

**RECEIVED**

**Dec 22 2022**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

On Petition for Writ of Certiorari to Horry County  
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Trial Judge  
The Honorable Robert E. Hood, PCR Judge

---

Appellate Case No. 2022-000332

---

ODOM BRYANT..... Petitioner.

v.

STATE OF SOUTH CAROLINA..... Respondent.

---

**RETURN TO PETITION FOR  
WRIT OF CERTIORARI**

---

ALAN WILSON  
Attorney General

CHELSEY F. MARTO  
Assistant Attorney General  
S.C. Bar # 104191

Post Office Box 11549  
Columbia, S.C. 29211  
(803) 734-3737

ATTORNEYS FOR RESPONDENT

**TABLE OF CONTENTS**

STATEMENTS OF ISSUE ON CERTIORARI.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS.....4

STANDARD OF REVIEW.....8

ARGUMENT.....9

The post-conviction relief court properly determined that Petitioner failed to establish  
counsel was ineffective for failure to object to the Court shifting the burden of proof in  
the State’s *Batson* motion when the burden of proof was not shifted and where no  
prejudice was suffered because the Court would have granted the motion with the correct  
burden of proof applied and because Petitioner would have been found guilty, regardless  
of who was seated on the jury.....9

CONCLUSION.....19

**STATEMENTS OF ISSUE ON CERTIORARI**

**Petitioner's Statement of Issue on Certiorari**

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*?

**Respondent's Counterstatement of Issue on Certiorari**

Did the post-conviction relief court properly determine that Petitioner failed to establish counsel was ineffective for failure to object to the Court shifting the burden of proof in the State's *Batson* motion when the burden of proof was not shifted and where no prejudice was suffered because the Court would have granted the motion with the correct burden of proof applied and because Petitioner would have been found guilty, regardless of who was seated on the jury?

## STATEMENT OF THE CASE

Odom Bryant (hereafter “Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. During its October 2013 term, the Horry County Grand Jury indicted Petitioner for first degree burglary (2013-GS-26-04316) and two counts of murder (2013-GS-26-04317 and -04318). Petitioner was represented by Dean Mureddu and Casey Brown, Esquires (hereafter “Counsel”). Bradley Richardson and Monica Wooten of the Fifteenth Circuit Solicitor’s Office prosecuted the case. On January 12-15, 2015, Petitioner proceeded to trial before the Honorable Benjamin Culbertson, circuit court judge, and a jury for the two counts of murder alone. Petitioner was found guilty on both counts and Judge Culbertson sentenced Petitioner to life imprisonment.

Petitioner filed a timely notice of appeal on January 23, 2015, that was perfected by Reid T. Sherard, Esquire. The parties proceeded to oral arguments on May 9, 2017. Petitioner was represented by Attorney Sherard and Caroline M. Scrantom, Esquire, of the South Carolina Attorney General’s Office, represented the State. By opinion decided July 26, 2017, the South Carolina Court of Appeals affirmed Petitioner’s convictions. *State v. Bryant*, Op. No. 2017-UP-302 (S.C. Ct. App. filed July 26, 2017). The remittitur was issued on August 11, 2017.

Petitioner timely filed a PCR application on May 23, 2018. Respondent made its return on August 21, 2018. The evidentiary hearing occurred on October 27, 2021, before the Honorable Robert E. Hood. Matthew S. Swilley, Esquire was Petitioner’s attorney. Chelsey F. Marto, Esquire of the South Carolina Attorney General’s Office represented Respondent.

The Court issued an order of dismissal, denying Petitioner’s PCR application and remanding him to the custody of South Carolina Department of Corrections on March 2, 2022.

Thus, the request for relief was denied. Petitioner appeals from the denial of relief based upon the allegation that trial counsel was ineffective for failure to argue that the trial court improperly shifted the burden of proof to defense counsel in deciding the State's *Batson* motion.

## STATEMENT OF FACTS

Petitioner was convicted for the execution-style murders of victims Amos and Thomas Hatfield at the direction of Sandy Lee Locklear, Amos' wife, who orchestrated the executions to collect from Amos' life insurance policy. Locklear called 911 early morning of August 19, 2012, to report an ongoing burglary and a shooting. (App. 156, 160-61). Arriving minutes later, law enforcement scanned the premises and witnessed two men lying face-down through the home's back door. (App. 164). Amos had a single gunshot wound to the back of the head and an additional laceration on his forehead. (App. 228). A green pillow lay several inches in front of his head. The pillow was drenched with blood, and it bore a burn mark surrounding a through-and-through circular hole. The blood and burn mark indicated that the fatal shot was fired flush against the pillow, which was simultaneously placed against the back of the victim's head. (App. 229, 232).

Amos' son's, Thomas', body was found several inches away from Amos'. (App. 233). Thomas laid prone, and his injuries were remarkably similar to Amos' in that he sustained a laceration to his forehead and a single gunshot wound to the back of the head. (App. 235-36). A coffee table laid, flipped upside down, to the immediate left of the victim's body. (App. 236, 454). As with Amos, blood splatter and a pillow with a burnt through-and-through hole were found three to four inches in front of Thomas' head. (App. 236-38).

Hearing a woman's voice calling for assistance, the first responding officer approached a bedroom and found Locklear on the bed in nightclothes, appearing distraught. (App. 165-66, 173). Locklear exhibited no signs of an assault beyond her contention that she was bound with tape and sexually assaulted. (App. 214-15). She was not bound when the officers arrived, but one officer witnessed Locklear pull a piece of tape off of herself. (App. 173-75). After clearing the

residence and finding no other occupants, the officer assisted Locklear from the bedroom to his patrol car. (App. 167-68). Law enforcement collected an off-white brassiere and a pair of black “stretched” underwear from the bed. They considered both items damaged and potential evidence of the sexual assault that Locklear alleged occurred. (App. 256-57).

An inspection of the crime scene returned a piece of black tape cast off in the hallway and a similar roll of tape on a shelf nearby. (App. 245-48). A first aid kit was spilled out of a nearby toiletry cabinet. (App. 249-50). The remainder of the mobile home showed little to no sign of struggle or disarray; no beds were flipped or drawers emptied. (App. 251-55). Additionally, law enforcement found no signs of forced entry. (App. 218, 221).

Within hours of the 911 call, law enforcement located a burned vehicle abandoned roadside, approximately five miles away from the crime scene. (App. 278, 367). Locklear claimed her assailant stole the vehicle when he left the scene. (App. 367). Though completely burned and containing no contents important to the investigation, the VIN number on the burned sedan matched the car on loan to Locklear. (App. 279, 281-82). Locklear’s car dealership loaned her the vehicle while her own was serviced. (App. 370).

Law enforcement took Locklear to the hospital because of her alleged sexual assault. Afterward, she went to the station and was questioned, first as a victim and witness and then, as questioning continued, as a suspect post-*Miranda* warnings, because the leads provided proved false when investigated. (App. 373-77). After questioning, Locklear was charged with two counts of murder. (App. 376-77). During her interrogation, Locklear provided the names of two suspects: Nehemiah James Evans, and a second she knew by his street name, “PooPoo”, who was later identified as Petitioner. (App. 377). Petitioner assisted in Evans’ landscaping business and, together, they cut the grass at Locklear’s house. (App. 377, 430). Locklear informed law

enforcement that Petitioner and Evans frequented the Vasco convenience store near her house. (App. 430). The store's surveillance footage showed Petitioner arriving at the store at 11:06 on the same morning as the murders with a pearl-handled gun at his waistband. (App. 431-34).

The investigation revealed that Locklear lived in Tabor City, North Carolina, in a home purchased for her by her husband, Amos. (App. 340-41). After hearing about the murders, Faye Hunt, Locklear's cousin and friend, voluntarily informed law enforcement of Locklear's living arrangement and marriage. (App. 343). Additionally, Hunt told law enforcement about a life insurance policy that she witnessed Amos hand to Locklear for safekeeping. (App. 342). Amos left the Tabor City home that night, and Locklear proclaimed to Hunt that "if that son-of-a-bitch died today [she'd] be a rich bitch tomorrow." (App. 342). When law enforcement executed a search warrant on the Tabor City home, they located the life insurance policy naming Locklear and Amos' daughter as beneficiaries. (App. 419-20).

Hunt told law enforcement that Locklear offered to sell Hunt's boyfriend a small, pearl-handled pistol about five months prior to the murders, which Locklear took from the top of her refrigerator and showed to Hunt. (App. 344-45). That pistol matched the description of a pistol that Amos' brother, Clayton Hatfield, loaned to Amos several years prior to the murder. Amos never returned the pistol to Clayton. Clayton described the pistol as a white or pearl-handled .25 caliber Lorcin. (App. 325-26). Investigators did not find the pistol or any other firearms in the Hatfield's mobile home during the investigation. (App. 252). However, photographs of Petitioner entering the convenience store revealed a pearl-handled pistol in his pocket. (App. 434-35).

United States Marshals took Petitioner into custody about a month after the incident. (App. 437). Petitioner provided a recorded voluntary statement to law enforcement while in custody. (App. 440). Initially, Petitioner was not forthcoming and asked to stop the interview so

he could talk to a lawyer. (App. 463). Shortly thereafter, Petitioner voluntarily reinitiated the interview after being re-advised of his right to counsel. (App. 442-44).

Ultimately, Petitioner divulged his participation in the incident. Petitioner admitted he knew Evans because they cut grass together, and he met Locklear through Evans' landscaping venture. (App. 472). On the night of the incident, Evans enlisted Petitioner's help and the two met with Locklear. (App. 474-75). Together they went to the Hatfield's home "to scare a dude up"—meaning Thomas—as a favor for Locklear. (App. 476-77). Locklear signaled Petitioner to enter the back door through texts. (App. 191-93, 477-78). Petitioner stated he did not expect any payment for his participation. (App. 478). Despite bringing a baseball bat along, he did not expect anyone to be harmed. Petitioner maintained that he did not know anyone had a gun when he first entered the mobile home. Petitioner was also able to confirm that no one subjected Locklear to sexual assault. (App. 479-80, 484). As to the murders, Petitioner stated that Locklear shot the victims while he was in a back bedroom looking through the residence. (App. 482). Petitioner left quickly after the gunshots, taking nothing but the baseball bat and the Kia they arrived in. (App. 485). Petitioner admitted to burning the Kia. (App. 485).

## STANDARD OF REVIEW

The standard of review for PCR matters depends on the specific issues before the appellate court. *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). Overall, reviewing courts “give[] great deference to the PCR court’s findings of fact and conclusions of law”, *Dempsey v. State*, 363 S.C. 365, 368, 610 S.E.2d 812, 814 (2005), with the petitioner shouldering the burden of proof. Rule 71.1(e), SCRCPP; *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000); *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Further, a PCR court’s findings will be upheld if there is “any evidence of probative value sufficient to support them.” *Id.* Reversal of the lower court’s findings occurs only if no probative evidence to support the findings. *Pierce v. State*, 338 S.C. 139, 526 S.E.2d 222 (2000). Courts only conduct a *de novo* review if evaluating questions of law. *Smalls*, 422 S.C. at 180-81, 810 S.E.2d at 839-40; *Goins v. State*, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012).

“The trial court’s findings regarding purposeful discrimination are accorded great deference and will be set aside on appeal only if clearly erroneous.” *State v. Haigler*, 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999). “This standard of review, however, is premised on the trial court following the mandated procedure for a *Batson* hearing.” *State v. Cochran*, 369 S.C. 308, 312-13, 631 S.E.2d 294, 297 (Ct. App. 2006). Thus, if this Court finds that the proper *Batson* hearing procedure was not followed at the trial level, it will exercise its plenary review to answer the question of law. *Id.*

## ARGUMENT

On appeal, Petitioner argues the PCR court erred in denying him relief because Counsel was ineffective for shifting the burden of proof to Applicant during the State's *Batson* motion. However, the PCR court properly rejected this argument because the burden of proof was not shifted and no prejudice was shifted because the Court would have granted the *Batson* motion with the correct burden of proof applied and, regardless of who was on the jury, Petitioner would have been found guilty. These findings are not controlled by an error of law and are supported by probative evidence in the record. Consequently, this Court should deny certiorari.

In a PCR action, the petitioner bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an petitioner asserts ineffective assistance of counsel as a ground for relief, the petitioner must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the petitioner must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the petitioner must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the

range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the petitioner so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the petitioner as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

The Supreme Court held in *Batson v. Kentucky*, 476 U.S. 79 (1986) that the equal

protection clause prohibits a prosecutor from striking jurors solely on account of their race. The prohibition applies to both parties in criminal cases. *Georgia v. McCollum*, 505 U.S. 42, 59 (1992). The rule was further extended to prohibit gender discrimination in jury selection. *J.E.B. v. Alabama*, 511 U.S. 127, 130-31 (1994) (“Today we reaffirm what, by now, should be axiomatic: intentional discrimination on the basis of gender by state actors violates the Equal Protection Clause . . .”).

A three-step procedure should be followed when an opponent raises a claim that a jury strike was exercised in violation of the Equal Protection Clause. First, the moving party must make a *prima facie* showing the challenge was based on race or gender. Provided an adequate showing was made, the trial court must require the challenged party to provide a race or gender-neutral explanation for the challenge. Last, the trial court must determine if the moving party has proven purposeful discrimination. *State v. Giles*, 407 S.C.14, 18, 754 S.E.2d 261, 263 (2014).

For the second step of the procedure, the explanation must be a “a clear and reasonably specific explanation of [the] legitimate reasons for exercising the [jury strike].” *Miller-El v. Dretke*, 545 U.S. 231, 239 (2005). However, the explanation need not be persuasive or even plausible. *Giles*, 407 S.C. at 21, 754 S.E.2d at 265.

At the third step, the moving party must show the facially race- or gender-neutral reason was mere pretext to engage in purposeful discrimination. *State v. Cochran*, 369 S.C. 308, 315, 631 S.E.2d 294, 298 (Ct. App. 2006). This Court explained this step as follows:

The opponent of the strike carries the ultimate burden of showing purposeful discrimination and must demonstrate the pretextual nature for the stated reason for the strike. . . . This burden is generally established by showing similarly situated members of another race were seated on the jury.

*Id.* (internal citations and quotation marks omitted). The burden of persuasion during a *Batson* motion always remains on the moving party. *State v. Evins*, 373 S.C. 404, 415, 645 S.E.2d 904,

909 (2007).

This third prong constitutes the State’s opportunity to make its case for discrimination. To establish pretext, the movant “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 or gender. *Id.* In other words, the movant must establish that his opponent struck potential jurors whom were similarly situated to seated jurors. *State v. Haigler*, 334 S.C. at 629, 515 S.E.2d at 91; *State v. Edwards*, 384 S.C. 504, 508-09, 682 S.E.2d 820, 822 (2009). Similarly situated does not mean “identical in all respects.” *State v. Scott*, 406 S.C. 108, 115, 749 S.E.2d 160, 164 (Ct. App. 2013). “Rather, the potential jurors need only alike in all relevant aspects.” *Id.* (internal quotations omitted). The inquiry is focused on “whether there are meaningful distinctions between the individuals compared.” *Id.* Sometimes, the neutral ““explanation given by the proponent may be so fundamentally implausible that the judge may determine . . . that the explanation was mere pretext even without a showing of disparate treatment.”” *State v. Haigler, supra* (quoting *Payton v. Kears*, 329 S.C. 51, 55, 495 S.E.2d 205, 207 (1998)).

Our courts have defined when counsel may selectively utilize preemptory strikes among jurors who appear similarly situated. Case law recognizes a discernable difference between striking a potential juror who is actively employed versus one who is retired or unemployed. *See State v. Williams*, 379 S.C. 399, 402-03, 665 S.E.2d 228, 230 (Ct. App. 2008) (“employment, or lack of it, is a well-understood and recognized consideration in the exercise of preemptory challenges”). And it is not implausible that “counsel may draw a distinction between the employment status of a prospective juror and the employment status of the spouse [or family and friends] of a prospective juror.” *Id.*; *State v. McCray*, 332 S.C. 536, 506 S.E.2d 301 (1998). Counsel may also exercise strikes based upon his perception of jurors’ differing job

responsibilities. *See State v. Scott*, 408 S.C. 108, 749 S.E.2d 160 (Ct. App. 2013) (sufficient distinction between a teacher and a warehouse manager to justify striking one but not the other).

The proponent of a peremptory strike is required to offer a race-neutral explanation for using the strike once the other party challenges the strike. *Purkett v. Elem*, 514 U.S. 765 (1995). The opponent of the peremptory strike carries the ultimate burden of persuading the trial court that the other party exercised strikes in a discriminatory manner. *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996).

“Unless a discriminatory intent is inherent in the [State’s] explanation, the reason offered will be deemed race neutral.” *Purkett v. Elem*, 514 U.S. 765, 768 (1995) (quoting *Hernandez v. New York*, 500 U.S. 352, 360 (1991)).

The defendant bears the burden of proving the State’s neutral reasons for striking the juror is pretext. *State v. Kelley*, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). This Court explained that for this step, “The opponent of the strike carries the ultimate burden of showing purposeful discrimination and must demonstrate the pretextual nature for the stated reason for the strike. . . . This burden is generally established by showing similarly situated members of another race were seated on the jury.” *Id.* (internal citations and quotation marks omitted). “[T]he uneven application of a neutral reason does not automatically result in a finding of invidious discrimination if the strike’s proponent provides a race or gender neutral explanation for inconsistency.” *State v. Casey*, 325 S.C. 447, 454, 481 S.E.2d 169, 173 (Ct. App. 1997).

“However, the uneven application of a neutral reason does not automatically result in a finding of invidious discrimination if the strike’s proponent provides a race or gender neutral explanation for inconsistency.” *State v. Casey*, 325 S.C. 447, 454, 481 S.E.2d 169, 173 (Ct. App. 1997). The defendant bears the burden of proving the State’s neutral reasons for striking the juror

is pretext. *State v. Kelley*, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995).

Evaluation of the responding party's credibility lies within the trial court's province. *See State v. Shuler*, 344 S.C. 604, 615-616, 545 S.E.2d 805, 810-11 (2001) ("often the demeanor of the challenged attorney will be the best and only evidence of discrimination and 'evaluation of the prosecutor's mind lies peculiarly within a trial judge's province'" (quoting *Hernandez v. New York*, 500 U.S. 352, 365 (1991))).

The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. *State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). As our Supreme Court has explained:

Typically the decisive question becomes whether counsel's race-neutral explanation for a peremptory challenge should be believed. . . . [T]here is seldom much evidence in the record bearing on that issue, and the trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous.

*State v. Evins*, 373 S.C. 404, 415-16, 645 S.E.2d 904, 909-10 (2007) (quoting *State v. Cochran*, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006)).

At trial, the State raised a *Batson* challenge because Counsel struck all white people, all but one were male, and acknowledged that only one white male and a few white females were not struck. The State made a *prima facie* showing by pointing out this pattern to the trial court. While acknowledging that Counsel sat one white male and "several" white females on the jury without use of peremptory strikes, the State motioned the court to conduct the *Batson* hearing to determine whether Counsel struck the jurors as a result of impermissible bias. (App. 32-33).

*Batson* procedure dictates that the defense's initial response *is* the giving of its race-neutral reason for each strike, for "[a]fter a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation." *E.g.*, *State v. Rayfield*, 369 S.C. 106, 112,

631 S.E.2d 244, 247 (2006). Given the pattern in Counsel’s striking predominately white men, the trial court appropriately moved on to *Batson*’s step two. *Purkett v. Elem*, 514 U.S. 765, 767, 115 S.Ct. 1769, 1770 (1995).

Counsel gave race neutral reasons for striking the individuals he struck.<sup>1</sup> (App. 33-35). The State responded with counter examples, to which Counsel admitted that he often strikes individuals based on their demeanor and his instinct about potential jurors. (Tr. 36-38). The Court granted the motion. (Tr. 38). The trial court appropriately navigated the trifurcated process prescribed by *Batson* and its progeny. Counsel is not deficient for failing to object to the Court following proper procedure.

Petitioner was not prejudiced by any deficiency for two reasons: first, because the trial

---

<sup>1</sup> Below were Counsel’s explanations regarding why he struck certain jurors:

*Juror 259*: Counsel struck this white male because he appeared to be a comptroller or had “some sort of government affiliated job” and counsel sought “to avoid anyone who worked in the field [of] government related [jobs]” due to the number of law enforcement and other government officials related to Petitioner’s trial. (App. 33).

*Juror 199*: Counsel struck this white male because he worked “as an active security guard” and thus was “quasi law enforcement.” (App. 33).

*Juror 26*: Counsel struck this white male because his wife “had some affiliation” as a youth pastor. (App. 34).

*Juror 42*: Counsel struck this white female, because she was an executive officer for telephone provider HTC. Counsel stated that he does not “know that you would call HTC a government agency, but in the utility range, again, those are official duties.” Counsel also cited that he struck this juror in relation to the cell phone evidence he anticipated challenging at trial. (App. 34).

*Juror 49*: Counsel struck this white male because he was affiliated with the Army National Guard, stating he was: “somehow affiliated with the military, and [thought] probably not only is the victim in this case . . . one of the retired military, but so many law enforcement officers you find are from that background as well.” (App. 34-35).

*Juror 121*: Counsel exercised a final strike on this white male based upon his demeanor, stating that his body language indicated a predisposition to convict. (App. 35).

judge made the correct decision in granting the *Batson* given the totality of the facts and circumstances provided and second, because the redrawing from the jury pool did not impact the outcome at trial.

The Court reached the proper conclusion regarding the *Batson* motion because Counsel's neutral reasons were not consistently applied. *State v. Oglesby*, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989) (finding race-neutral reason for strike proven to be pretext where not applied in neutral manner); *State v. Stewart*, 413 S.C. 308, 317-18, 775 S.E.2d 416, 421 (Ct. App. 2015) (same). Counsel articulated that he struck the male comptroller because he worked for a governmental agency and sought to avoid anyone who worked in a government-related field because of any bias related to their potential interaction with "numerous law enforcement and other government officials." (App. 33). However, Counsel did not strike a female Juror 50, who was employed by Waccamaw Mental Health of the South Carolina Department of Mental Health. (App. 36). Additionally, as ruled by the court, Counsel sat two females with personal and spousal ties to both the military and law enforcement yet struck men because of employment with the National Guard or as a security guard. (App. 36, 38-39).

Regarding Juror 49 specifically,<sup>2</sup> Counsel stated that he struck the National Guardsman because military affiliation may have some bearing on his view of retired military personnel, noting that one victim and some State's witnesses were also retired military. (App. 34). No distinction endures between Female Juror 13, male Juror 49, and the cited gender-neutral bias

---

<sup>2</sup> Since Juror 49 was the only challenged juror who received a seat on the jury, Respondent requests this Court limit its analysis to Juror 49. *State v. Scott, infra* at 111, 749 S.E.2d at 162; *State v. Edwards, infra* at 509, 682 S.E.2d at 823 ("If a trial court improperly grants the State's *Batson* motion, but none of the disputed jurors serve on the jury, any error in improperly quashing the jury is harmless because a defendant is not entitled to the jury of her choice."). Even on limited review, Counsel's race-neutral reason for striking Juror 49 discloses that he employed an impermissible bias.

towards Petitioner's case. Juror 13 was retired military in her own right, yet Counsel did not strike this female. Counsel stated he sought to avoid seating any juror who may be sympathetic to the retired military associated with Petitioner's trial, but sat Juror 13, who was retired military. (App. 34-35).

Counsel's neutral reason for striking Juror 49 does not overcome the pretextual nature of his striking three white men over similarly situated white women. The trial court correctly pointed out that Counsel did not offer a valid reason "as to why [he] seated females that have military ties and didn't seat males that had military ties." (App. 39). Counsel failed to point out any distinction rationalizing the apparent pretext. Counsel never articulated any difference between a potential juror being active or retired military or argue he appreciated any difference between a potential juror with his or her own military résumé and a juror having a spouse with an analogous association. In fact, Counsel candidly told the Court "when I look at this . . . I'll look at a juror and look at their demeanor and get a feel for . . . what side they might be inclined to sympathize with." (App. 35). He continued: "[t]hat is the best I can give you on that individual. It was just a feeling towards this individual." (App. 35). This was confirmed by Counsel's testimony at the PCR hearing. (App. 648-50). Striking jurors based upon instinct is inherently *not* a legitimate reason for striking some jurors at the exclusion of others. Thus, Petitioner was not prejudiced by any failure of Counsel to object for burden shifting because even with the correct burden being applied, the State still would have prevailed on the *Batson* motion.

Additionally, Petitioner suffered no prejudice because of the strength of the State's case at trial.<sup>3</sup> Co-defendant Locklear incriminated him during her police statement. (App. 377).

---

<sup>3</sup> Petitioner contends that prejudice is presumed not by the outcome at trial, but by the outcome of the *Batson* motion. This argument is entirely reliant on extra-jurisdictional and, accordingly, non-controlling law.

Petitioner was captured on video surveillance with co-defendant Vasco earlier that day, carrying a pearl-handled gun. (App. 431-35). This distinctive gun matched a gun loaned to the victim, Locklear's husband, by his brother. (App. 325-26). Petitioner gave a police statement, admitting involvement in the murders through the recruitment by Locklear into "scar[ing] a dude up." (App. 476-78, 482). Thus, Petitioner suffered no prejudice in this matter because regardless of who was seated on the jury, the trial would have produced a guilty verdict.

**CONCLUSION**

For the reasons stated above, this court should deny certiorari and affirm the PCR Court's findings that Petitioner had effective assistance of counsel. However, if this Court decides to grant the petition of writ of certiorari, Respondent respectfully requests permission to more fully brief the issues herein.

Respectfully submitted,

ALAN WILSON  
Attorney General

CHELSEY F. MARTO  
Assistant Attorney General

BY: /s Chelsey F. Marto  
Chelsey F. Marto

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-0386

ATTORNEYS FOR RESPONDENT

December 22, 2022