THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2022-000485

RECEIVED
Jan 07 2026
SC Court of Appeals

The State,

Respondent,

v.

Donald King Pollock,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Appellant, Donald King Pollock, respectfully petitions for rehearing of his appeal, decided December 23, 2025, in Unpublished Opinion No. 2025-UP-422. In support of his petition, Appellant states as follows:

Appellant raised a single issue on appeal, a challenge to the trial court's grant of the State's gender-based *Batson* motion, *see Batson v. Kentucky*, 476 U.S. 79 (1986); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994) (applying *Batson* to gender-based jury strikes), with respect to Juror 82, who was later seated on the jury that heard and decided Appellant's case. In the Court of Appeals' decision, it correctly recited a number of principles applicable in the analysis of *Batson* objections, including setting out some of

the relevant considerations. However, the Court misconstrued the three-step analysis required for *Batson* motions and misapprehended that the trial court followed the correct *Batson* procedure.

The Court did not misconstrue or misapprehend the first two steps of the *Batson* procedure and, importantly, the Court correctly found the defense's stated explanation of its strike of Juror 82 was clear, reasonably specific, and gender neutral. However, the remainder of the Court's analysis of the *Batson* objection is flawed and should be reheard. The Court overlooked numerous aspects of the required *Batson* procedure that the trial court failed to follow.

After the defense articulated a gender-neutral reason for its strike of Juror 82, the trial court failed to place on the State, as the objecting party, the burden of establishing that the defense's explanation was mere pretext and the juror was struck through purposeful discrimination. *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). The trial court failed to require the State to make ***any*** showing, including a showing of something more than a mere claim of pretext and something more than a conclusory claim of improper motivation, as is required with respect to *Batson* challenges. *See State v. Inman*, 409 S.C. 19, 28, 760 S.E.2d 105, 109 (2014); *State v. Flynn*, 368 S.C. 83, 86, 627 S.E.2d 763, 765 (Ct.App. 2006). At this stage in the proceedings, the trial court did not require that the State meet ***any*** burden, instead making

a finding on its own, and without further explanation, that the strike was pretextual. The trial court failed to require the State to establish pretext either by showing that a similarly situated male juror was seated on the jury or that the reason given by the defense for the strike was so fundamentally implausible as to constitute mere pretext. *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. The trial court did not require the State to make ***any*** showing at this stage in the process, in contravention of the mandated procedure. The trial court failed to review the totality of the circumstances and failed to consider the selection and ultimate composition of the jury, as part of the analysis. *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, 65-66, 512 S.E.2d 500, 504 (1999). In finding the trial court followed the correct *Batson* procedure, the Court of Appeals overlooked these aspects of the required *Batson* analysis and the trial court's failure to follow these aspects of the *Batson* procedure, as set out in the authorities cited above and in Appellant's brief and reply brief.

In addressing the third step of the *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 misapprehended the trial court's holding. The trial court's entire ruling is quoted in Appellant's opening brief, at page 5. 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,

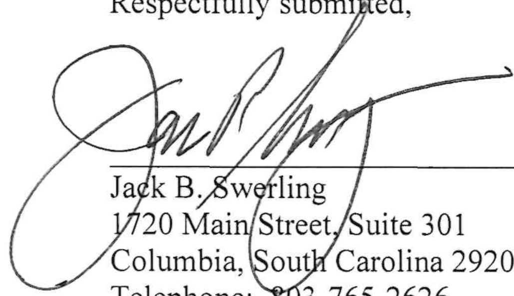
the trial court skipped step three entirely. Instead of requiring the State to meet the burden of establishing pretext and purposeful discrimination – a required step of the *Batson* procedure – the trial court simply drew its own conclusion that the reason stated by the defense was pretextual. *See* R. p. 127, line 18 – p. 128, line 1. In so doing, the trial court did not follow the correct *Batson* procedure, and the Court of Appeals should rehear this aspect of its decision.

The Court of Appeals also overlooked case precedents that require reversal where the proper *Batson* procedure is not followed. In particular, the Court overlooked that *State v. Cochran*, 369 S.C. 308, 631 S.E.2d 294 (Ct.App. 2006), and *State v. Inman*, 409 S.C. 19, 760 S.E.2d 105 (2014), addressed similar shortcomings in trial courts' analyses of *Batson* issues and found, where the mandated process was not followed and the burden was not placed on the objecting party to show purposeful discrimination, those courts committed reversible error.

The Court of Appeals overlooked that no similarly situated male juror was seated so as to establish the defense's stated reason for the strike of Juror 82 was pretext. The Court also overlooked the requirement to evaluate the totality of the circumstances and the composition of the selected jury in determining whether purposeful discrimination occurred. As in *Rogers*, *Cochran*, and *Ford*, the Court should have reviewed the jury selection and the ultimate composition of the jury and found that there was no purposeful discrimination in the defense's exercise of its strike of Juror 82. *See Rogers*, 405 S.C. at 534-35, 748 S.E.2d at 255; *Cochran*, 369 S.C. at 315-16, 631 S.E.2d at 298-99; *Ford*, 334 S.C. at 66, 512 S.E.2d at 504.

Based on all these principles and precedents that were overlooked or misapprehended by the Court of Appeals in its decision of this case, and based on all the arguments and authorities cited in the Appellant's brief and reply brief, both incorporated herein by reference, the Court should grant rehearing, find the trial court erred in its *Batson* analysis, find such error was prejudicial, and grant Appellant a new trial.

Respectfully submitted,



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PROOF OF SERVICE

I certify that I have served the Petition for Rehearing by depositing through Electronic Mail, on January 7, 2026, addressed to the following:

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January 7, 2026
Columbia, South Carolina