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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2026-002059

The State, ...Petitioner-Respondent,

v.

Kendrick Montrez Lee, ...Respondent-Petitioner.

REPLY TO STATE'S RESPONSE IN OPPOSITION TO KENDRICK LEE'S PETITION FOR WRIT OF CERTIORARI

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ARGUMENT IN REPLY

In the interest of judicial economy, this Court should grant Kenderick Lee's cross-petition for a writ of certiorari because the *Batson* violation and the trial court's failure to secure potential jurors representing a cross-section of the community cannot be separated from the Juror 191 accommodation issue and because all questions presented in Mr. Lee's cross-petition can be considered as additional sustaining grounds.

The State argues, "Generally, this Court does not consider an issue on certiorari unless that issue was first considered and addressed by the Court of Appeals." State's Response to Kendrick Lee's Cross-Petition for Writ of Certiorari ("Cross Petition" and "State's Response"), p. 7 (citing *Baggott v. S. Music, Inc*., 330 S.C. 1, 6, 496 S.E.2d 852, 855 (1998) ("[W]e generally do not consider issues which were not addressed by the Court of Appeals . . . ."")). As *Baggott* illustrates, this preference is discretionary and not mandatory. The complete quote from *Baggott* demonstrates, "Although we generally do not consider issues which were not addressed by the Court of Appeals, we find it necessary to do so here." 330 S.C. at 6, 496 S.E.2d at 855.

Judicial economy militates in favor of granting the Cross Petition and considering the merits of the questions presented. *See, e.g*., *Anderson Cnty. v. Preston*, 427 S.C. 529, 539, 831 S.E.2d 911, 916 (2019) ("due to the unsettled law of [*State v*.] *McMillian*[, 349 S.C. 17, 561 S.E.2d 602 (2002)] at the time of oral argument, and in the interest of judicial economy, we proceed to the merits of the dispute."); *Woodson v. DLI Props., LLC*, 406 S.C. 517, 528, n, 10, 753 S.E.2d 428, 434, n. 10 (2014) ("While remand to the court of appeals is appropriate, in the interest of judicial economy, we address the merits of whether summary judgment in favor of Respondents was proper." (citing *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.,* 352 S.C. 594, 599, 576 S.E.2d 146, 149 (2003)).

This Court should grant Mr. Lee's Cross Petition and consider those questions on the merits and as additional sustaining grounds pursuant to Rule 220, SCACR. *See. e.g., I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("a respondent—the 'winner; in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling"). Accordingly, "discussion of the remaining issues" raised in the Cross Petition would not merely "constitute an advisory opinion on questions for which no meaningful relief can be granted," as suggested in the State's Response, at p. 8.

Finally, as seen in Mr. Lee's Response in Opposition to the State's petition for a writ of certiorari, at pp. 12-15, the trial court's failure to grant a continuance when the jurors appearing for jury duty did not reflect a cross-section of the community and the State's *Batson*[1] violation regarding Juror 191 cannot be separated from the trial court's failure to exercise its discretion to determine whether Juror 191's hearing difficulty could be accommodated." As this Court stated in *Edge v. State Farm Mut. Auto. Ins. Co.*:

> An order that is not directly appealable may be considered if there is an appealable issue before the court. Here, an order in this case which is appealable is before the Court and, in an effort to avoid another appeal in the future and potentially narrow the issues for trial (i.e. judicial economy), we will consider State Farm's cross-appeal.

366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005) (internal citations omitted).

CONCLUSION

For the reasons set forth in Kendrick Lee's Response in Opposition to the State's Petition for a writ of certiorari, this Court should deny the State's Petition. Alternatively,

[1] *Batson v. Kentucky*, 476 U.S. 79, (1986).

if this Court grants the State's Petition, then this Court should also grant Mr. Lee's Cross Petition.

Respectfully Submitted,

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