ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dillon County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMIEN INMAN,

APPELLANT

Appellate Case No. 2011-193887

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On May 13, 2010, a Dillon County Grand Jury indicted Appellant for murder (2009-GS-17-1210), possession of a weapon during a violent crime (2009-GS-17-1211), burglary first degree (2009-GS-17-1212), kidnapping (2009-GS-17-1213), armed robbery (2009-GS-17-1214), grand larceny (2009-GS-17-1215), and criminal conspiracy (2009-GS-17-1217). On December 13, 2010, Appellant was tried before the Honorable Thomas A. Russo and a jury. Kernard E. Redmond and Shipp Daniel represented the state, and Rosalind Sellers represented Appellant. R. 1. The jury found Appellant guilty of all charges. R. 303, line 10 – R. 304, line 5. Judge Russo sentenced Appellant to life without parole for murder, life without parole for burglary in the first degree, thirty years for kidnapping, thirty years for armed robbery, ten years for grand larceny, five years for possession of a weapon during the commission of a violent crime, and five years for conspiracy. He ordered the sentences to run consecutively. R. 316, line 25 – R. 318, line 4; sentence sheets.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

Larry Jason Turner, an investigator with the City of Dillon Police Department, testified regarding a statement made by Appellant subsequent to his arrest. R. 141, lines 21-22. According to Appellant's statement, he and his brother were walking down the road when they saw "the murderer," who threatened to kill Appellant and his brother if the two did not participate in the crime. Henry, presumably the murderer, went to the door of a house and asked the occupant for water. Henry told the occupant that he did not know how to turn the water on prompting the occupant to exit her home. Appellant tried to warn her, but Henry put the gun to his head. Henry pointed a gun at her head and instructed her to give him money. When she ran, he knocked her down and threatened to kill her. At Henry's instruction, Appellant drove the occupant's car to the back yard and Appellant's brother assisted Henry in placing her in the trunk.

Henry continued to threaten the two in order to obtain their cooperation. All three got into the car and drove to a wooded area. Henry dragged the occupant out of the trunk. Henry shot her twice in the head. After Henry threatened to shoot Appellant if Appellant's brother refused to help, Henry and Appellant's brother moved her body to the woods. Afterwards, Henry threatened to kill Appellant's brother and mother if he told anyone. Henry dropped Appellant at his home and again threatened him to be quiet. He also forced Appellant to hide a bag of shells at his house. R. 164, line 18 – R. 166, line 3.

John Henry Bridges testified on behalf of the state. Bridges pled guilty to murder, armed robbery, kidnapping, conspiracy, burglary in the first degree, grand larceny and possession of a weapon during a violent crime and received a forty-five year sentence. R. 251, lines 3-21. He testified that he ran into Appellant who asked if he wanted to rob

someone and showed him a small gun. The two then met with Appellant's brother. R. 253, lines 1-19. Appellant's brother then asked Appellant if he wanted to rob someone. R. 254, lines 6-15. The three then received a ride to the football stadium from Appellant's uncle. R. 254, lines 21-24.

Upon exiting the vehicle, the three saw the deceased in her yard. R. 254, lines 24-25. Bridges claimed the three concocted a plan to rob the deceased. The three jumped some ditches and arrived in her yard. They went to her door and asked for some water. The deceased directed them to the water faucet. Bridges told her he could not work the faucet and she exited her home. Appellant's brother hit her in the head with the gun. R. 256, line 11 – R. 257, line 14. Appellant's brother instructed Appellant and Bridges to go into the house to find items to steal. The two found nothing, but Bridges drank some tea from the refrigerator. R. 257, lines 16-20.

Appellant got the car keys and the two exited the house. At Appellant's brother's instruction, Appellant pulled the car to the backyard. Bridges and Appellant's brother placed the deceased in the trunk. The group left the residence in the deceased's car. R. 258, lines 6-19. They stopped on a dirt road. Appellant's brother and Bridges removed the deceased from the trunk. Bridges claimed Appellant "just ran up and shot her twice between the eyes and head. R. 259, line 21 – R. 260, line 1. According to Bridges he started to help drag the deceased's body into the woods, but he stopped because he "couldn't take [it]." R. 260, lines 19-23. The group then went riding in the car. R. 260, line 25 – R. 261, line 1.

Although Bridges was dropped off at a relative's home, but he created a ruse and left the house. R. 263, line 9; R. 264, lines 2-6. Bridges then met back up with Appellant and

his brother. The group continued to ride in the deceased's car. R. 264, lines 6-9; R. 265, lines 11-14. They dropped Appellant off at home because he had to go to school the next day. Bridges and Appellant continued to drive through the night. The two stole tags off a van to conceal the theft of the deceased's vehicle. Appellant's brother had the gun at this time as well. R. 267, line 22 – R. 269, line 5.

During the night, Appellant's brother and Bridges broke into an automobile at a trailer park. Bridges claimed the automobile's owner had stolen something from him in the past and he wanted to still something from her. He was unable to find anything in the car to take, however. R. 269, lines 6-18. The next morning the two took the car to a scrap yard in an attempt to get the car crushed. The scrap yard refused because the car was "hot" and the two did not have a license. Shortly thereafter, the two were chased by police. Eventually, the car wrecked on some railroad tracks, but the two continued to run on foot. Bridges had the gun in his possession and threw it while running. R. 270, lines 2-23. Bridges was arrested and gave a statement to police. R. 271, lines 2-3.

ARGUMENT

I. The trial judge erred in sentencing Appellant to life without parole for burglary in the first degree, a non-homicide offense, because Appellant was seventeen-years old at the time of the offense; thus, his sentence is cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.

Relevant facts

At the time of the offenses for which Appellant was charged and ultimately convicted, Appellant was seventeen-years old. R. 311, lines 18-19. The judge sentenced Appellant to life sentence without parole for burglary in the first degree – specifically, the judge stated: "you are to be committed to the state department of corrections for the remainder of your natural life." R. 317, lines 10-13; sentence sheet. Appellant did not object to the imposition of the sentence.

Discussion

The United States Supreme Court held life sentences for non-homicide crimes committed while the defendant was under the age of eighteen violated the Eighth Amendment to the United States Constitution. Graham v. Florida, 130 S.Ct. 2011 (2010). The Graham Court found that the cruel and unusual punishment clause of the Eighth Amendment forbids the states from determining at sentencing that a juvenile non-homicide offender will never be fit to reenter society. Id. at 2030. Instead, juvenile non-homicide offenders must be given a meaningful opportunity to obtain release. Id. at 2033.

This Court confronted a similar issue in State v. Bonner, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012). Bonner was sentenced to life without parole for the offense of burglary in the first degree, which occurred when he was seventeen-years old. Id. at 563,

735 S.E.2d at 526. Bonner's trial attorney did not object to the imposition of the sentence at trial; therefore, the issue was not preserved for appeal. Nevertheless, this Court addressed the issue in the interest of judicial economy. Id. at 565, 735 S.E.2d at 527. Relying upon State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009), this Court excused the lack of preservation to address the merits of Bonner's claim. This Court found Bonner's sentence violated the United States Constitution, vacated the sentence, and remanded the case for re-sentencing. Bonner, 400 S.C. at 567, 735 S.E.2d at 528.

Appellant's life sentence for burglary in the first degree should be vacated. Pursuant to Appellant's current sentence, he would be imprisoned until his death. S.C. Code Ann. §16-11-311(B). Appellant was only seventeen when he allegedly committed the burglary. Appellant's "sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character." See Graham, 130 S.Ct. at 2033 (2010). Appellant's case is virtually identical to Bonner's. Appellant respectfully requests this Court address the issue presented in the interest of judicial economy.[1] The application of Graham and Bonner to the instant matter requires vacation of Appellant's sentence of life without parole for burglary in the first degree and remand for sentencing.

[1] If the case were affirmed on procedural basis, trial counsel could not articulate any strategic reason for failing to object at a post-conviction relief proceeding, State v. Torrence, 305 S.C. 45, 406 S.E. 2d 315 (1991) and the prejudice is manifest.

II. The trial judge erred in sentencing Appellant to thirty years for kidnapping because the South Carolina Code forbids the imposition of a sentence for kidnapping when a defendant is also convicted of murder concerning the same alleged victim.

Relevant facts

The trial judge sentenced Appellant to life without parole for murder and to thirty years for kidnapping. He ordered the sentences to run consecutively. R. 316, line 25 – R. 317, line 3; R. 317, lines 14-16; R. 318, lines 2-3; sentence sheets. Appellant did not object to the imposition of the sentence.

Discussion

South Carolina's statutory scheme forbids the imposition of a sentence for kidnaping when a defendant is also convicted of murder. S.C. Code Ann. § 16-3-910. Specifically, the governing statute provides

> Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by his parent, is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years unless sentenced for murder as provided in section 16-3-20.

S.C. Code Ann. § 16-3-910. "Our courts have long held, where an appellant has been sentenced for murder of a victim, this code section precludes a sentence for kidnapping of that victim, and any such sentence should be vacated." Vick, 384 S.C. at 201-202, 682 S.E.2d at 281(citing Owens v. State, 331 S.C. 582, 584-585, 503 S.E.2d 462, 463 (1998); State v. McCall, 304 S.C. 465, 470, 405 S.E.2d 414, 416-417 (Ct. App. 1991), overruled on other grounds by Brightman v. State, 336 S.C. 348, 352, 520 S.E.2d 614, 616 (1999); State v. Livingston, 282 S.C. 1, 8, 317 S.E.2d 129, 133 (1984); State v. Perry, 278 S.C. 290, 495,

299 S.E.2d 324, 327 (1983); State v. Copeland, 278 S.C. 572, 597, 300 S.E.2d 63, 77-78 (1982)).

Just as in Vick, supra, this Court should address the merits of the issue in the interest of judicial economy. Without question, Appellant could raise this issue in an application for post-conviction relief as a claim of ineffective assistance of trial counsel for failing to object to an improper sentence. Based upon the clear statutory language and the abundance of case law on the matter presented, Appellant's sentence for kidnapping is improper. Thus, judicial economy weighs heavily in favor of this Court addressing the merits of the claim at this time. Appellant respectfully requests this Court address the merits of the issue and vacate his sentence for kidnapping.

III. The trial judge erred in granting the prosecutor's first motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986) where Appellant presented a race and gender neutral explanation for striking Juror #60 – his employment - and the prosecutor failed to present evidence or argument that the reason was a pretext.

Relevant facts

On December 13, 2010, Judge Russo qualified the jury venire and engaged in voir dire. Subsequently, the parties struck the jury. Juror #60, David Cox, explained that he was a "self-employed farmer" and that his wife worked for him. R. 327, lines 20-22.

Appellant struck Cox and others during the first striking of the jury. R. 26, line 25 – R. 35, line 22. Thereafter, the prosecution moved to quash the jury panel based upon an alleged violation of Batson v. Kentucky, 476 U.S. 79, 89 (1986). R. 36, lines 21-24. Specifically, the prosecution challenged Appellant's striking of jurors #166, 60, 281, 21, 100, 17, and 174. Tr. 44, lines 2-16. Of these jurors, only Juror #60 ultimately sat on Appellant's jury; therefore, this brief will address the motion as it concerns Juror #60.[2]

[2] Judge Russo also granted the state's motion as to Jurors #17 and #166. R. 43, line 1-4. Appellant struck Juror #17 because the juror worked at the Herald, which Appellant believed was a media outlet. R. 39, line 24 – R. 40, line 2. The prosecutor countered that the juror worked at "Herald Multiple Forms, i.e. office supply," not a newspaper. R. 40, lines 3-7. Appellant struck Juror #166 because the juror worked at a bond shop. R. 37, line 22 – R. 38, line 2. The prosecutor countered that the juror said he worked at a body shop. Appellant admitted she may have misheard, but her information was that he worked at a bond shop and that was the basis for the strike. R. 38, lines 3-8. Concerning Juror #166, Judge Russo stated he had concerns because the juror stated that he worked or owned a body shop. R. 42, lines 16-18. Judge Russo called Appellant's reason for striking Juror #17 a "mischaracterization or a misunderstanding of the [juror's] place of employment." He further explained that he could not accept such as race neutral because it would "circumvent the entire Batson system." R. 42, line 23 – R. 43, line 21. During qualifications, Juror #17 stated she worked for "Harold Uniformers" and Juror #166 stated he was "self-employed in bond shop," which would be the equivalent of a pawn

Appellant's counsel explained she struck Juror #60 because he was a farmer.[3] She explained her thought process concerned "terms of education" and the fact that forensics would be introduced in the case. She wanted "someone in a more sophisticated occupation." When the judge challenged Appellant that he "graduated from law school with a farmer" and asked if being a farmer were the equivalent of being uneducated, Appellant explained the strike was "based on his employment." R. 38, lines 8-19.

Although the judge did not make a specific ruling at this point, the judge asked the state to respond, which is an implicit finding that the reasons offered by Appellant were race and gender neutral. R. 40, lines 11-12. The prosecutor responded that the reasons given "were very pretext." He did not "think [they were] race neutral reasons as recognized by the State of South Carolina for a preemptory [sic] challenge to a jury and absence that non-pretextural [sic] reason." He contended "the defense ha[d] failed to meet its burden of showing race neutral or pretextural [sic] reason for having struck those jurors." He moved to re-strike the jury. R. 40, lines 17-25.

The judge then asked if Appellant had "[a]nything further." Appellant responded that none of the reasons given were based on race or gender. R. 41, lines 1-18. The trial judge explained that he understood Appellant struck Juror #60 because he was a farmer and that farmers are not educated. R. 42, lines 19-22. He further granted the prosecution's

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shop. R. 324, lines 19-21; R. 333, lines 16-18. Neither Juror #17 nor Juror #166 was a member of the jury that tried Appellant.

[3] The transcript refers to "160" as the juror number; however, the state did not challenge a strike against #160 and a review of the entire proceedings involving the first jury strike reveals Juror #160 was not called. Further, during the qualifications process, juror #160 was revealed to be a female who worked as an assistant manager. R. 333, lines 6-8. Therefore, Appellant has construed this as a typographical error by the court reporter.

motion as to Juror #60 finding the reason given was not "sufficient." As a result, the judge forbade Appellant from striking Juror #60 in the subsequent selection. R. 43, lines 1-21. Ultimately, Juror #60, David Cox, was a member of the jury that tried Appellant. R. 88, lines 13-20. In fact, Juror Cox was elected the jury foreperson. R. 140, lines 9-12.

Discussion

The United States Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment prohibits the prosecution from striking potential jurors on the basis of race. Batson, supra. In a subsequent opinion, the United States Supreme Court held that a criminal defendant may not engage in racial discrimination in exercising peremptory strikes. Georgia v. McCollum, 505 U.S. 42, 59 (1992). Two years later, the United States Supreme Court recognized that the Fourteenth Amendment also prohibits the striking of a juror on the basis of gender. J.E.B., 511 U.S. at 146 (1994). In Purkett v. Elem, 514 U.S. 765, 767 (1995), the United States Supreme Court set out 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). The first step requires the moving party to make out a prima facie case of racial or gender discrimination.[4] At the second step, the burden of production shifts to the proponent of the strike to present a race or gender neutral explanation for the challenged strike. If a race or gender neutral explanation is provided, then the third step requires the trial judge to decide

[4] Our Supreme Court has determined that "requesting a Batson hearing in effect sets out a prima facie case of discrimination." State v. Chapman, 317 S.C. 302, 305-306, 454 S.E.2d 317, 319-320 (1995) overruled on other grounds by State v. Hicks, 330 S.C. 207, 499 S.E.2d 209 (1998).

whether the moving party has proven purposeful racial or gender discrimination. Purkett, 514 U.S. at 767; see also State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007).

According to the United States Supreme Court, 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. Unless discriminatory intent is inherent in the explanation, it is deemed race neutral at step two. Purkett, 514 U.S. at 768. 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." State v. Cochran, 369 S.C. 308, 315, 631 S.E.2d 294, 298 (Ct. App. 2006) (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. 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. Id. "The burden of persuading the court that a Batson violation has occurred remains at all times on the opponent of the strike." Evins, 373 S.C. at 415, 645 S.E.2d at 909. The trial judge must examine the totality of the facts and circumstances in the record to determine whether a Batson violation occurred. State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009).

Although the appellate courts give great deference to a finding of purposeful discrimination, "[t]his standard of review, however, is premised on the trial court following the mandated procedure for a Batson hearing." Cochran, 369 S.C. at 312, 631 S.E.2d at 297. When the challenge is the failure of the trial court to follow the procedure, the appellate court's review is plenary. Id. at 312-313, 631 S.E.2d at 297.

"Employment is a well-understood and recognized consideration in the exercise of peremptory challenges." State v. Edwards, 384 S.C. 504, 510, 682 S.E.2d 820, 823 (2009). Indeed, the South Carolina Supreme Court has held that place and type of employment are race and gender neutral reasons for strikes. State v. Ford, 334 S.C. 59, 65, 512 S.E.2d 500, 504 (1999); Adams, 322 S.C. at 125, 470 S.E.2d at 372 (1996).

In Cochran, the defendant struck a juror who shared the last name of a local Deputy Sheriff and the prosecution countered that neither the defendant nor the state knew for sure whether the juror was related to the officer. 369 S.C. at 316, 631 S.E.2d at 299. The trial court agreed and found the strike was a pretext. Id. This Court held such was an error as the reason was race-neutral and the state had failed to carry its burden of proving purposeful discrimination. Id.

This Court recently addressed a similar issue in State v. McMillan, 400 S.C. 298, 734 S.E.2d 171 (Ct. App. 2012). The defendant struck a juror and the state moved for a hearing. The defendant explained he struck the juror because "someone told him [the juror] 'displayed attitudes that be believed to be not consistent with being a good and unfair and unbiased juror in this matter.'" Id. at 305, 734 S.E.2d at 175. The prosecutor argued the reason was pretext because the defendant did not "'articulate some reason, other than somebody told me he wouldn't be a good juror.'" Id. The judge found the

defendant's reason was a pretext and quashed the jury. Id. In reviewing the matter, this Court found the defendant's stated reason for the strike to be race neutral. Id. at 307, 734 S.E.2d at 176. Further, this Court held the prosecution, as the opponent of the strike, failed to prove the defendant's strike was purposeful racial discrimination. Id. Therefore, the lower court erred in granting the prosecution's motion and quashing the jury. Prejudice was presumed because the juror, like Juror #60 here, was seated on the jury that tried the case. Id.

In the instant matter, the trial court failed to follow the proper procedures for conducting a Batson hearing. Appellant provided a race neutral reason for the strike – the juror's employment. Judge Russo failed to require the prosecutor to prove purposeful racial discrimination. Instead, the judge determined the reason was not race neutral, in direct contravention to case law.

The error here requires reversal because Appellant was wrongfully prohibited from striking Juror #60 and this juror sat on the jury that tried the case. See State v. Williams, 379 S.C. 399, 402, 665 S.E.2d 228, 230 (Ct. App. 2008); Ford, 334 S.C. at 63-66, 512 S.E.2d 503-504; State v. Short, 333 S.C. 473, 476-478, 511 S.E.2d 358, 360-361 (1999).

IV. The trial judge erred in granting the prosecutor's second motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986) where Appellant presented race and gender neutral explanations for striking the jurors and the prosecutor failed to present evidence or argument that the reasons were pretexts.

Relevant facts

During jury qualification, Juror #25, Jennifer Blackard, informed the court that she "work[ed] at the public schools of Robeson County [North Carolina] as a seams operator [and her] husband work[ed] putting up shutters." R. 325, lines 9-12. Susan Cook, Juror #56, was employed by the Department of Social Services (DSS), and her husband, Tim Cook, worked in construction. R. 327, lines 11-14. Ashley Hyatt, Juror #129, also worked for DSS. She explained she worked in the adoption office and that her husband was a self-employed truck driver. R. 331, lines 16-20. During voir dire, Blackard revealed that Appellant's trial attorney was representing her currently. However, she explained she could be fair and impartial despite her relationship with the attorney. R. 9, lines 7-25.

Appellant struck Jurors #25, #56, and #129 during the second striking of the jury. R. 51, lines 16-22; R. 54, lines 1-7; R. 56, lines 15-21. At the conclusion of the selection process, the prosecution challenged Appellant's striking of those jurors among others. R. 60, line 21 – R. 61, line 10. Again, these jurors ultimately sat on the jury that tried Appellant; therefore, Appellant will discuss those jurors. While making the specific challenge, the prosecutor explained that two white jurors who worked for DSS were struck while the black juror who worked for DSS was not struck. R. 61, lines 5-10.

The judge asked Appellant to respond. Juror #56 and Juror #129 worked for DSS, and Appellant struck those jurors on that basis. Appellant's family received services from

DSS, and as a result, the DSS works may have "some more intimate details about the family." R. 61, lines 16-19; R. 64, lines 12-14. The judge asked Appellant to "contrast that to Ms. Dawnyelle Livingston." R. 61, lines 20-21. According to jury qualifications, Livingston worked at Dillon County DSS. R. 333, lines 22-23.

Appellant explained that when Livingston was called, she had only one strike left. She also noted that when Livingston was called during the first jury selection process, she did strike her. Appellant explained "based on the position that I was in, it was our last strike and I still had four or five more jurors to go. I was in no position at that time to strike her." R. 29, lines 16-22; R. 61, line 22 – R. 62, line 3. Candidly, Appellant admitted she used a strike "earlier on a white juror who's in the same position." R. 62, lines 10-12. However, she explained her failure to strike Livingston was "based solely on only having one remaining strike" and having other potential jurors against whom they wanted to exercise a strike. R. 62, lines 14-18.

Based upon further discussion between Appellant and the court, the judge found the rational insufficient. R. 64, line 15 – R. 65, line 12. The judge stated

> Your DSS workers you use two strikes on two white DSS workers and you put a black DSS worker on the jury. You say your reason was because you only had one strike left. And there were like four other jurors you were concerned about. Well, one strike wouldn't help you with four jurors. So if you struck a white DSS worker, it makes no rational reason that you would have let the black DSS worker except for the fact that it was [a] pretext[.]

R. 65, line 24 – R. 66, line 7.

Concerning Juror #25, Appellant explained she struck the juror because she worked in the public school systems and may have "some pre-disposition for youth and criminal activity." All of the defendants involved were "very young." Appellant worried that the

prosecution may introduce evidence, such as rags of a particular color, which the juror would associate with gang activity. R. 63, lines 8-24.

Upon the judge's request, the prosecution argued that Appellant's stated reason for striking Juror #25

> would be improperly placing a block of people into a category that it again -- and let me be clear on this when we talk about Batson and I know we've talked in terms of race, but I would say that if you look at Batson, it is really the issues involving preemptory [sic] strikes are - - it even goes beyond race issues. Here I think it is pretext in the sense that based on the defense argument, that any teacher is - - you know, because of their exposure to children or whatnot, they may be predisposed, that is improper I would say. It's very broad in general.... I think the whole standard we got here is to try to avoid putting people in a particular category that will serve our pre-textural [sic] uses.

R. 73, lines 6-22. The prosecutor argued "it reeks of pretext." R. 74, line 1. The prosecutor equated Appellant's position with "saying ... no teacher can serve on any jury were there's a kid involved." He opined such was not "proper argument for this purpose." R. 74, lines 4-9. The prosecutor argued Appellant's strikes were improper as they were "generalizations of an entire group." R. 75, lines 1-8. Rather than make any legal argument, the prosecutor claimed "we got a situation where the race card is being played from the bottom of the deck. And again, I'm not blaming her, it's her client." R. 78, lines 9-15.

Appellant's trial counsel explained it was her job to find jurors who would not harbor any particular bias against Appellant. R. 74, lines 10-14. She also explained that her reasoning was specific to the individual teacher who was struck because she worked in a high school noted for gang activity. R. 75, lines 9-11; R. 75, lines 16-20. The judge countered that Juror #25 "may be like my sister who absolutely has a heart as big as Texas

for these kids." R. 74, lines 22-23. He also stated that Appellant was not addressing the individual person, but would not select schoolteachers for this jury. R. 75, lines 12-15.

Concerning the strikes, the judge lectured:

> I'm going to tell you what it looks like to the Court and this is not to you, Ms. Sellers, at all. It sounds to me like [Appellant] is calling some shots here. He is not educated as to the legal system in what can and can't be struck. And for him to make a call on these guys because he doesn't like their demeanor and then to strike the two white DSS workers and let the black DSS worker on the jury when you still have a strike left, I'm granting the motion.

R. 72, lines 13-21. The judge agreed with the prosecutor's assessment that Appellant, not Appellant's trial counsel, did not "want a white juror on the jury." R. 78, lines 16-18.

Judge Russo concluded Appellant's reasons for striking Jurors #56, 129, and 25 were not race neutral reasons. R. 82, lines 10-15. Importantly, he did not find the reasons stated were a pretext for the strikes. When instructing the parties concerning the third jury strike, Judge Russo emphasized that he had found the reasons given for the prior strikes not race neutral. R. 83, lines 2-5. As a result, the judge forbade Appellant from striking Jurors #56, 129, and 25 in the subsequent selection. R. 85, lines 12-24. Ultimately, Jurors #56, 129, and 25, were members of the jury that tried Appellant. R. 90, lines 5-12; R. 90, line 21 – R. 91, line 3; R. 92, line 20 – R. 93, line 2.

Appellant incorporates by reference the legal analysis discussed in Issue III, supra. Concerning Juror #25, Appellant's stated reason for the strike was the juror's employment, which is a race neutral reason as explained supra. The prosecution countered that Appellant's reason was insufficient because it was a "generalization." In Payton v. Kearse, 329 S.C. 51, 495 S.E.2d 205 (1998), the Supreme Court held that a party may not "strik[e] a juror based upon a racially stereotypical reason." 329 S.C. at 56-57, 495 S.E.2d at 208. In

Payton, a party struck a juror because the juror was a "redneck." Id. at 55, 495 S.E.2d at 208. After noting that redneck is a racially derogatory term applied exclusively to members of the white race, the Court held the explanation was not a valid race-neutral reason and the strike was facially discriminatory. Id. at 55-56, 495 S.E.2d at 208. Payton does not prohibit exercising peremptory strikes based upon generalizations; instead, it prohibits striking jurors based upon racial stereotypes even if those stereotypes apply only to a subgroup of a particular race. Id. at 56-57, 495 S.E.2d at 208. Appellant's striking of a teacher was not based upon a racial stereotype. The trial court failed to follow the proper Batson procedure because he found Appellant's stated reason was not race neutral where it obviously was. The court did not find Appellant's reason was a pretext because the prosecution failed to present any evidence to support such a finding. The prosecution pointed to no other similarly-situated jurors who were treated differently.

Concerning Jurors #56 and #129, Appellant again put forward a race neutral reason for her strike – employment. Both jurors were employed by DSS. The prosecution attempted to show the stated reason was a pretext by noting that Juror #168 was also an employee of DSS, but was not struck by the Appellant. Appellant's counsel explained to the court that when Juror #168 was called, she had only one strike left and yet, there were four jury spots left to fill. As a result, she chose not to strike Juror #168 based upon her employment and kept her last remaining strike to address additional potential jurors about whom she had more serious concerns. Appellant's trial counsel further demonstrated that her intent was not based upon race because she had struck Juror #168 when she was called during the first jury strike. The judge summarily found Appellant's rationale was not sufficient and the reason given was not "a racially neutral reason."

The trial judge erred in finding Appellant's strikes against Jurors #56 and #129 were not race neutral. The reason stated – employment – was a race neutral explanation for the exercise of the strikes. Although the state attempted to show the stated reason was a pretext for the exercise of a strike in a racially discriminatory manner, the state did not prove the strike was the result of purposeful racial discrimination. Importantly, Appellant's trial counsel struck Juror #168 when she was drawn for the first jury, which indicated Appellant did not want Juror #168 on the jury. However, during the striking of the second jury, Juror #168 was called when Appellant had only one strike left. As explained by Appellant's trial counsel, there were still four spots on the jury and she saved her remaining strike for others in the pool who presented a greater reason to strike. Her decision not to strike Juror #168 was a strategic decision, not based upon race.

The trial court should have looked at all the facts and circumstances here, rather than mechanistically applying the "similarly situated" test to find pretext were none existed. Adams states the opponent's burden is "generally" met in such an instance, not invariably and not without consideration of the whole picture.

V. The trial judge erred in permitting a witness to testify to her in-court and out-of-court identification of Appellant where the out-of court identification procedure was unnecessarily suggestive and conducive to irreparable mistaken identification in violation of Appellant's right to due process of law.

Relevant facts

Appellant moved to limit the testimony of Lisa Alford to exclude her out-of-court and in-court identification of Appellant based upon the unnecessarily suggestive procedures used by law enforcement. R. 197, lines 8-22. The court conducted an in-camera hearing to determine the admissibility of the testimony. Alford testified that she worked at Stewart Heights Elementary School as a custodian, which was located one house away from the deceased. R. 198, line 18 – R. 199, line 4. She testified that "on the day in question," she saw police cars at the deceased's house. She asked the school resource officer for details. The officer stated the deceased's car was missing. Later, Alford found out that the deceased was missing also. At some point, Alford told the school resource officer that she had seen three boys walking down the street on Monday afternoon before she got off from work. Upon questioning from the prosecutor, Alford revealed she spoke to law enforcement on Tuesday, and saw the three boys on Monday, a day earlier. R. 199, line 5 – R. 200, line 4.

Alford explained that she was sitting inside the entrance to the school from 6:15 p.m. until 7 p.m. She had finished with her work and was waiting the time when she could leave. She observed three boys pass the school three times. She identified one of the three as Henry, whom she knew because his grandmother lived in the neighborhood. R. 201, line 1 – R. 202, line 11. Alford did not know Appellant or his brother, who was

other boy walking. She described the two unknown boys as much shorter than Henry. She also stated the two shorter boys stopped in front of a gray house in front of the school where they stood for about ten or fifteen minutes. R. 202, line 12 – R. 203, line 3. She observed the boys the entire forty-five minutes she sat waiting to leave. She testified that it was sunny outside and nothing blocked her view of the street. R. 204, lines 11-20. She then identified Appellant as one of the boys she observed walking. R. 204, lines 3-8.

On cross-examination, Alford admitted that a chain link fence surrounded the school and the boys were outside the fence. R. 205, lines 3-10. She estimated the distance between her and the boys as half a football field, or 50 yards. R. 205, lines 11-18. During the conversation between Alford and the school resource officer, the officer revealed that the two boys were brothers. R. 205, lines 19-25. Alford described the two boys as wearing dreads, and said Henry was "beginning his dreads or plats." R. 206, lines 12-14. Thereafter, Alford observed photographs to identify the two boys. Initially, she testified that only two of the suspects in the photographs had dreads. Then she testified "the photos when he brought them to me, all three of the boys had dreads." R. 206, lines 18-25. She described all the individuals in the photographs had the same complexion, but only one had facial hair. When she gave her initial description, she did not say anyone had facial hair. She testified that she "picked out the two brothers that I [saw], other person I didn't know him." R. 207, lines 1-25.

Appellant objected to the identification procedure as patently suggestive because Alford did not view multiple suspects with no facial hair and that her description was very limited. As Appellant argued, Alford "had no choice but to rule out – but to pick the two brothers, the information that she received from the officer at that time." R. 208,

lines 15-25. Appellant clarified that Alford described the boys has having dreadlocks and medium complexions. The officer then showed her three photographs, only one of which had facial hair, which was not mentioned by Alford in her description. The officer also informed Alford the two boys were brothers. Appellant argued Alford picked out two individuals who had similar characteristics because she knew the two were brothers. R. 211, line 2 – R. 212, line 16.

When Appellant offered a case to support the objection, the prosecution countered "actually that's why we didn't get into the lineup thing in direct with Ms. Alford here." According to the prosecutor, Alford told the police she saw the three boys and knew one of the boys. As the prosecutor stated "she was able to give somewhat of a description on the other two because she observed them for [forty-five] minutes." The prosecutor claimed "the fact that it may not have been the cleanest of identifications does not prevent Ms. Alford from being able to give testimony within the rules here because of the amount of time and the clarity with which she identified these young men." R. 210, lines 3-20. The prosecutor further explained he had no intention of introducing a lineup – "We don't even have the lineup. We've never seen the lineup." R. 212, lines 21-23.

The judge determined the identification was admissible. Concerning the photographs that were shown to Alford, the judge found them to be "somewhat suggestive." However, his review of the totality of the circumstances weighed in favor of admitting the identification. Judge Russo cited Alford's observation of the individuals for forty-five minutes in a low stress environment, Alford's close degree of attention because "all she was doing was watching," the accuracy of her description, and the stated certainty of her identification. R. 215, line 22 – R. 217, line 16.

Alford testified before the jury immediately following the in camera hearing. Alford's testimony tracked her in camera testimony in general. However, several points were different or were additional information. For example, Alford testified that a co-worker, "Ms. Diane," was sitting with her on the day she observed the three boys walking by the school. She testified that she did not recognize Henry for approximately thirty minutes. In fact, Henry wiped his face with a white t-shirt at one point, obscuring his face. R. 218, line 5 – R. 229, line 19.

Discussion

When law enforcement use an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification, an individual's right to due process of law is violated. Stovall v. Denno, 388 U.S. 293 (1967); State v. Moore, 343 S.C. 282, 286, 540 S.E.2d 445, 447 (2000). If a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification, the in-court identification is not admissible. Manson v. Brathwaite, 432 U.S. 98 (1977); Moore, 343 S.C. at 286, 540 S.E.2d at 447. In Neil v. Biggers, 409 U.S. 188 (1992), the United States Supreme Court created a two-prong inquiry to determine the admissibility of out-of-court identifications. First, the trial court must ascertain whether the identification process was unduly suggestive. Next, the trial court must determine whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Id. at 198. The central issue is whether the identification was reliable even though the confrontation procedure was suggestive under the totality of the circumstances. Id. The following factors should be considered when evaluating the totality of the circumstances: (1) the witness's opportunity to view the perpetrator at the time of the crime; (2) the

witness's degree of attention; (3) the accuracy of the witness's prior description of the perpetrator; (4) the level of certainty demonstration by the witness; and (5) the length of time between the crime and the confrontation. Id. at 199; see also State v. Stewart, 275 S.C. 447, 450, 272 S.E.2d 628, 629 (1980).

Our courts have found some identification procedures patently suggestive. For example, in State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004), our Supreme Court held a line-up procedure wherein three victims were in the same room, sitting within feet of each other, while observing photographic line-ups was blatantly unacceptable. Id. at 81-82, 600 S.E.2d at 527. Nevertheless, the Court found the identification was admissible based upon the totality of the circumstances. Those circumstances included the victims not conversing during the line-up and not being aware of whom the other victims selected, if anyone. The victims testified they observed the assailant from one minute to ten minutes and their prior descriptions generally matched that of the person identified. All testified they were certain of their identifications, which were made two days after the incident. Id. at 83, 600 S.E.2d at 527.

Our Supreme Court held a show-up identification was unduly suggestive in Moore, supra. A witness observed two people exiting her neighbor's home when she knew the neighbor was away. She called the police and provided a general description of the men, primarily focused on the clothing. Id. at 285, 540 S.E.2d at 447. Ninety minutes later, officers took the witness to an area where to men were being detained. The witness positively identified the two men as the perpetrators. Her identification was based upon the clothing she observed. She admitted she had not really seen their faces earlier. Id. at 285-286, 540 S.E.2d at 447. As explained by the Court, "[s]ingle person show-ups are

particularly disfavored in the law." Id. at 287, 540 S.E.2d at 448 (citing Stovall, 388 U.S. and State v. Johnson, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct. App. 1993)). The procedure in Moore was unduly suggestive. Id. Further, the Court found the identification unreliable as a matter of law. In Moore, the Court found the only factor with any reliability was the amount of time between the crime and the confrontation, which was ninety minutes. The other factors clearly outweighed that one where the witness observed the two perpetrators for a brief time at a significant distance, the degree of attention was not great, and the accuracy of her description was tenuous. Id. at 449, 540 S.E.2d at 290.

The trial judge erred in permitting Alford to testify to her in-court identification of Appellant because the out-of-court identification procedure was unnecessarily suggestive and conducive to irreparable mistaken identification. Without question, the out-of-court identification procedure was unnecessarily suggestive because an officer presented Alford with three photographs, one of which was Appellant and one of which was Appellant's brother. The trial judge found the identification procedure "somewhat suggestive," but the clear evidence indicates the procedure was unnecessarily suggestive. By Alford's testimony, she did not select the photographs of the individuals she saw in front of the school, she selected the photographs of "brothers."

Moving to the totality of the circumstances, the trial judge erred in finding the totality of the circumstances rendered the identification reliable. Although Alford had forty-five minutes to view the young men walking in front of the school, she did so through a glass window from a distance of fifty yards and through a chain link fence. Her degree of attention was not great because she was merely observing individuals walking. She admitted that she was waiting for the clock to run so that she could leave

and was waiting with a co-worker. The accuracy of her description was very poor as she only described the individuals as boys who were shorter than Henry with dreadlocks and medium complexions. Her description was devoid of any facial features, such as eye color and shape, face shape, nose shape. Her description lacked any distinctive marks, such as scars, moles, or freckles. The poor description is understandable in light of the great distance and obstacles between her and the young men. She even admitted that she did not recognize Henry until she had been observing the trio for approximately thirty minutes. The exact length of time between her observing the boys and her out-of-court identification is unknown, but it is at least the following day when she made the identification.

VI. The trial judge erred in sentencing Appellant to life without parole for murder because Appellant was seventeen years of age at the time of the offenses and his sentence is cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution.[5]

Relevant facts

Appellant was seventeen-years old at the time of the offenses for which Appellant was charged and ultimately convicted. R. 311, lines 18-19. During the sentencing proceeding, the prosecutor explained to the judge "I don't care how hold [sic] he was at the time" and that Appellant deserved "absolutely no leniency from this court." In the prosecutor's opinion, Appellant "got the biggest benefit from the U.S. Supreme Court" because the prosecution could not seek the death penalty against him due to his age. In fact, the prosecutor informed the court "I'll be honest with you if the U.S. Supreme Court would have allowed it, we would have absolutely noticed this defendant for the death penalty." It was "unfortunate" the prosecution was prevented by the Constitution from doing so in the prosecutor's opinion. He then went on to relay to the court the result of his "long discussion about this case" with his mother. According to the prosecutor's mother, "if people his age have the wherewithal to plot out and engage in this type of activity, they should have to bear the responsibility that I would at the age of [forty] plus." As a result, the prosecution asked the court to impose maximum sentences. R. 307, line 20 – R. 308, line 20.

[5] Appellant is a named petitioner in a petition for writ of certiorari filed in the original jurisdiction of the South Carolina Supreme Court asking the Court for new sentencing hearings and constitutionally adequate procedures for sentencing hearings where juveniles have been sentenced to life without parole. Aiken, et al. v. Byars, et al., Appellate Case No. 2012-213286.

The judge explained that he presided over a case earlier in the year in Florence in which a seventeen-year old or eighteen-year old had killed a war hero at a hotel. The war hero's son's statements "struck a c[h]ord" with the judge:

> [H]e said, Judge, you know, what's so ironic. He said when my dad was this boy's age, he was overseas fighting for this country and fighting for the freedoms that we enjoy in this land. And now here this boy is at that age and he is on the streets of this free country terrorizing the very people my dad fought to free.

R. 314, line 13 – R. 315, line 2. The judge went on to call Appellant a "terrorist." He explained that he saw no difference between Appellant and "those folks that flew those plans into the towers in New York." He called them "just as much a terrorist when folks cannot extend God's hand to another person." R. 315, lines 3-12.[6]

The judge opined that Appellant was "not raise[d] to take responsibility for [his] actions." The judge was cognizant that "one young man who's not associated with this family, came forward, gave a statement, pled guilty, took the police to place where [deceased]'s body was and showed them where she was, so that her family could recover her remains. And the other two have never taken responsibility for this day." R. 315, lines

[6] In Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010), the South Carolina Supreme Court granted relief to a death-sentenced defendant where the solicitor's opening statement during the guilt phase described the defendant, a Muslim, as a "domestic terrorist" and closing argument drew a correlation between the attacks of September 11, 2001 and the acts for which the defendant was standing trial. The Court held the defendant's case was clearly not one that constituted "terrorism" as that word was legally defined. The Court found the solicitor intentionally used the term and made reference to the events of September 11, 2001 to evoke religious prejudice and inflame the passions and prejudice of the jury. Just as the prosecutor had no legal basis to call Vasquez a domestic terrorist, the judge had no legal basis to call Appellant a terrorist as his conduct could not be legally defined as such.

13-25.[7] He then lamented that Appellant had failed to enter a guilty plea on the second day of trial. He explained that the prosecution offered Appellant "essentially what is a [fifty-five] year sentence in exchange for his plea to basically to prevent this family from having to go through this trial." However, when the judge attempted to accept the guilty plea, "the only thing throughout that entire guilty plea that [Appellant] cared anything about was making sure that he still had the right to appeal." Thus, it was clear to the judge that Appellant was not interested in pleading guilty. R. 316, lines 7-24.[8] Thereafter, the judge sentenced Appellant to life without parole for murder. R. 316, line 1 – R. 317, line 4; sentence sheets.

Discussion

On June 25, 2012, the United States Supreme Court held mandatory sentences of life without parole violate the Eighth Amendment to the United States Constitution when imposed upon juveniles. Miller v. Alabama, 132 S.Ct. 2455, 2464 (2012). The Court's decision created a presumption against life without parole sentences for juveniles, and most importantly, the Court imported the principles of capital sentencing into cases where

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[7] The judge's comments indicate his consideration of what he perceived to be Petitioner's lack of remorse. The South Carolina Supreme Court held "remorse is not an appropriate matter for consideration by the jury when a defendant pleads guilty and does not testify." State v. Hawkins, 292 S.C. 418, 424, 357 S.E.2d 10, 13 (1987) overruled on other grounds State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); see also State v. Sloan, 278 S.C. 435, 440, 298 S.E.2d 92, 95 (1982); State v. McClure, 342 S.C. 403, 408-409, 537 S.E.2d 273, 275 (2000).

[8] A trial court may not impose a greater sentence on a defendant because the defendant exercised his constitutional right to stand trial rather than plead guilty. Alabama v. Smith, 490 U.S. 794 (1989). In Davis v. State, 336 S.C. 329, 520 S.E.2d 801 (1999), the South Carolina Supreme Court found trial counsel ineffective for failing to object to a trial judge sentencing Davis where the judge's remarks indicated he was punishing Davis for exercising his right to a trial. See also, State v. Brouwer, 346 S.C. 375, 550 S.E.2d 915 (Ct. App. 2001); State v. Hazel, 317 S.C. 368, 453 S.E.2d 879 (1995).

juveniles face the possibility of life without parole. Specifically, the court explained that "death is different" and "children are different too." Id. at 2470. Beginning in 2005 with the landmark decision of Roper v. Simmons, 543 U.S. 551 (2005), the Court held the Eighth Amendment barred sentencing juveniles to death. Four years later, in 2009, the Court examined the application of life without parole sentences for juveniles convicted of non-homicide offenses. Graham, supra. The Court found such sentences cruel and unusual punishment and barred by the Constitution. Finally in 2012, the Court decided Miller, supra.

"The Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'" Id. at 2463 (quoting Roper, 543 U.S. at 560). The Miller Court emphasized that "proportionality is central to the Eighth Amendment." Id. (quoting Graham, 130 S.Ct. at 2021). Focusing on the concept of individualized sentencing, the Court recognized "that children are constitutionally different from adults for purposes of sentencing." Children "have diminished culpability and greater prospects for reform," and therefore, "'they are less deserving of the most severe punishments.'" Id. at 2464 (quoting Graham, 130 S.Ct. at 2026). "[T]he distinctive attributes of youth diminish penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." Id. at 2465. As a result, "[a]n offender's age is relevant to the Eighth Amendment." Graham, 130 S.Ct. at 2031. In light of the relevance to the ban on cruel and unusual punishment, "imposition of a State's most severe penalties on juvenile offenders cannot proceed as though they were not children." Miller, 132 S.Ct. at 2466.

Admittedly, the Court explicitly reserved ruling on the question of whether the Eighth Amendment bars sentences of life without parole for juvenile offenders under all circumstances. Nevertheless, the Court likened life without parole as applied to juveniles to the death penalty. Id. at 2466. As a result, the Court held that the same constitutional protections granted to adults facing the death penalty must be provided to juveniles facing sentences of life without parole. Id. at 2468. The Court emphasized the mitigating qualities of youth and noted "[i]t is a time of immaturity, irresponsibility, 'impetuousness[,] and recklessness.'" Id. at 2467(quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)). Mandatory sentencing prevents the sentencer from considering the juvenile offender's "chronological age and its hallmark features, among them, immaturity, impetuosity, and failure to appreciate risks and consequences," the offender's family and home environment, the extent of the offender's conduct in the offense and the way familial and peer pressures may have affected him. The Court required sentencers "to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 2469. Thus, it is clear that sentencing authorities must consider a juvenile offender's age and consideration of such must be a mitigating factor.

A review of the trial judge's statements during sentencing indicate the judge considered Appellant's age an aggravating circumstance, not a mitigating factor. The judge recalled the words of a victim's son in an earlier case in which the son compared the life of the victim at a young age with the life of the defendant at a young age. The judge called Appellant a terrorist, no different from the hijackers from September 11, 2001. He used Appellant's upbringing, essentially something Appellant could not control and which the

judge perceived as one in which Appellant was not taught to take responsibility for his actions, as an aggravating circumstance, rather than a mitigating factor.

CONCLUSION

As to Issue I, Appellant respectfully requests this Court vacate his sentence as to burglary in the first degree and remand the matter for resentencing. As to Issue II, Appellant respectfully requests this Court vacate his sentence as to kidnapping. As to Issue VI, Appellant respectfully requests this Court vacate his sentence as to murder and remand the matter for resentencing. As to all other issues, Appellant respectfully requests this Court reverse his convictions and remand the matters for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of November, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

Appeal from Dillon County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAMIEN INMAN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of November, 2013.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of November, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.