

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Sumter County
W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2011-199366

RECEIVED

SEP 06 2013

THE STATE,

RESPONDENT SC Court of Appeals

v.

DANIEL D'ANGELO JACKSON,

APPELLANT

**RESPONDENT'S MOTION TO HOLD INITIAL BRIEF OF RESPONDENT
IN ABEYANCE PENDING RECEIPT OF TRANSCRIPT
OF JUROR PROCEEDINGS OF AUGUST 8, 2011**

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The Respondent, above-named, hereby make a motion to this Court to hold in abeyance the time for filing the Initial Brief of Respondent and designation of matter. The Brief is currently due September 6, 2013. This request is made due to the fact that the transcript of the preliminary jury qualifications proceedings were not included in the trial transcript received from the South Carolina Office of Appellate Defense to this office and Respondent submits that this record is relevant and available. The transcript was ordered by this office from Ms. Elizabeth B. Harris on September 5, 2013.

A.

Respondent submit that abeyance is necessary because this preliminary transcript is

relevant to this appeal. In the Appellant's fifth issue presented, he asserts a violation of Batson v. Kentucky, 476 U.S. 79(1986):

- V. Did the trial court err in refusing to quash the jury panel pursuant to Appellant's *Batson* motion where the State's explanation for striking two African-American jurors was that the jurors did not want to serve on the jury, and where the State also failed to provide an explanation for striking another African-American juror?

Initial Brief of Appellant, p. 1, 3-4, 22-26.

B.

The issue involves the use of peremptory challenges concerning the use on eight African American jurors. The material will be relevant because the Solicitor relied upon information and answers that occurred during this excluded proceeding in addressing his basis for the peremptory strikes. In particular, Assistant Solicitor John Meadors stated the following:

MR. MEADORS: Judge, as to juror number 64, Mr. Griffin was assisting me in this, and he has pending burglary charges. Everyone on this list had had a pending or a serious conviction or charge -- I don't care if they're black, white, or purple -- I struck them. Anything beside a traffic offense, which I never use, but if there's a serious offense out there that's either still pending or convicted or we're not sure, I struck them. I have a burglary charge for this individual. That's why I struck him.

THE COURT: Mr. Green, there was burglary charge pending?

MR. MEADORS: Yes, sir. That's juror number 64.

THE COURT: Right.

MR. MEADORS: **Judge, juror, juror number 157. Judge, as we approached -- I've done this my whole career. People that want off, I don't put on. There were several people that wanted off Your Honor transferred. This next juror, 157, wanted off. I believe she was the attendance coordinator. It was obvious to me -- not, not disagreeing with you keeping her on, Judge, but it was obvious to me she wanted off. And everyone that wanted off, that is my reason that I chose not to present her. Your Honor, number 30 has charges, and I don't know. They're from Baltimore,**

but they're charges of possession of heroin, intent to distribute, possession of Valium with intent to distribute, possession of paraphernalia with intent to inject something, nuisance, conspiracy to violate the drug laws, possession of narcotics. That's why I struck her, Judge.

THE COURT: All right.

MR. WILDER: Your Honor, did he say she has a conviction for that?

THE COURT: She has pending charges showing up on her sheet. . . .

MR. MEADORS: As I said, everybody ---

MR. WILDER: She had pending charges?

THE COURT: She has pending charges.

MR. WILDER: All right.

MR. MEADORS: I forgot where I was now, Judge.

THE COURT: Mr. Thomas.

MR. MEADORS: 167. I struck everyone that came up unemployed, that stated they were unemployed. And while we're at there, he is a black male, juror 166. Number right next to him, Judge, is a while male. He's unemployed. I struck him, too. **Juror number 46, Your Honor, has a -- came up, I believe came up when we were all present, said he had a gun charge that's pending. That's why I struck him. Juror number 32 also in my notes had said she did not want to serve. I had written that down. That was consistent with that.** And finally, juror number 28, Judge, fraudulent check convictions, false statement to obtain benefits convictions, other fraudulent check convictions, just convictions of fraud and deceit, and that's why I respectfully struck that juror. Again for the record, all of their strikes were exercised against white individuals. Your Honor, I think I provided a race-neutral reason for each one of them. We would respectfully ask you keep this jury. Thank you.

Tr.p. 48, l. 8 - p.50, l. 19.

C.

Respondent, in review of the trial transcript determined that the information revealed in

bold above concerning the basis for the strikes of juror numbers 32, 46, and 137 were based upon responses and information presented during the preliminary juror qualification of the entire voir dire on the first day of the term on August 8, 2011.

Upon determining this information, below-signed counsel contacted Assistant Solicitor Meadors and the Court Reporter concerning the existence and availability of these records. On September 4, 2013, the Court Reporter advised below-signed counsel that the records of that portion were available, but had not been transcribed yet. On September 5, 2013, below-signed counsel ordered the transcript of the proceeding.

Copies of the emails to the court reporter and Mr. Meadors are attached and incorporated herein by reference as well as the September 5, 2013 request letter to the court reporter.

II.

Counsel has contacted the office of opposing counsel, Appellate Defender Carmen V. Ganjehsani concerning her position on this motion. She advise below-signed counsel today by telephone that she had no objection to this request.

III.

Wherefore Respondents respectfully request the matter be held in abeyance pending the receipt of the transcript of the August 8, 2011 juror qualification proceedings.

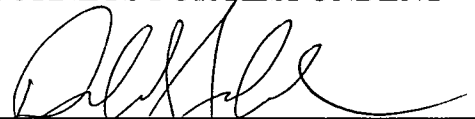
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
S.C. Bar #5758

ATTORNEYS FOR RESPONDENT

By: 

Donald J. Zelenka
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
803-734-6305

September 6, 2013





ALAN WILSON
ATTORNEY GENERAL

September 5, 2013

Elizabeth B. Harris
Court Reporter
414 Autumn Circle
Columbia, SC 29206

Re: *State v. Daniel D'Angelo Jackson*
2008-GS-43-993

Dear Ms. Harris:

Please provide this office with a copy of the transcript of the jury qualifications held before the Honorable William J. Young on August 8, 2011 at the Sumter County Courthouse.

If further information is needed please do not hesitate to contact me.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Senior Assistant Deputy Attorney General

/lbb

cc: Desiree Allen, S.C. Court Administration
Carmen Ganjehsani, Esquire

Don Zelenka

From: Don Zelenka
Sent: Wednesday, September 04, 2013 5:44 PM
To: 'eharris@sccourts.org'
Cc: john@mcwhirterlaw.com; 'cganjehsani@sciid.sc.gov'
Subject: State v. Daniel S. Jackson and State v. Reginald Canty - August 8, 2011 - Sumter - Judge Young - Preliminary Juror Voir Dire Proceedings.

To: Elizabeth B. Harris
Court Reporter

RE: Sumter – August 8, 2011 – Judge Young

Dear Ms. Harris:

I am handling this appeal involving State v. Daniel D. Jackson on behalf of the state. An issue being raised in the appeal by Jackson's counsel involves the selection of the jurors. The transcript that appellate defense provided begins **after** the Canty and Jackson case were called.

However, during the selection process Deputy Solicitor Meadors make reference to two of the potential jurors earlier requesting to be transferred or stating that they did not want to serve and other information about jurors concerning pending charges that was presented prior to the particular case being called. This preliminary material was not included in the transcript that I received. I need to learn the availability or the general jury qualification for that date.

Could you advise me whether you still have records of the preliminary voir dire of the jury pool on August 8, 2011. If so I will need to order it for the appeal. If it has already been provided to the SC Office of Appellate Defense, I would appreciate being advised.

Your attention to this is deeply appreciated. If you have questions, please contact me.

Don Zelenka

Donald J. Zelenka
Senior Assistant Deputy Attorney General
South Carolina Attorney General's Office
P. O. Box 11549
Columbia, S.C. 29211
803-734-3601
dzelenka@scag.gov

Don Zelenka

From: Don Zelenka
Sent: Thursday, September 05, 2013 8:48 AM
To: 'Harris, Elizabeth B.'
Cc: john@mcwhirterlaw.com; 'Lonnie Brawley'; cganjehsani@sccid.sc.gov
Subject: RE: State v. Daniel S. Jackson and State v. Reginald Canty - August 8, 2011 - Sumter - Judge Young - Preliminary Juror Voir Dire Proceedings.

Ms. Harris -

Thank you. We will be ordering it today.

Sincerely,

Don Zelenka

Donald J. Zelenka
Senior Assistant Deputy Attorney General South Carolina Attorney General's Office P. O. Box 11549 Columbia, S.C. 29211
803-734-3601
dzelenka@scag.gov

-----Original Message-----

From: Harris, Elizabeth B. [<mailto:EHarris@sccourts.org>]
Sent: Wednesday, September 04, 2013 11:21 PM
To: Don Zelenka
Subject: RE: State v. Daniel S. Jackson and State v. Reginald Canty - August 8, 2011 - Sumter - Judge Young - Preliminary Juror Voir Dire Proceedings.

Dear Mr. Zelenka,

I do indeed have the recording of the jury venire for that week, so feel free to order it at the address below.

Typically the only time that is transcribed is for a death penalty case, so that's why it wasn't included in the transcript you received. This will be my first time turning venire into text, so it should be interesting!

Cordially,
Elizabeth B. Harris, CVR-M
5th Judicial Circuit, At-large
414 Autumn Circle
Columbia, SC 29206

From: Don Zelenka [DZelenka@scag.gov]
Sent: Wednesday, September 04, 2013 5:41 PM
To: Harris, Elizabeth B.
Cc: john@mcwhirterlaw.com; cganjehsani@sciid.sc.gov

Subject: State v. Daniel S. Jackson and State v. Reginald Canty - August 8, 2011 - Sumter - Judge Young - Preliminary Juror Voir Dire Proceedings.

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803-734-3601
dzelenka@scag.gov

Don Zelenka

From: John Meadors <john@mcwhirterlaw.com>
Sent: Wednesday, September 04, 2013 6:12 PM
To: Don Zelenka
Subject: Re: State v. Daniel DeAngelo JACKSON - William Flexon Murdere Appeal

Don -

I do believe the court reporter was present and recorded this information. I will pull the closed file and see what is in there. Thank you and take care.

John

Sent from my iPhone

On Sep 4, 2013, at 5:20 PM, "Don Zelenka" <DZelenka@scag.gov> wrote:

John -

I am briefing this case. One of the issues is a Batson issue. In the transcript you give as a reason for two of the female jurors that they did not want to serve and assert that you write it done. Tr.p. 48-51. However, the transcript does not include any portion involving jurors request to be excused or transferred. It starts on Monday August 8, 2011 when you call the case.

The court reporter is Elizabeth Harris. Do you know if the preliminary portion of the court's inquiry with the general voir dire is recorded by her normally or in this instance. I just picked up on this in the record. Can you get back to me and let me know ASAP.



John Meadors

Attorney

Tel: 803-252-5523

Fax: 803-252-1248

& Associates john@mcwhirterlaw.com

McWhirter, Bellinger & Associates, P.A. • ,

This message contains confidential information and is intended only for DZelenka@scag.gov. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately if you have received this e-mail by mistake and delete this e-mail from your system. Finally, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.

Don Zelenka

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Don Zelenka

Donald J. Zelenka

Senior Assistant Deputy Attorney General South Carolina Attorney General's Office P. O. Box 11549 Columbia, S.C. 29211

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dzelenka@scag.gov

STATE OF SOUTH CAROLINA
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APPELLANT

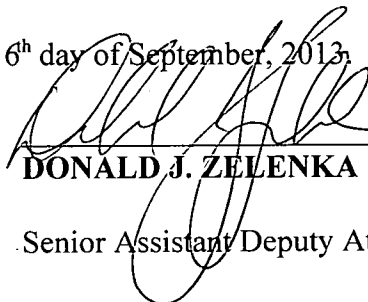
CERTIFICATE OF SERVICE

I, Donald J. Zelenka, hereby certify that I have served Respondents **Motion to Hold in**

Abeyance by Intra-Agency mail on:

Ms. Carmen V. Ganjehsani, Esquire
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201

by depositing a copy in the Intra-Agency Mail this 6th day of September, 2013.



DONALD J. ZELENKA
Senior Assistant Deputy Attorney General



ALAN WILSON
ATTORNEY GENERAL

September 6, 2013

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Daniel D'Angelo Jackson
Appellate Case No. 2011-199366

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of a Motion to Hold Initial Brief of Respondent in Abeyance in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Thank you for your consideration.

Sincerely,

Donald J. Zelenka
Senior Assistant Deputy Attorney General

DJZ/lbb
Enclosure

cc: Carmen V. Ganjehsani, Esquire

RECEIVED

SEP 06 2013

SC Court of Appeals