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**Feb 25 2026**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM SPARTANBURG COUNTY  
General Sessions Court  
Grace Gilchrist Knie, Circuit Court Judge

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Opinion No. 2025-UP-422 (S.C. Ct. App. filed December 23, 2025)

Appellate Case No. 2026-\_\_\_\_\_

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The State,

Respondent,

v.

Donald King Pollock,

Petitioner.

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PETITION FOR A WRIT OF CERTIORARI

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Jack B. Swerling  
1720 Main Street, Suite 301  
Columbia, South Carolina 29201  
Telephone: 803-765-2626  
South Carolina Bar No. 5457

Katherine Carruth Goode  
Post Office Box 61123  
Columbia, South Carolina 29260  
Telephone: 803-799-4440  
South Carolina Bar No. 8951

Attorneys for Petitioner

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## QUESTION PRESENTED

Did the trial court commit reversible error in finding a gender-based *Batson* violation with respect to one of the defense's peremptory juror challenges, and did the Court of Appeals also err in affirming the trial court's *Batson* ruling?

## STATEMENT OF THE CASE

Appellant, Donald King Pollock, was indicted by the Spartanburg County grand jury on a charge of criminal sexual conduct with a minor, first degree; a charge of criminal sexual conduct with a minor, second degree; and two charges of criminal sexual conduct with a minor, third degree. R. pp. 1-6, 42-43. He was tried before a jury on April 4-6, 2022, in the Spartanburg County General Sessions Court, with Judge Grace G. Knie presiding. R. p. 15. The jury returned a verdict of not guilty with respect to the first-degree count and verdicts of guilty with respect to the second- and third-degree counts. R. pp. 7-8, 173-74. Judge Knie sentenced him to a term of 15 years on the second-degree count, consecutive to the sentences for the third-degree counts. On the third-degree counts, she sentenced him to concurrent terms of 15 years, suspended to time served, followed by five years' probation, with those terms consecutive to the term for the second-degree count. R. pp. 9-14, 175.

Appellant appealed, raising a single issue – a challenge to the trial court's grant of the state's gender-based *Batson*<sup>1</sup> motion with respect to a juror who was later seated on the jury that heard and decided the case. The Court of Appeals affirmed in a decision issued December 23, 2025, unpublished opinion no. 2025-UP-422. Appellant sought rehearing, which the Court of Appeals denied by order dated January 27, 2026.

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<sup>1</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986).

## CONSIDERATIONS GOVERNING REVIEW

Rule 242(b) of the South Carolina Appellate Court Rules provides for certiorari review “where there are special and important reasons.” The rule lists specific examples of the character of reasons which will be considered in determining whether to grant a writ of certiorari. Two of those reasons are present in this case: the decision of the Court of Appeals is in conflict with prior decisions of the Supreme Court, and substantial constitutional issues are directly involved. *See* Rule 242(b) (3), (4), SCACR.

## ARGUMENT

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING A GENDER-BASED *BATSON* VIOLATION WITH RESPECT TO ONE OF THE DEFENSE’S PEREMPTORY JUROR CHALLENGES, AND THE COURT OF APPEALS ALSO ERRED IN AFFIRMING THE TRIAL COURT’S *BATSON* RULING.

During jury selection, the defense exercised ten peremptory challenges, striking two male and eight female prospective jurors. R. pp. 104-11. The state made a motion pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), based on the eight strikes of female prospective jurors. R. pp. 116-17. The defense articulated its reasons for each of the eight strikes. R. pp. 119-24. As to juror 82, the strike was based on counsel’s concern about the prospective juror’s understanding of the English language. R. p. 121, lines 3-10. After argument of counsel, the trial judge found the majority of the strikes were gender neutral but stated there were two that gave her concerns, the strikes of jurors number 82 and 118. R. p. 127. The court found the reasons given for those strikes were “a pretext concerning gender.” R. pp. 127-28. The court quashed the jury. R. p. 128. When the new jury was drawn, one of those jurors, juror 82, was seated. R. p. 133, lines 3-8. The trial court’s finding of a *Batson* violation with respect to juror 82 was reversible error.

In *Batson*, the United States Supreme Court held the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a prosecutor from exercising peremptory challenges to prospective jurors on account of their race. *See Batson*, 476 U.S. at 84-89; U.S. Const. amend. XIV. The Supreme Court established a three-step analysis to be conducted when a *Batson* objection is made. *Id.*, 476 U.S. at 96-98. In later decisions, the Court refined the original *Batson* analysis and extended the principles of *Batson* to strikes based on gender and to strikes made on behalf of criminal defendants. *See Purkett v. Elem*, 514 U.S. 765, 767-68 (1995) (clarifying step two of the *Batson* analysis); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 136-46 (1994) (applying *Batson* to gender-based strikes); *Georgia v. McCollum*, 505 U.S. 42, 48-59 (1992) (extending *Batson* to strikes by criminal defendants).

As the analysis is now framed, when a party makes a prima facie showing that a juror challenge was race based or gender based (step one), the proponent of the juror challenge must articulate a race-neutral or gender-neutral explanation for the peremptory challenge (step two). *See State v. Giles*, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014); *State v. Evins*, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007); *State v. Rayfield*, 369 S.C. 106, 112, 631 S.E.2d 244, 247 (2006), *abrogated on other grounds*, *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016); *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996), *overruled on other grounds*, *State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). Once the proponent of the juror strike offers a facially neutral explanation (step two), the objecting party has the burden to establish that the stated explanation is mere pretext and the juror was struck through purposeful discrimination (step three). *See Giles*, 407 S.C. at 18, 754 S.E.2d at 263; *Evins*, 373 S.C. at 415, 645 S.E.2d at 909; *Rayfield*, 369 S.C. at 112,

631 S.E.2d at 247. The objecting party may establish pretext either by showing that a similarly situated person of another race or other gender was seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. *See Evins*, 373 S.C. at 415, 645 S.E.2d at 909; *Rayfield*, 369 S.C. at 112, 631 S.E.2d at 247; *Adams*, 322 S.C. at 124, 470 S.E.2d at 372.

A mere statement that the articulated reason is pretext, without more, is insufficient to meet the burden of establishing purposeful discrimination. *See State v. Inman*, 409 S.C. 19, 28, 760 S.E.2d 105, 109 (2014). A conclusory assertion of racial (or gender) motivation is also insufficient. *See State v. Flynn*, 368 S.C. 83, 86, 627 S.E.2d 763, 765 (Ct.App. 2006). The question of purposeful discrimination is evaluated on the basis of the totality of the facts and circumstances, and a relevant factor to consider is the selection and composition of the jury. *See State v. Shuler*, 344 S.C. 604, 615, 621, 545 S.E.2d 805, 810, 813 (2001); *State v. Haigler*, 334 S.C. 623, 629-30, 515 S.E.2d 88, 91 (1999); *State v. Rogers*, 405 S.C. 520, 534-35, 748 S.E.2d 247, 255 (Ct.App. 2013); *State v. Ford*, 334 S.C. 59, 64, 512 S.E.2d 500, 503 (1999). The ultimate burden of establishing a *Batson* violation rests upon the party objecting to the juror strike, and that party's burden is to prove purposeful discrimination. *See Giles*, 407 S.C. at 18, 754 S.E.2d at 263; *Evins*, 373 S.C. at 415, 645 S.E.2d at 909; *Adams*, 322 S.C. at 124, 470 S.E.2d at 372.

The appellate court ordinarily reviews a ruling on a *Batson* motion under a clearly erroneous standard. *Shuler*, 344 S.C. at 615, 545 S.E.2d at 810; *State v. Scott*, 406 S.C. 108, 113, 749 S.E.2d 160, 163 (Ct.App. 2013); *State v. Cochran*, 369 S.C. 308, 312, 631 S.E.2d 294, 297 (Ct.App. 2006). A lower court's finding is clearly erroneous if it is not supported by the record. *Shuler*, 344 S.C. at 620, 545 S.E.2d at 813; *Scott*, 406 S.C. at 113,

749 S.E.2d at 163. However, where the claim of error is the failure to follow the required *Batson* hearing procedure, the matter is a question of law and the standard of review is plenary. *State v. Shands*, 424 S.C. 106, 116, 817 S.E.2d 524, 529 (Ct.App. 2018); *State v. Stewart*, 413 S.C. 308, 316, 775 S.E.2d 416, 420 (Ct.App. 2015); *Cochran*, 369 S.C. at 312-13, 631 S.E.2d 294, 297 (Ct.App. 2006).

In this case, the trial court committed reversible error in two respects. It failed to follow the *Batson* procedural framework, and it also made findings that were clearly erroneous. Additionally, the Court of Appeals erred in its review of these aspects of the claim of error. While the Court of Appeals correctly recited the standard for reviewing whether the trial court followed the required procedure – answering a question of law – the Court of Appeals incorrectly held the trial court followed the correct *Batson* procedure. The Court of Appeals also erred in affirming the trial court’s findings in support of its determination that a *Batson* violation occurred. The Court of Appeals further erred in failing to consider the totality of the facts and circumstances, including the selection and composition of the jury.

Following the selection of the jury, the state interposed a *Batson* objection, contending the defense improperly struck female prospective jurors because of their gender. R. pp. 117-19. The court indicated it would have the state make its prima facie showing and then have the defense respond. R. p. 119. The state contended a prima facie showing was made because the defense struck eight females. R. p. 119. The court then heard, juror by juror, the defense’s explanations for its strikes, with the state responding intermittently by either conceding the explanation was gender neutral or arguing it was not. R. pp. 119-27. At the conclusion of this stage of the *Batson* procedure, the court was

required to make findings as to whether the stated reasons were gender neutral. The court took a brief recess, then returned and announced its ruling, as follows:

I have considered in detail the State's motion, and while I do understand the majority of the strikes that were made by the defendant were gender neutral, there are two that give me concerns, specifically as to Juror 82 and Juror 118. And I am going to take it to the third part of the *Batson* consideration and find that those strikes were a pre -- the reasons given were a pretext concerning gender. Both of these jurors were white females.

R. p. 127, line 18 – p. 128, line 1. This ruling was reversible error, for a number of reasons.

First, the court's analysis was contrary to the established procedural framework for analysis of a *Batson* objection. The *Batson* procedure places the burden of proving purposeful discrimination on the party objecting to the juror strikes, in this case the state. The trial court was required to follow a three-step process. At the first step, the court was required to have the state make a prima facie showing of discriminatory strikes. At the second step, the court was required to have the defense give its explanation for each strike and make a determination if the articulated reason was gender neutral. In this case, the court ruled that the majority of the strikes were gender neutral but did not specifically rule on the other two, instead stating those two "give me concerns." R. p. 127, lines 20-22. However, the court then moved to the next step of the *Batson* process. Implicit in its doing so was a finding the reasons articulated by defense counsel were gender neutral, because the *Batson* analysis does not proceed to the third step if the explanation given at the second step is not deemed facially neutral. *See Giles*, 407 S.C. at 23, 754 S.E.2d at 265-66; *Robinson v. Bon Secours St. Francis Health Sys., Inc.*, 382 S.C. 224, 227, 675 S.E.2d 744, 746 (2009).

The trial court committed an error of law in the third step of the required procedure. At that stage, the burden rested on the state to prove the reasons were pretextual and the

strikes were made through purposeful discrimination. The court clearly erred by not requiring the state to make any showing. Essentially, the court merged steps two and three, and the court made its own finding of pretext, without any showing by the state. The court failed to require the state to establish purposeful discrimination, either by demonstrating another similarly situated juror of the other gender was seated on the jury or by demonstrating the articulated explanation was fundamentally implausible. The court's departure from the mandated *Batson* procedure contravened the principle that the burden rested upon the state, as the party objecting to the peremptory challenges, to demonstrate purposeful discrimination. See *Giles*, 407 S.C. at 18, 754 S.E.2d at 263; *Evins*, 373 S.C. at 415, 645 S.E.2d at 909; *Adams*, 322 S.C. at 124, 470 S.E.2d at 372; *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298. The Court of Appeals' determination that the trial court followed the correct *Batson* procedure conflicts with the Supreme Court's decisions outlining the required procedure. Where the correct procedure was not followed, the Court of Appeals was required to reverse.

In *State v. Inman*, 409 S.C. 19, 760 S.E.2d 105 (2014), the Supreme Court found error where a trial court did not require the state to establish purposeful discrimination as mandated by the *Batson* procedural framework. In *Inman*, the state argued the race-neutral reason given by the defendant's counsel was "very pretext," without further elaboration. The Supreme Court held the conclusory statement that the reason was pretextual did not meet the state's burden of persuasion. See *Inman*, 409 S.C. at 28, 760 S.E.2d at 109. The Court further held that, by finding defense counsel's proffered rationale was "not sufficient," the trial court improperly placed the burden of persuasion on defense counsel to prove the explanation for the strike was not pretextual, rather than placing the burden on

the state to establish the explanation was pretextual. *See id.* In this case, it was the trial court, rather than the prosecutor, that made the conclusory statement that the defense's articulated reason for the strike was pretext. R. p. 127, line 23 - p. 128, line 1. In so doing, the trial court committed error akin to the error in *Inman*, failing to require the state to establish pretext through a showing of purposeful discrimination, either by demonstrating another similarly situated juror of the other gender was seated on the jury or by demonstrating the articulated explanation was fundamentally implausible. The Court of Appeals' decision affirming the trial court's *Batson* methodology conflicts with this Court's decision in *Inman*.

In *State v. Cochran*, 369 S.C. 308, 631 S.E.2d 294 (Ct.App. 2006), the Court of Appeals reversed where a trial judge abandoned the mandated process and failed to have the objecting party prove purposeful discrimination, as the trial court did in this case. In a detailed evaluation of the trial court's *Batson* rulings, Chief Justice Kittredge, writing the majority opinion in *Cochran*, found error in the trial court's rulings on a number of the defense's juror strikes. Four of the findings of error are particularly instructive in this case. The Court found error with respect to two jurors where the trial court did not require the state to prove purposeful discrimination but instead placed the burden on the defendants to disprove discrimination. *See Cochran*, 369 S.C. at 318-19, 321-22, 631 S.E.2d at 300, 302 (jurors 78 and 93). Significantly, the Court also found error as to two other jurors where the trial court declared the reasons for the defendants' strikes of those jurors were pretextual, without requiring the state to prove purposeful discrimination. *See id.*, 369 S.C. at 319, 631 S.E.2d at 300-01 (jurors 90 and 41). That is precisely what occurred in this case. As in *Cochran*, the trial court skipped the third step of the process, required no

showing by the state, and simply declared the stated reasons for two of the juror strikes were pretext. As in *Cochran*, the trial court erred in its failure to follow the *Batson* analytical framework and require the state to make a showing of purposeful discrimination.

Contrary to the Court of Appeals' determination, the trial court erred in abandoning the *Batson* analytical framework. Once the state objected to the strikes of the various female jurors, defense counsel articulated the basis for his strikes. With respect to juror 82, counsel stated that during the initial qualification of the jury it appeared English was not the juror's first language, and counsel thought there might be a discrepancy in what she could understand. R. p. 121, lines 3-10. This explanation was gender neutral. Indeed, the Court of Appeals specifically found counsel's explanation of his concern about the juror's ability to comprehend the English language "was clear, reasonably specific, and gender neutral on its face." Once counsel articulated a gender-neutral reason for the strike, the state was required to show the neutral explanation was mere pretext and the strike was the result of purposeful discrimination. At this stage, the trial court failed to place that burden on the state and failed to have the state make any showing, instead making its own finding, without explanation, that the reason given by defense counsel was pretextual. The failure to conduct the analysis in the manner dictated by the *Batson* line of cases, cited above, was reversible error, and the Court of Appeals erred in failing to reverse on this basis.

The Court of Appeals further erred in its review of the trial court's conclusions that led to the court's granting the *Batson* motion and quashing the jury. In addressing the third step of the trial court's *Batson* analysis, the Court of Appeals stated: "Third, the trial court determined the State met its burden to prove Pollock's reasoning was mere pretext because the state demonstrated Pollock's explanation was 'fundamentally implausible.'" This

statement is not supported by the record of the trial court's ruling, R. p. 127, line 18 - p. 128, line 1, which is quoted above, at page 6, in its entirety. The trial court did not address or make any finding of fundamental implausibility. Nor did the trial court rule that the state demonstrated pretext or purposeful discrimination. Rather, the trial court skipped step three of the *Batson* procedure entirely. Once defense counsel articulated its neutral reason for the strike of juror 82, the trial court did not require the state to make *any* showing or meet *any* burden, instead making a finding on its own, and without further explanation, that the strike was pretextual. R. p. 127, line 24 - p. 128, line 1. Instead of requiring the state to meet the burden of establishing pretext and purposeful discrimination – a required step of the *Batson* procedure – the trial court simply drew its own conclusion that the reason stated by defense counsel was pretextual. The methodology employed by the trial court did not follow the correct *Batson* procedure, and the Court of Appeals' finding to the contrary is an error of law.

Had the court required the state to make a showing of purposeful discrimination, any argument the state may have attempted to make would have been baseless. As to one of the methods of establishing purposeful discrimination, the record does not contain any indication that a similarly situated male juror – a juror with a limited understanding of English – was seated. *Cf. Stewart*, 413 S.C. at 317, 775 S.E.2d at 421 (though state offered racially-neutral explanation for strike of African American jurors, it negated the reason by seating similarly-situated Caucasians); *State v. Oglesby*, 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989) (holding originally neutral reason was proven to be pretext, because white female with same characteristic was seated on the jury).

Nor is there any basis for concluding that the articulated explanation for the strike was fundamentally implausible, had the state made such an argument. To the contrary, the ability of a juror to understand proceedings being conducted in English and to comprehend the legal terminology and principles that would be used throughout the trial is a legitimate concern. Counsel emphasized the juror's ability to understand the English language would be particularly concerning "once we start getting into arguments and things like that in front of the jury." R. p. 125, lines 12-15. Especially at the end of trial, when the court charges the law and the attorneys make closing arguments, the use of unusual words and legal terminology could be an impediment for a juror with only a weak or rudimentary understanding of the English language. A concern premised upon a juror's questionable understanding of the language is not fundamentally implausible.

In addition to the erroneous findings made by the Court of Appeals in its decision, discussed above, the Court made a serious omission, wholly ignoring one critical aspect of the analysis of a *Batson* issue – the totality of the facts and circumstances surrounding the selection of the jury and the composition of the jury selected. A review of the totality of the circumstances of the jury selection and the composition of the first jury selected in this case refutes any claim of purposeful discrimination. The first jury was composed of three females and nine males. R. pp. 104-11. Importantly, two of the female jurors, jurors 66 and 32, were seated early in the selection process, while the defense still had a number of peremptory challenges available to it. Juror 66 was seated when the defense had nine strikes remaining, and juror 32 was seated when the defense had six strikes remaining. R. p. 105, lines 8-13 (juror 66); p. 106, lines 19-24 (juror 32). Thereafter, the defense exercised two of its peremptory challenges against male jurors. R. p. 107, lines 20-25

(juror 139); p. 108, line 23 - p. 109, line 3 (juror 85). Had the defense been engaged in purposeful discrimination against women jurors, it surely would have exercised strikes against female jurors 66 and 32, who were seated when most of the defense's peremptory challenges had not been used.

This case presents a situation akin to those presented in prior decisions of both this Court and the Court of Appeals, in which the totality of the circumstances surrounding the selection and composition of the jury negated any claim of purposeful discrimination. In *Ford*, this Court noted that, while the defendant exercised most of his strikes against white jurors, he did not strike every white juror, instead accepting and placing some white jurors on the first jury. The Court specifically held, "the fact that appellant used most of his challenges to strike white jurors is not sufficient, in itself, to establish purposeful discrimination." *See Ford*, 334 S.C. at 66, 512 S.E.2d at 504 (citations omitted). In *Rogers*, the Court of Appeals noted the defendant exercised most of his strikes against white jurors, but he did not strike every white juror and he also struck several black jurors. The Court also noted the ultimate composition of the jury was diverse and found the trial court erred in finding pretext. *See Rogers*, 405 S.C. at 534-35, 748 S.E.2d at 255. In *Cochran*, the Court of Appeals rejected an argument of a pattern of race-based strikes against whites, noting the defendants did not use their peremptory challenges solely on jurors from a single racial group. They selected a white male as their first juror and struck a black female. They struck five white women but also two black women, and they seated one white woman and four white men. *See Cochran*, 369 S.C. at 315-16, 631 S.E.2d at 298-99.

In this case, the state did not argue there was purposeful discrimination, and the record demonstrates there was not purposeful discrimination. Defense counsel seated

female jurors when he had a number of peremptory challenges remaining, and he struck male jurors as well as female jurors. The fact that he struck more females than males, in and of itself, does not establish purposeful discrimination. The first jury was gender-diverse, with three females and nine males seated. The trial court's determination that the language-based strike of juror 82 was a "pretext concerning gender" is clearly erroneous, because it is not supported by the record. The Court of Appeals erred in failing even to address this critical aspect of a proper *Batson* analysis.

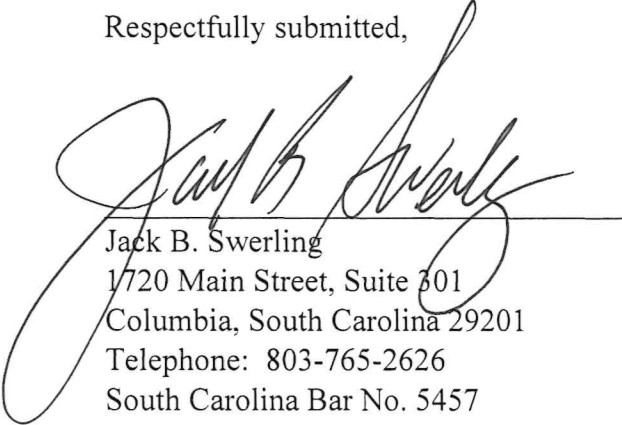
As previously noted, after the court quashed the first jury due to its finding of a *Batson* violation, juror 82 was seated on the redrawn jury. R. p. 133, lines 3-8. Because the trial court erred in its *Batson* ruling as to juror 82, the effect is that the defendant was denied his right to exercise his peremptory challenges. *See Scott*, 406 S.C. at 117, 749 S.E.2d at 165. Where a court improperly grants a *Batson* motion and one of the disputed jurors is ultimately seated, the erroneous *Batson* ruling is deemed to have tainted the jury and prejudice is presumed. *See Inman*, 409 S.C. at 29, 760 S.E.2d at 110; *State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009); *Scott*, 406 S.C. at 117, 749 S.E.2d at 165; *State v. McMillan*, 400 S.C. 298, 307-08, 734 S.E.2d 171, 176-77 (Ct.App. 2012). Under these circumstances, the proper remedy is a new trial. *See Inman*, 409 S.C. at 29, 760 S.E.2d at 110; *Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009); *Scott*, 406 S.C. at 117, 749 S.E.2d at 165; *McMillan*, 400 S.C. at 307-08, 734 S.E.2d at 176-77.

Based on the arguments and authorities set forth above and based on the additional arguments and authorities contained in the briefs filed by petitioner in the Court of Appeals, incorporated herein by reference, the trial court's determination and the Court of Appeals' affirmance of that determination are clearly erroneous. This Court should grant review.

CONCLUSION

The trial court committed clear, reversible error in its grant of the state's *Batson* motion with respect to juror 82, and the Court of Appeals improperly affirmed the trial court's ruling. This Court should grant a writ of certiorari, reverse, and grant petitioner a new trial.

Respectfully submitted,



Jack B. Swerling  
1720 Main Street, Suite 301  
Columbia, South Carolina 29201  
Telephone: 803-765-2626  
South Carolina Bar No. 5457

Katherine Carruth Goode  
Post Office Box 61123  
Columbia, South Carolina 29260  
Telephone: 803-799-4440  
South Carolina Bar No. 8951

Attorneys for Petitioner