

RECEIVED

Jun 12 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Thomas William McGee, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTY BROWN,

APPELLANT

APPELLATE CASE NO. 2025-001776

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Deputy Chief Attorney for Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	3
ARGUMENT	
The trial court erred in granting the State’s motion to quash the jury based on its allegation that appellant exercised his peremptory challenges in a manner discriminating against women when the trial court found no purposeful discrimination by defense counsel.....	4
CONCLUSION.....	8
PETITION TO BE RELIEVED AS COUNSEL	9

TABLE OF AUTHORITIES

South Carolina Cases

<u>State v. Blake</u> , 442 S.C. 295, 898 S.E.2d 184 (Ct. App. 2024)	3
<u>State v. Cochran</u> , 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006)	7
<u>State v. Edwards</u> , 384 S.C. 504 682 S.E.2d 820 (2009)	4
<u>State v. Palmer</u> , 415 S.C. 502, 783 S.E.2d 823 (Ct. App. 2016)	5
<u>State v. Rayfield</u> , 369 S.C. 106, 631 S.E.2d 244 (2006).....	7

United States Cases

<u>Batson v. Kentucky</u> , 476 U.S. 79 (1986)	4, 6, 7
<u>J.E.B v. Alabama</u> , 511 U.S. 127 (1994).....	4, 7

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in granting the State's motion to quash the jury based on its allegation that appellant exercised his peremptory challenges in a manner discriminating against women when the trial court found no purposeful discrimination by defense counsel?

STATEMENT OF THE CASE

Appellant was indicted in Richland County for second-degree criminal sexual conduct with a minor, exposure of private parts, and contributing to the delinquency of a minor. R. 7. On August 25, appellant was tried before the Honorable William Thomas McGee, III, and a jury. R. 1. Anna Rawl Browder and Cecil Kelly "Jack" Jackson, Jr. represented the State. R. 1. Scott Joseph Hayes represented appellant. R. 1. The jury acquitted appellant on the criminal sexual conduct charge. R. 497. It convicted appellant on the exposure and contributing charges. R. 497. Judge McGee sentenced appellant to three years' imprisonment on the contributing charge and a consecutive six months' imprisonment on the exposure charge. R. 508. Judge McGee found sex offender registration was mandatory for the exposure charge because complainant was a minor. R. 504-05. This appeal follows.

STANDARD OF REVIEW

“The trial court’s findings regarding purposeful discrimination are accorded great deference and will be set aside on appeal only if clearly erroneous.” State v. Blake, 442 S.C. 295, 301, 898 S.E.2d 184, 187 (Ct. App. 2024).

ARGUMENT

The trial court erred in granting the State's motion to quash the jury based on its allegation that appellant exercised his peremptory challenges in a manner discriminating against women when the trial court found no purposeful discrimination by defense counsel.

On the first day of trial, the judge granted the State's motion to quash the jury panel based on alleged gender discrimination by the defense. R. 47-51. See J.E.B v. Alabama, 511 U.S. 127 (1994); Batson v. Kentucky, 476 U.S. 79 (1986). The next day, when the solicitor discussed the procedure for selecting the jury following the quashing of a panel, defense counsel said, "And I just want it to be clear for the record. I acted in good faith yesterday. I stand by everything I did, right?" R. 140.

Judge McGee responded, "Yesterday I probably said half a dozen times and I'll say it again, I do not believe that there was any intent to do anything wrong. . . . I'm not saying that you intended to do anything improperly." R. 141. The judge commended the experienced defense attorney and then added, "I'm just saying that the analysis that I'm forced to do, and I stand by that as well." R. 141.

The trial judge erred because he did not understand that the final determination of juror discrimination is based on the totality of the circumstances. State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822-23 (2009). "The opponent of the strike carries the ultimate burden of persuading the trial court that the challenged party exercised strikes in a discriminatory manner." Id. A trial judge is entitled to take into account the demeanor and credibility of the challenged attorney. Id. Here, the court erroneously thought it was constrained to grant the State's motion even though it found defense counsel had no discriminatory intent.

During the first selection, defense counsel used eight peremptory strikes for the primary jurors and two peremptory strikes during the selection of the two alternates. R. 24-32. Defense counsel struck jurors 41, 236, 315, 362, 282, 131, 110, and 5 for the primary panel and jurors 93 and 132 for the alternates. R. 24-32. The solicitor argued that defense counsel discriminated against women because nine of these ten total strikes were against women. R. 33.

The trial judge then moved to the second step of the analysis and had defense counsel give race-neutral reasons for his strikes. R. 33. State v. Palmer, 415 S.C. 502, 512-13, 783 S.E.2d 823, 828 (Ct. App. 2016). Defense counsel gave the following reasons for his strikes:

- Juror 41: worked as an insurance underwriter;
- Juror 236 (male): actuary for insurance company and had an MBA, thought he would be a leader and very conservative;
- Juror 315: banker and smart;
- Juror 362: victim of sexual assault;
- Juror 282: accountant who worked with the Boys and Girls Club;
- Juror 131: how she dressed (red flannel shirt and jeans), worked at Amazon, how she conducted herself;
- Juror 110: way juror carried herself, had a “blonde bob cut” and a “black top,” decided to strike this juror during the morning’s qualifications;
- Juror 5: was over 65, but did not exercise her exemption and defense counsel believed jurors who want to serve have an “axe to grind;”
- Juror 93: lived in Chapin which is a very conservative part of the county;
- Juror 132: young, unemployed.

R. 33-38. Defense counsel added that, “we sat white ladies on the jury.” R. 39.

The solicitor argued that age was a discriminatory reason and not allowed. R. 39-40. She argued living in Chapin did not indicate whether a person was conservative. R. 40-41. The red flannel and jeans was too unspecific as was the explanation for Juror 110 (how she carried herself). R. 41. As for the strikes regarding intelligence or employment in banking and insurance, the solicitor argued the case had “nothing to do with numbers.” R. 41-42. She added male jurors who were engineers or business analysts were not struck. R. 45-46.

Defense counsel strenuously maintained he did not engage in purposeful discrimination. R. 42-45. He argued that without lawyer-led voir dire, the information he could rely upon was “miniscule.” R. 43. “It is ridiculous what we have to pick juries on the amount of information that we really have.” R. 43.

Judge McGee took a break to review the law. R. 47. When he returned he granted the State’s motion. R. 47-50. The court found some of defense counsel’s explanations were obviously gender neutral, such as the sexual assault victim and the juror who worked for the Boys and Girls Club. R. 48. But the judge said some explanations were not gender-neutral and cited the juror wearing the flannel shirt. R. 48. The judge then reasoned that because some of the strikes were supposedly for working with numbers or advanced degrees and men with similar credentials were not struck, “were discussed there.” R. 49.

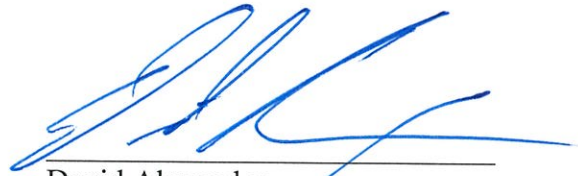
The court then said when it came to whether purposeful discrimination had been proved, he did not “want to make any implication that there was any, you know, maligned intent or anything like that.” R. 49. But found “there still must be compliance with Batson” and granted the motion. R. 49. As stated earlier, the judge again reiterated the next day that defense counsel had no intent to do anything wrong. R. 141.

The trial judge's error was because he interpreted the law as discriminatory purpose is conclusively proved when a challenging party shows disparate treatment of similarly situated jurors. The law governing Batson and J.E.B. challenges does not require this kind of automatic finding. In State v. Cochran, 369 S.C. 308, 333-34, 631 S.E.2d 294, 308 (Ct. App. 2006), now-Chief Justice Kittredge wrote for the Court of Appeals' decision that pretext is "generally established" with a disparate treatment showing. He elaborated, however, that, "The uneven application of a neutral reason does not automatically result in a finding of invidious discrimination if the strike's proponent provides a race-neutral explanation for the inconsistency." Id. Cochran emphasized that the burden always remains on the challenging party to prove discrimination and that the totality of the circumstances must be considered. Id.

The trial court recognized that the totality of the circumstances and the demeanor of defense counsel showed no purposeful discrimination. Unfortunately, the judge felt constrained by the superficial showing of disparate treatment made by the State. Judge McGee knew the right result, but the incorrect interpretation of the law led him to rule otherwise. While none of the jurors struck by appellant ended up on the final jury, this Court should nevertheless find the defendant was prejudiced by the trial court's error. But see State v. Rayfield, 369 S.C. 106, 637 S.E.2d 244 (2006). Appellant's convictions should be reversed and this case remanded for a new trial.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and the case remanded for a new trial.



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 12th day of June, 2026.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jun 12 2026
SC Court of Appeals

Appeal from Richland County

Honorable Thomas William McGee, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTY BROWN,

APPELLANT

APPELLATE CASE NO. 2025-001776

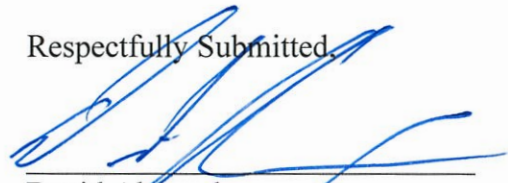
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marty Brown states:

1. He is Deputy Chief Attorney For Capital Appeals for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Thomas William McGee, III, which was held on Aug. 25-28, 2025, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, he asks the Court to relieve him as counsel for Marty Brown.

Respectfully Submitted,



David Alexander
Deputy Chief Attorney for Capital Appeals

ATTORNEY FOR APPELLANT

This 12th day of June, 2026.

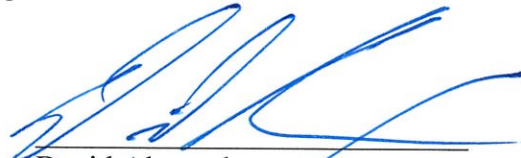
RECEIVED

Jun 12 2026

CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



David Alexander
Deputy Chief Attorney For Capital Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 12th day of June, 2026.