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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Colleton County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KASIEM RASHAWN STEPHENS,

APPELLANT

APPELLATE CASE NO. 2025-002060

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by failing to quash the jury panel where the state used its peremptory strikes in a racially discriminatory manner by striking four black men, in violation of the Equal Protection Clause of the United States Constitution?

STATEMENT OF THE CASE

On December 14, 2017, a Colleton County grand jury indicted appellant for homicide by child abuse and unlawful neglect of a child. Indictments. On September 22-25, 2025, appellant's case was called to trial before the Honorable Carmen T. Mullen. Tr. 1. Matthew Walker represented appellant. Tr. 1. Tameaka Legette prosecuted for the state. Tr. 1.

At the conclusion of trial, the jury found appellant guilty as indicted. Tr. 673, ll. 11-18. Judge Mullen sentenced appellant to concurrent terms of ten years' imprisonment for unlawful neglect of a child and life imprisonment for homicide by child abuse. Tr. 682, ll. 7-11.

This appeal follows.

STANDARD OF REVIEW

“In criminal cases, [the appellate court] will review errors of law only.” *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). The appellate court “is bound by the trial court’s factual findings unless they are clearly erroneous.” *Id.* The reviewing court “is limited to determining whether the trial court abused its discretion” and “does not re-evaluate the facts based on its own view of the preponderance of the evidence.” *Id.* The appellate court “simply determines whether the trial court’s ruling is supported by an evidence.” *Id.*

ARGUMENT

The trial court erred by failing to quash the jury panel where the state used its peremptory strikes in a racially discriminatory manner by striking four black men in violation of the Equal Protection Clause of the United States Constitution.

Relevant facts

At the end of jury selection, defense counsel objected to jury selection. Tr. 88, ll. 6-11. Defense counsel asserted all the state's peremptory strikes were used against black males, resulting in no black males on the jury. Counsel further contended there was no one "that appears like my client, [a black male] on the jury panel." Tr. 89, ll. 10-20.

In response, the solicitor averred that juror 186 and juror 127 both had convictions for criminal domestic violence. The solicitor explained that a prior conviction of that nature would not be favorable to the state's position in this case. Tr. 89, l. 22—90, l. 10; 91, ll. 8-12. The solicitor later added that juror 127 gave her a "off-putting" look when she stood. Tr. 92, ll. 9-13. For juror 39, the solicitor explained the juror disclosed that his stepfather was accused of murder and because this was a homicide the juror would not be favorable to the state. Tr. 90, ll. 11-21. For juror 216, the solicitor asserted he stood up on nearly every question during voir dire and she intuited from that juror 216 did not want to serve. Tr. 90, l. 22—91, l. 7.

The trial court overruled the objection to the jury finding there was sufficient basis for the reasons the state struck the black male jurors and noted "juror number 39 [was] marked [on the roll call] as M . . . for Mexican." Tr. 91, ll. 21-25. The court further found there were "enough black males in the jury panel to make this a good panel still, and . . . there [were] race - - reasoning behind the state's strikes." Tr. 92, ll. 5-8. Later the court added "for the record," the defense failed to meet their burden under the totality of facts and circumstances. Tr. 94, ll. 15-

19.

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 v. Kentucky*, 476 U.S. 79 (1986). In a subsequent opinion, the United States Supreme Court held the defense 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. v. Alabama*, 511 U.S. 127, 146 (1994).

The Supreme Court has long recognized “that denying a person participation in jury service on account of his race unconstitutionally discriminates against the excluded juror.” *Georgia v. McCollum*, 505 U.S. 42, 48 (1992). The Court devised *Batson* and its procedures “to remedy the harm done to the dignity of persons and to the integrity of the courts.” *Id.* (internal quotation omitted). When a party strikes a juror based on race, “there can be no doubt that the harm is the same – in all cases, the juror is subjected to open and public racial discrimination.” *Id.* at 49.

When jury selection procedures purposefully exclude African-Americans, public confidence in the criminal justice system is undermined. *Id.* “Be it at the hands of the state or the defense, if a court allows jurors to be excluded because of group bias, it is a willing participant in a scheme that could only undermine the very foundation of our system of justice – our citizens’ confidence in it.” *Id.* at 49-50 (internal quotation omitted).

Here the state’s peremptory strikes were all used against males of color, which seemingly presented as black. Three were males whose race was denoted B and one was a male whose race was denoted as M. The trial court declared the M stood for Mexican or Hispanic. Tr. 91, l. 23—

92, 1. 4. However, the list of potential jurors reflects an H under race, which appellate counsel asserts stands for Hispanic. Roll call list; Random strike sheets. Appellate counsel contends the M denotes multiracial. While it is somewhat unclear juror 39's specific race, it is clear that he was a man of color. The result of the state's discriminatory use of its peremptory strikes was that the jury contained absolutely no black men or any men of color. Appellant's jury was made up of five white women, three black women, one Hispanic woman, and three white men. The alternates were one white woman, one black woman, and one white man.

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. This 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.¹ 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 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; *see also State v. Inman*, 409 S.C. 19, 26, 760 S.E.2d 105, 108 (2014). This 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

¹ This 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).

intent is inherent in the explanation, it is deemed race neutral at step two. *Purkett*, 514 U.S. at 768.

However, the Supreme Court explained that while

the explanation provided by the proponent of a peremptory challenge at the second stage of the *Batson* process ... need not be persuasive, or even plausible, ... it must be clear and reasonably specific such that the opponent of the challenge has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty to assess the plausibility of the reason in light of all the evidence bearing on it.

State v. Giles, 407 S.C. 14, 21-22, 754 S.E.2d 261, 264 (2014). Otherwise, the opponent of the challenge and the trial court would not have the ability to safeguard the right to equal protection. *Id.* “Reasonably specific is necessary because comparison to other members of the venire for purposes of a disparate treatment analysis, which is often used at the third step of the *Batson* process to determine if purposeful discrimination has occurred, is impossible if the proponent of the challenge provides only vague or very general explanation.” *Id.* at 22, 754 S.E.2d at 263. The explanation given “may not be so general or vague that it deprives the opponent of the challenge the ability to meet the burden to show, or the trial court of the ability to determine whether, the reason given is pretextual.” *Id.* “The proponent of the challenge must provide an objectively discernible basis for the challenge that permits the opponent of the challenge and the trial court to evaluate it.” *Id.*

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).

Defense counsel made a *prima facie* case of racial discrimination when they pointed out the solicitor exercised all their peremptory strikes against black men. The state’s explanations—at least regarding juror 39 and juror 216—were mere pretext for racial discrimination.

The state exercised its peremptory strike against juror 39 in a racially discriminatory manner. Juror 39 responded to the court’s question of whether the person or a member of immediate family had been accused of a violent crime. Juror 39 told the court “my stepfather was accused of rape and murder, but I don’t really know too much about the case.” Tr. 71, l. 23—72, l. 2. Juror 39 himself was not accused or convicted of a violent crime. Rather his mother married a man that was accused of such crimes. Additionally, juror 39, admittedly knew very little to nothing about the case and it could therefore not bias him in anyway against the state.

The state exercised its peremptory strike against juror 216 in a racially discriminatory manner. Juror 216 stood up in response to four questions during *voir dire*, not as the state asserted “nearly every question.” Two of the potential juror’s responses were because he knew one of the witnesses that the *state* was calling and the other two because he had family member(s) in law enforcement or working for South Carolina Department of Social Services. Tr. 55, l. 2—56, l. 3; 60, ll. 5-18; 66, ll. 5-20. Juror 216 responding to legitimate questions during *voir dire* does not signify disinterest in serving on a jury. Rather it shows a conscientious citizen being candid with the court regarding his connections. Moreover, juror 216 stated, when asked, that he could be fair

and impartial regardless of his connection to members of law enforcement or other potential witnesses. Tr. 79, l. 14—2.

The state seated other jurors that stood up during *voir dire* in response to the court's questions. Member of appellant's jury, juror 196, a white woman stood three times. Tr. 64, ll. 10-14; 70, ll. 8-11; 73, ll. 10-14. Member of appellant's jury, juror 101 a white woman stood twice. Tr. 56, l. 21—57, l. 11; 62, l. 23. Three members of appellant's jury juror 28 a black woman, juror 55, a white woman, and juror 245, a white man stood once. Tr. 73, ll. 4-9; 61, ll. 21-25; 70, ll. 1-3. Alternate juror 208, a white female stood one time. Tr. 65, ll. 8-9. These jurors were similarly situated to this juror 216 a black man which demonstrates the state's given reason for the strike was a pretext for racial discrimination. The trial judge erred by denying defense counsel's motion.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.


Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of June, 2026.