. 13-23.

Defense counsel argued that the State just seemed like they were "fishing" to find compliance with [Batson]. Defense counsel noted that jurors traditionally have other, important things to do that might be on their mind, whether work-related or family-related, and "so just the general demeanor of a potential juror I don't think is a valid reason to strike a person." Tr. 28, l. 25 – 29, l. 6.

Defense counsel also argued that because the State only struck young black males or females, that was evidence that the State was clearly striking jurors in violation of Batson. Tr. 29, ll. 7-11.

The Trial court ruled: "Well, unemployed, assault, appearance in Court, and a lip ring just not enough there for me to set this aside. So I'll have to deny that motion." Tr. 29, ll. 12-14.

The Trial Court erred in refusing to quash the jury panel pursuant to Appellant Tyner's Batson motion where the State used its peremptory strikes to only strike black jurors and where there is no support in the record that Juror 39's demeanor could be credibly said to have exhibited the basis for the strike attributed to the juror by the solicitor. Furthermore, with respect to Juror 101, the solicitor began to mention the area in which she lived, although stopping short of a full explanation, showing that the solicitor was about to use the juror's residence as a substitute for her race and as a stereotype of the experiences that can be ascribed to that race.

A criminal defendant has the right to a fair trial by an impartial jury under the federal and state constitutions. *See* U.S. Const. Amend. VI; *see also* S.C. Const. art. I, § 14; State v. Salters, 273 S.C. 501, 257 S.E.2d 502 (1979). This guarantee includes the right to a selection process that is unbiased and fair to the defendant and the jurors. See

Powers v. Ohio, 499 U.S. 400, 410-16 (1991). The United States Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment prohibits the prosecution from striking potential jurors on the basis of race. Batson v. Kentucky, 476 U.S. 79 (1986). Consequently, a trial court must hold a Batson hearing when members of a cognizable racial group are struck and the opposing party requests a Batson hearing. See State v. Haigler, 334 S.C. 623, 629, 515 S.E.2d 88, 90 (1999). "A party has standing to object to race-based peremptory strikes of venire persons even if the challenging party and the potential juror are not of the same race." Payton v. Kearse, 329 S.C. 51, 54, 495 S.E.2d 205, 207 (1998).

Batson and its progeny "protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process." State v. Rayfield, 369 S.C. 106, 112, 631 S.E.2d 244, 247 (2006). Therefore, "[t]he Constitution forbids striking even a single prospective juror for a discriminatory purpose." Snyder v. Louisiana, 552 U.S. 472 (2008).

Furthermore, "[w]hether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. Id. at 509, 682 S.E.2d at 823. "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] mind lies peculiarly within a trial [court's] province.'" Id. (quoting Hernandez v. New York, 500 U.S. 352,

365 (1991)). This court will give the trial court's finding great deference on appeal and review the trial court's ruling under the "clearly erroneous" standard. Id., 384 S.C. at 509, 682 S.E.2d at 822.

In Purkett v. Elem, 514 U.S. 765, 767 (1995), the United States Supreme Court set forth the procedures for a trial court to follow when a party challenges a peremptory strike. The South Carolina Supreme Court adopted that procedure in State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996). Specifically, Batson challenges follow a three step process: (1) the opponent of the strike requests a hearing and asserts a *prima facie* case of racial or gender discrimination; (2) the proponent of the strike must offer a race or gender neutral explanation; and then (3) the opponent must show the race or gender neutral explanation was mere pretext. See State v. Cochran, 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct. App. 2006).

The "second step of this process does not demand an explanation that is persuasive, or even plausible." Purkett, 514 U.S. at 767-68. The South Carolina Supreme Court recognized that the proponent of the strike does not carry "any burden of presenting reasonably specific, legitimate explanations for the strikes. Adams, 322 S.C. at 123, 470 S.E.2d at 371; see Purkett, 514 U.S. at 768 (finding unless discriminatory intent is inherent in the explanation, it is deemed race neutral at step two).

During the third step, the moving party "must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination." Cochran, 369 S.C. at 315, 631 S.E.2d at 298 (citing Adams, 322 S.C. at 124, 470 S.E.2d at 372). "This burden is generally established by showing similarly situated members of another race were seated on the jury." Id. "Unless the discriminatory intent is

inherent in a fundamentally implausible explanation, the opponent of the strike must make a bona fide showing that the proponent of the strike seated a juror who shared nearly every quality with the struck juror other than race to establish pretext." Id.

However, "[u]nder some circumstances, the explanation given by the proponent may be so fundamentally implausible the trial judge may determine the explanation was mere pretext, even without a showing of disparate treatment." Edwards, 384 S.C. at 508-09, 682 S.E.2d at 822. Accordingly, if the trial judge determines the race and gender neutral explanations were mere pretext, then the trial court must quash the jury panel and select a new jury. Cochran, 369 S.C. at 315, 631 S.E.2d at 298; see Riddle v. State, 314 S.C. 1, 14, 443 S.E.2d 557, 565 (1994) (finding courts will examine the totality of the facts and circumstances in the record to determine if a Batson violation has occurred); see also State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990) (finding the composition of the jury panel is also a factor that may be considered when determining whether a party engaged in purposeful discrimination).

In this case, the totality of the facts and circumstances surrounding the selection of the jury demonstrates that a Batson violation occurred and that the jury panel should have been quashed. See generally State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009) (finding "[w]hether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record").

First, the Solicitor only struck young black male or females, which proves a "pattern" of solely striking jurors from a single racial group. Cf. Cochran, 369 S.C. at 315, 631 S.E.2d at 298 (finding "we disagree with the State's argument that Appellants embarked on a "pattern" of striking jurors because of their race. Appellants did not use their

peremptory challenges solely on jurors from a single racial group"); see also State v. Oglesby, 298 S.C. 279, 379 S.E.2d 891 (1989) (finding a prosecutor's asserted reason for excluding prospective jurors of one race is a pretext for racial discrimination in light of a failure to strike jurors of another race who differed in no significant way from the jurors who were excused).

Second, although demeanor can be considered race neutral,[1] "reliance upon non-verbal conduct or demeanor may mask a racially motivated strike" and the courts should carefully examine such explanations. Haynes v. Union Pac. R.R. Co., 395 S.W.3d 192, 200 (Tex. Ct. App. 2012). "Peremptory strikes may legitimately be based on nonverbal conduct, but permitting strikes based on an assertion that nefarious conduct 'happened' without identifying its nature and without any additional record support, would strip Batson of meaning. Verification of the occurrence may come from the bench if the court observed it; it may be proved by the juror's acknowledgement; or, it may be otherwise borne out by the record as, for example, by the detailed explanations of counsel." Id.; see also Cochran, 369 S.C. at 318, 631 S.E.2d at 300 (finding "if a party were able to overcome every Batson challenge by merely claiming that a prospective juror's demeanor and disposition were somehow inappropriate, the equal protection principles underlying Batson would be weakened. The trial court serves an important gatekeeping role in this regard. . . .)

While the State said that Juror 39 just looked like she had an attitude and would not participate in jury discussions, nothing in the record supports the State's assertions. The record demonstrates that the Trial Court did not observe such behavior of Juror 39. Tr. 28, ll. 13-19. In ruling against defense counsel's assertion that the State's reason was pre-

[1] See State v. Wilder, 306 S.C. 535, 413 S.E.2d 323 (1991).

textural, the Trial Court did not even credit Juror 39's attitude in rejecting the Batson challenge and rather ruled that "appearance in Court" was not enough for the Trial Court to set the jury aside. Tr. 29, ll. 12-14. See Haynes, 395 S.W.2d at 201 ("[T]he record does not show that the trial court credited the non-verbal conduct explanation in rejecting the Batson challenge. Although [the defendant']s lawyer described Juror No. 3's "pleasant smile," the trial court made no express findings to confirm this account, and the record contains no other indication of Juror No. 3's demeanor.").

The record does not demonstrate a legally sufficient racially neutral explanation for the exclusion of Juror 39, and the Trial Court erred in denying the Batson challenge as to Juror 39.

The Trial Court further erred in denying the Batson challenge as to Juror 101. While at first noting that she had a lip ring, the solicitor then began to discuss the area in which the juror lived before stopping himself short to say that he did not think she would participate in jury discussions. Tr. 28, ll. 307. The invocation of a juror's residence as justification for a strike without further explanation, such as the juror living near the defendant, is nothing more than a surrogate for racial stereotypes and as such runs afoul of the guarantees of equal protection. U.S. v. Bishop, 959 F.2d 820, 825-27 (9th Cir. 1992), overruled on other grounds by, U.S v. Nevils, 598 F.3d 1158 (9th Cir. 2010).

An explanation for a jury strike is not deemed race-neutral if a discriminatory intent is inherent. Robinson v. Bon Secours St. Francis Health Sys., Inc., 382 S.C. 224, 227, 675 S.E.2d 744, 746 (2009). If the stated reason is inherently discriminatory, the inquiry ends and a pretext inquiry is obviated. Id.

Here, the solicitor invoked Juror 101's residence in his explanation for striking her

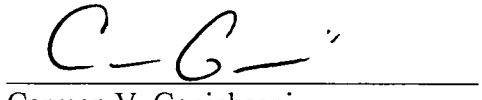
and as such the solicitor's decision was inherently race-based and failed the second prong of Batson "because a juror's residence is a substitute for the juror's probable race and stereotypes of experiences that can be ascribed to that race." See Williams v. State, 125 P.3d 627, 635 (Nev. 2006). Accordingly, the Trial Court also erred in rejecting Tyner's Batson challenge with respect to Juror 101.

Where the State improperly embarked on a pattern of striking young black jurors and further struck two of the jurors for racially discriminatory reasons, the Trial Court erred in refusing to grant Tyner's Batson motion and in refusing to quash the jury.

CONCLUSION

Based upon the foregoing arguments, Appellant James C. Tyner respectfully requests this Court to grant his directed verdict motion on the offense of assault and battery of a high and aggravated nature under S.C. CODE ANN. § 16-3-600(B)(1). In addition, Appellant also respectfully requests this Court to reverse his remaining convictions and remand the case for a new trial where the Trial Court erred in granting Appellant's Batson motion.

Respectfully submitted,



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This 7th day of June, 2013.