

RECEIVED

SEP 19 2014

STATE OF SOUTH CAROLINA

In The Court of Appeals

S.C. Supreme Court

APPEAL FROM CHESTERFIELD COUNTY

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES C. TYNER,

APPELLANT

APPELLATE CASE NO. 2012-212324

RECORD ON APPEAL

CARMEN V. GANJEHSANI
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated June 18-20, 2012)	1
MOTION FOR CONTINUANCE BY MR. COCKRELL	9
JURY VOIR DIRE	9
MOTION UNDER <u>BATSON V. KENTUCKY</u> BY MR. COCKRELL	26
TESTIMONY	
RALPH CHAPMAN, SR.	
Direct examination by Mr. Jones	30
Cross-examination by Mr. Cockrell	39
Redirect examination by Mr. Jones	43
LAJOYCE CHAPMAN	
Direct examination by Mr. Jones	46
Cross-examination by Mr. Cockrell	55
ADAM RAYMOND QUICK	
Direct examination by Mr. Jones	56
Cross-examination by Mr. Cockrell	61
Redirect examination by Mr. Jones	62
DELTON POWERS	
Direct examination by Mr. Jones	63
BRUCE WAYNE WALTERS	
Direct examination by Mr. Jones	64
Cross-examination by Mr. Cockrell	70
MOTION FOR A DIRECTED VERDICT	73
MOTION TO RENEW DIRECTED VERDICT BY MR. COCKRELL	75
CHARGE ON THE LAW	77
VERDICT	84
SENTENCING	88

INDICTMENTS 89

CERTIFICATE OF COUNSEL.....93

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
<u>COUNTY OF CHESTERFIELD</u>	)	2011-GS-13-0239
		2011-GS-13-0240

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JAMES C. TYNER	)	
<u>DEFENDANT</u>	)	

June 18-20, 2012
 Chesterfield, South Carolina
VOLUME 01 OF 03

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

A P P E A R A N C E S:

CHRIS JONES, ASSISTANT SOLICITOR
 Attorney for the State

TREY COCKRELL, ESQUIRE
 Attorney for the Defendant

JASON TURNBLAD, ESQUIRE
 Attorney for the Defendant

A P P E A R A N C E S:

RALPH CHAPMAN, SR., Victim

LAJOYCE CHAPMAN, Victim's Wife

RALPH CHAPMAN, JR., Victim's Son

WAYNE JORDAN, Chesterfield Cty. Sheriff's Office

BRANDON NOLAN,

BRANDON BOUEW,

ADAM QUICK,

DELTON POWERS, Esquire

BRUCE WALTERS,

HATTIE O. GORDON
Circuit Court Reporter

MASTER INDEX

VOLUME 01: JUNE 18, 2012

Colloquy	9
Voir Dire of the Jury	9
Selection of the Jury	21
Colloquy	26
Certificate of Reporter	34

VOLUME 02: JUNE 19, 2012

Colloquy	36
Opening Statement by Mr. Jones	42
Opening Statement by Mr. Cockrell	45
Contempt of Court	47

RALPH CHAPMAN, SR.

Direct By Mr. Jones	50
Cross By Mr. Cockrell	59
Redirect By Mr. Jones	63

LAJOYCE CHAPMAN

Direct By Mr. Jones	66
Cross By Mr. Cockrell	75
Redirect By Mr. Jones	78

WAYNE JORDAN

Direct By Mr. Jones	79
Cross By Mr. Cockrell	82

1	Redirect By Mr. Jones	93
2	Recross By Mr. Cockrell	95
3	Further Redirect By Mr. Jones	97
4	BRADLEY NOLAN	
5	Direct By Mr. Jones	99
6	Cross By Mr. Cockrell	102
7	Redirect By Mr. Jones	103
8	BRANDON BOUEW	
9	Direct By Mr. Jones	104
10	Cross By Mr. Cockrell	107
11	ADAM QUICK	
12	Direct By Mr. Jones	109
13	Cross By Mr. Cockrell	114
14	Redirect By Mr. Jones	120
15	DELTON POWERS	
16	Direct By Mr. Jones	121
17	BRUCE WAYNE WALTERS	
18	Direct By Mr. Jones	122
19	Cross By Mr. Cockrell	128
20	Colloquy	134
21	Certificate of Reporter	140
22		
23	<u>VOLUME 03: JUNE 20, 2012</u>	
24	Colloquy	142
25	Closing Statement by Mr. Jones	146

1	Closing Statement by Mr. Cockrell	151
2	Charge of the Court	157
3	Colloquy	176
4	Verdict of the Jury	178
5	Colloquy	180
6	Sentence of the Court	182
7	Certificate of Reporter	190
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	STATE'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Photo	33	
4	2	Photo	33	
5	3	Photo	33	
6	4	Photo	33	37
7	5	Photo	33	37
8	6	Photo	33	
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

DEFENDANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Photo	33	78
2	Photo	33	78
3	Adam Quick Interview	118	142

1	COURT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	Jury Question No. 01	177	177
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

COLLOQUY

MR. COCKRELL: Your Honor, in the matter of the State v. James Tyner, I have not spoken with my client since -- in around two weeks. He was aware that he was likely going to be called at the next term of Court when -- the last time I spoke to him. However, I have not, and I move for a continuance and an opportunity to meet with him in order to fully prepare for the defense of this matter.

THE COURT: Based on the fact that it was continued the last time the Court, sort of for unusual reasons, you are going to have to be prepared to go before the Supreme Court on the selection situation. I am going to give you partial relief on it. I'll continue it until tomorrow to try to get him located, but that's about the best that I can do cause it's pretty obvious to the Court that he's playing games with you.

MR. COCKRELL: Thank you, Your Honor.

MR. JONES: Thank you, Your Honor.

(WHEREUPON, jury qualification was conducted on the record but not included in this transcript of the record.)

VOIR DIRE OF THE JURY

THE COURT: I find the panel so qualified. Now, ladies and gentlemen, the next thing that is going to happen, at least I think is going to happen, the

1 Solicitor, under our constitution at the time controls the
2 call of the docket in our General Sessions Court. General
3 Sessions is an Old English term which in effect means that
4 we will be trying the criminal cases that are pending in
5 Chesterfield County. If we were trying civil cases it
6 would be what we call Common Pleas. In Common Pleas Court
7 the Court, and through the Clerk's Office, we call the
8 docket in effect setting the cases that will be called and
9 work very closely with all the members of the bar that may
10 be involved in these cases.

11 With General Sessions the Solicitor, which I feel
12 sure all of you are aware that in South Carolina and
13 Virginia I believe it is the prosecuting authority in a
14 particular jurisdiction called the Solicitor. In other
15 states it's called the State's Attorney or the District
16 Attorney. Well, in South Carolina the Solicitor at this
17 time will call the cases for trial, and I will defer to
18 the Solicitor's Office at this time to call the cases that
19 we may be seating a jury for in a few minutes.

20 That will mean I'm going to have to ask you another
21 series of questions which will be more case specific.
22 Solicitor.

23 MR. JONES: Thank you, Your Honor. State calls James
24 Tyner. Indictment Number 2011-GS-13-0239, assault and
25 battery of a high and aggravated nature. And

1 2011-GS-13-0240, strong armed robbery.

2 THE COURT: If I can have those, please. And for the
3 record, Mr. Cockrell of the Chesterfield County Bar will
4 be representing Mr. Tyner. We will not begin this case
5 today, but while we've got a jury panel here and everybody
6 was in agreement to save the County considerable expense
7 and to go ahead and seat a jury today.

8 As you heard the State has called the cases of the
9 Defendant, being James Curtis Tyner, indicted by the Grand
10 Jury of Chesterfield County with the offenses of assault
11 and battery of a high and aggravated nature and strong
12 armed robbery. Also sometimes called common law robbery.
13 the indictment alleges that these offenses occurred in
14 Chesterfield County on or about December the 23rd 2010.
15 The Defendant, James Curtis Tyner, at that time he was a
16 resident of Ruby Road in Hartsville, South Carolina.

17 The question I have to pose to you; anybody on the
18 panel related by blood or by marriage or have any
19 business, social, religious or fraternal relationship
20 where James Curtis Tyner, if so we need you to stand at
21 this time.

22 PROSPECTIVE JUROR: Is this the same one I think
23 where I work? He was a student where I work.

24 THE COURT: Let's see if I can help. Date of birth,
25 1983.

1 PROSPECTIVE JUROR: I think it's the same one.

2 THE COURT: All right. Would the fact that you have
3 that prior knowledge of him and knew him at that time
4 would that affect your ability to be a fair and impartial
5 juror?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Thank you. Anyone else? We need your
8 juror number, please.

9 PROSPECTIVE JUROR: Twenty-one.

10 THE COURT: Going to be the same question, but we're
11 going to have several other individual's names. Anyone
12 related by blood or marriage or have any business, social,
13 religious or fraternal relationship in any way with Ralph
14 Chapman? And I'll turn it over first to the State to call
15 any other potential witnesses.

16 MR. JONES: LaJoyce Chapman, Wayne Jordan, Bruce
17 Wayne Walters, Adam Quick, Brandon Nolan, and Brandon
18 Bouew.

19 PROSPECTIVE JUROR: I'm sorry. Their neighbors of
20 mine and about 7-miles down the road from me. And I know
21 Bruce. Same thing.

22 THE COURT: Okay. Number 65 again. Anyone else. If
23 any one of those witnesses, potential witnesses, are here
24 turn around and face the jury where they can get a look at
25 you. Mr. Jordan is over here is with the Sheriff's

1 Department. All right. Juror Number 21 would you come up
2 to the court reporter's box, please. Don't talk too loud
3 but so that she can hear.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: You told us that you knew them. I'll
6 just boil it down to the brass plate. If you were to be
7 seated on this jury could you be both fair to the State
8 and to the Defendant? /

9 PROSPECTIVE JUROR: I could be.

10 THE COURT: In other words the fact that you've got
11 some neighbors that may be witnesses would that affect
12 your ability to be fair and impartial?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: Any questions?

15 MR. COCKRELL: Are you familiar with the facts that
16 surround this case?

17 PROSPECTIVE JUROR: Just hearsay.

18 MR. COCKRELL: Your Honor, I think she's kind of
19 biased. The fact that she has some knowledge, hearsay or
20 otherwise, it's a close proximity to the area. I ask for
21 dismiss for cause.

22 PROSPECTIVE JUROR: General talk. I've got to be
23 honest.

24 THE COURT: Okay. Let me think about it, okay. All
25 right. Anyone else on that question?

1 PROSPECTIVE JUROR: I don't know if this is relevant,
2 but my daughter worked with Wayne Jordan at the Sheriff's
3 Department.

4 THE COURT: And your name.

5 PROSPECTIVE JUROR: Linda Mills, Number 26.

6 THE COURT: Would that affect your ability to be fair
7 and impartial?

8 PROSPECTIVE JUROR: No, sir.

9 PROSPECTIVE JUROR: I've known Wayne Jordan since he
10 was a little, tiny boy. We'd go to church together.

11 THE COURT: Is that good or bad? Would that affect
12 your ability to be a fair and impartial juror?

13 PROSPECTIVE JUROR: No, sir.

14 THE COURT: Now, he's not related to you?

15 PROSPECTIVE JUROR: No. No.

16 THE COURT: You just know him?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Your juror number.

19 PROSPECTIVE JUROR: 124.

20 THE COURT: All right. Anyone else? Yes.

21 PROSPECTIVE JUROR: I taught Wayne. I believe it
22 will not affect me. And I'm Number 78.

23 THE COURT: Number 78.

24 PROSPECTIVE JUROR: Does it count if I used to work
25 with him?

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR: It won't affect me.

3 THE COURT: And your number? Number Four.

4 PROSPECTIVE JUROR: Number 64.

5 THE COURT: Sixty-four, sorry. You used to work with
6 him. Mr. Wallace.

7 PROSPECTIVE JUROR: I know Deputy Jordan from school.

8 THE COURT: All right. We have Nelda Richardson,
9 Mr. Stewart Wallace, and?

10 PROSPECTIVE JUROR: Wanda Byrd.

11 THE COURT: All know him previously from school.
12 Would that affect y'all ability to be fair and impartial
13 jurors if selected on this case?

14 PROSPECTIVE JUROR: No, sir.

15 PROSPECTIVE JUROR: No, sir.

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: All right. Thank you. Mr. Wallace, what
18 is your juror number?

19 PROSPECTIVE JUROR: 141.

20 THE COURT: Ms. Richardson?

21 PROSPECTIVE JUROR: 118.

22 THE COURT: Ms. Byrd?

23 PROSPECTIVE JUROR: Twenty-four.

24 THE COURT: Is there anybody -- has anybody discussed
25 this case with anyone or have any personal knowledge or

1 developed any opinions about any issues in this case?

2 Already got you. Juror 121. Anyone else?

3 Does anyone know of any bias, prejudice or any reason
4 why you could not be both fair to the State and the
5 Defense?

6 Anybody presently represented or represented in the
7 past by the Solicitor's Office? Or by Mr. Cockrell? Or
8 represented by any other attorney who may be seated at the
9 table? Yes?

10 PROSPECTIVE JUROR: Mr. Cockrell did a land deed for
11 me.

12 THE COURT: And your number?

13 PROSPECTIVE JUROR: Forty-eight.

14 THE COURT: Past representation? Not present?

15 PROSPECTIVE JUROR: Not present.

16 THE COURT: Yes, ma'am.

17 PROSPECTIVE JUROR: Mr. Turnblad is pending
18 representation in a personal matter.

19 THE COURT: Your number?

20 PROSPECTIVE JUROR: Fifty-four.

21 THE COURT: Fifty-four?

22 PROSPECTIVE JUROR: Fifty-four.

23 THE COURT: Thank you. One last question from me.

24 Does anybody know of any reason whatsoever why you should
25 not serve on this jury? Any further questions from either

1 side?

2 MR. JONES: No, Your Honor.

3 MR. COCKRELL: None from the Defense.

4 THE COURT: Okay, 54 and 21 are out. All right. The
5 next thing that is going to happen is we're going to give
6 Madam Clerk a few minutes to prepare us a list. Things
7 have changed a lot in the last two to three years. Before
8 that we had a bin that had capsules in it. Everybody's
9 name had to go in this capsule and dropped in that bin.
10 And it turns, something like you see on t.v, you know.
11 And you draw the names out one at the time. And it took
12 quite some time to do that especially in a case where you
13 had multiple strikes.

14 Now a days, with the computers and all loaded in the
15 computer and it does all the random sorting and
16 everything. But we've got to give them a few minutes to
17 do that, and once we come up with a random list we will be
18 calling you forwards to come up and stand in front of the
19 microphone here and face both tables and let them get a
20 good look at you and decide whether they want you on this
21 particular case or not. Okay.

22 If it was Common Pleas it would be a secret process.
23 You wouldn't know if you were stricken or not, but here in
24 criminal court, as I say, you have to come forward. And I
25 know that's an awkward thing for me to have to ask you to

1 do but it's just the way it's done. And we apologize for
2 any discomfort that this may cause, but any time you've
3 anyone interested in the State's interest that are in the
4 Court we want everybody to be aware of who the potential
5 jurors are. And it's just more important that we get a
6 good look at you and let them see you.

7 It's nothing wrong with knowing each other. So like
8 I say if somebody speaks that doesn't mean anything to me
9 except that you're being nice. So don't worry about that.
10 You don't have to be absolutely clammish about it. Just
11 like I said be careful what you say and who you say it to.

12 Now, while we're getting the list ready sometimes I
13 have questions, and I sort of like to just talk with the
14 jurors about why things are the way they are. One
15 question is, why do you separate the courts into criminal
16 court and to civil court? Why don't you just get a jury
17 down here and try whatever is available? Well, one
18 obvious reason is what I just talked to you about; the way
19 we're different in the way you seat a jury.

20 The other factor is just pure logistical; that it
21 would be very difficult to do. And of course, the other
22 factor that I already mentioned to you is the Solicitor's
23 Office controls the case docket in criminal court and the
24 Court, through the Clerk of Court's Office, controls the
25 civil docket. So it would be very difficult to administer

1 them.

2 Another question that is asked is why do you have
3 Court starting at 9:30 or ten o'clock when other
4 businesses open at 8:00 or 830? Well, you've got to keep
5 in mind that there are two important reasons for that.
6 Compared to other states South Carolina has large
7 counties. Those of you that are from Chesterfield County
8 and have been here for quite some time know that it takes
9 you an hour to drive from Wolf Pond to Society Hill. Many
10 people have to drive over 40 minutes from the far reaches
11 of the county to get to the courthouse.

12 Different from the State of Georgia where you have
13 small compact counties. The other reason is that you've
14 got attorneys, especially in the private bar, that are
15 trying cases that not only represent that particular
16 individual in the courtroom but they may have 200 other
17 client's interest that they've got to look after on a day
18 to day basis, and the only time they have to do it is in
19 the morning. So we have to give the attorneys time to go
20 back to their office and get everything else straight for
21 the day and then come in and take care of Court
22 appearances.

23 The same applies to most circuit judges. Now, if
24 you're on the road and you're assigned to a far county
25 somewhere you're not going to have too many administrative

1 duties to do. But if you're out locally, as we have been
2 for the last several years, somebody has got to be the
3 chief administrative judge and that means that the judge
4 has got to go in and take care of matters in the morning
5 or either go late in the afternoon.

6 So that's the reason we try now to follow banking
7 hours. As Miss Faye will remember and Miss Lear will
8 remember wasn't many years ago that we would operate
9 sometimes until 8:00 or nine o'clock at night. And the
10 Chief Justice got so many complaints about that, not only
11 from jurors who needed to pick up their children after
12 school or after work, and also Court staff that had
13 obligations. The Chief Justice at that time finally
14 decided that we're not going past five o'clock or 5:30
15 until it's absolutely necessary. And so we're basically
16 down to banker's hours for various reasons.

17 So that's a question that's asked sometimes. Another
18 question that is asked sometimes, now, we're a little bit
19 unusual here in that having a resident judge from your
20 actual county. Some various times a person several years
21 ago got a gavel and put it up here and had my name put on
22 it. So, therefore, it has been here. But in most older
23 court houses in South Carolina you won't find a gavel on
24 the bench. People, that just doesn't make sense. All
25 judges should have a gavel on the bench.

1 Well, I was told many years ago by a very wise Chief
2 Justice that it was tradition in South Carolina that the
3 judge didn't need a gavel; that the people of this State
4 respected the law enough to where you didn't have to call
5 to order or need a gavel to maintain order. So that
6 speaks well for all of us. And very seldom do I use a
7 gavel. About the only time I do is when we finish court,
8 if I've got one available, my court reporter likes to hear
9 we're adjourned for the week and I may hit the gavel just
10 to make her smile. That's about the only time that you
11 will see us use a gavel.

12 I'm informed that we're ready. So I'll end my
13 history lessons to you this morning, and we'll get on with
14 business.

15 SELECTION OF THE JURY

16 CLERK OF COURT: When I call your name come to the
17 front and bring everything with you. Number 50 is Gail P.
18 Funderburk. What says the State?

19 MR. JONES: One second, Your Honor. Please seat
20 Miss Funderburk.

21 CLERK OF COURT: What says the Defense?

22 MR. COCKRELL: Please seat the juror.

23 THE COURT: Have a seat in the jury box, please.
24 Number Four, Dana H. Alexander. What says the State?

25 MR. JONES: Please present Ms. Alexander.

1 CLERK OF COURT: Defense?

2 MR. COCKRELL: One moment, please. Please swear the
3 juror.

4 CLERK OF COURT: Have a seat in the jury box, please.
5 Number 98, James H. McBride the Third. What says the
6 State?

7 MR. JONES: Please strike the juror.

8 CLERK OF COURT: You can have a seat back. Number
9 130, Sonya Lee Smith. What says the State?

10 MR. JONES: One moment, Your Honor. Please present
11 Miss Smith.

12 CLERK OF COURT: Defense?

13 MR. COCKRELL: Please swear the juror.

14 CLERK OF COURT: Have a seat in the jury box, please.
15 Number 141, Stewart A. Wallace. What says the State?

16 MR. JONES: Please present Mr. Wallace.

17 CLERK OF COURT: Defense?

18 MR. COCKRELL: Please excuse the juror.

19 CLERK OF COURT: You may return to your seat. Number
20 115, Charles T. Powell, Jr. What says the State?

21 MR. JONES: Please present the juror.

22 CLERK OF COURT: Defense?

23 MR. COCKRELL: Please excuse the juror.

24 CLERK OF COURT: You may return to your seat. Number
25 54, Victoria B. Goodin. What says the State?

1 THE COURT: That will be Court excused.

2 CLERK OF COURT: Number 72, Shannon M. Jacobs. What
3 says the State?

4 MR. JONES: Please present Ms. Jacobs.

5 CLERK OF COURT: Defense?

6 MR. COCKRELL: Please seat the juror.

7 CLERK OF COURT: Have a seat in the jury box, please.
8 Number 56, Jessica L. Hammond. What says the State?

9 MR. JONES: One moment, Your Honor. Please present
10 Ms. Hammond.

11 CLERK OF COURT: Defense?

12 MR. COCKRELL: Please seat the juror.

13 CLERK OF COURT: Have a seat in the jury box, please.
14 Number 60, Annisia A. Campbell. What says the State?

15 MR. JONES: One moment, Your Honor. Please excuse
16 the juror.

17 CLERK OF COURT: You may return to your seat. Number
18 44, Robin L. Eubanks. What says the State?

19 MR. JONES: Beg the Court's indulgence. Please
20 present Miss. Enbanks.

21 CLERK OF COURT: What says the Defense?

22 MR. COCKRELL: Please seat the juror.

23 CLERK OF COURT: Have a seat in the jury box, please.
24 Number 39, Jowanda S. Drake. What says the State?

25 MR. JONES: One moment, Your Honor. Please excuse

1 the juror.

2 CLERK OF COURT: You may return to your seat. Number
3 128, David W. Sides. What says the State?

4 MR. JONES: One second, Your Honor. Please present
5 Mr. Sides.

6 CLERK OF COURT: Defense?

7 MR. COCKRELL: Please seat the juror.

8 CLERK OF COURT: Have a seat in the jury box, please.
9 139, Susan M. Terry. What says the State?

10 MR. JONES: One second, Your Honor. Please present
11 Ms. Terry.

12 CLERK OF COURT: Defense?

13 MR. COCKRELL: Please seat the juror.

14 CLERK OF COURT: Have a seat in the jury box. Number
15 33, Kristin B. Cox. What says the State?

16 MR. JONES: One second, Your Honor. Please seat
17 Ms. Cox.

18 CLERK OF COURT: Defense?

19 MR. COCKRELL: Please seat the juror.

20 CLERK OF COURT: Have a seat in the jury box, please.
21 Number 16. No, Number Five. I'm sorry. Number Five,
22 Charlotte T. Alford. What says the State?

23 MR. JONES: Beg the Court's indulgence. Please
24 present Ms. Alford.

25 CLERK OF COURT: Defense?

1 MR. COCKRELL: Please seat the juror.

2 CLERK OF COURT: Have a seat in the jury box, please.
3 Number 101, Shakeela D. McNeely. What says the State?

4 MR. JONES: Beg the Court's indulgence. Please
5 excuse the juror.

6 CLERK OF COURT: You may return to your seat, please.
7 Number 31, Timothy M. Cottingham. What says the State.

8 MR. JONES: Please present Mr. Cottingham.

9 CLERK OF COURT: Defense?

10 MR. COCKRELL: Please seat the juror.

11 CLERK OF COURT: Have a seat in the jury box, please.
12 Number 24, Wanda M. Byrd. What says the State?

13 MR. JONES: Please present Ms. Byrd.

14 CLERK OF COURT: Defense?

15 MR. COCKRELL: Please excuse the juror.

16 CLERK OF COURT: You may return to your seat. Number
17 117, Henry P. Rhoad the Third. What says the State?

18 MR. JONES: Please present Mr. Rhoad.

19 CLERK OF COURT: Defense?

20 MR. COCKRELL: Please seat the juror.

21 CLERK OF COURT: Have a seat in the jury box, please.
22 Alternates?

23 THE COURT: Let's seat two alternates.

24 CLERK OF COURT: Number 132, Raven H. Starling. What
25 says the State?

1 MR. JONES: Beg the Court's indulgence. Please
2 present Ms. Starling.

3 MR. COCKRELL: Please seat the juror.

4 CLERK OF COURT: Have a seat in the jury box. Number
5 105, Vickie L. Bryant. What says the State?

6 MR. JONES: Please present Ms. Bryant.

7 CLERK OF COURT: Defense?

8 MR. COCKRELL: Please seat the juror.

9 CLERK OF COURT: Have a seat in the jury box, please.

10 THE COURT: Any matters concerning selection of the
11 jury?

12 MR. JONES: None from the State, Your Honor.

13 MR. COCKRELL: I do have a motion to make outside of
14 the jury.

15 THE COURT: Ladies and gentlemen of the jury, please
16 do not discuss this case, but I need you to step back into
17 the jury room. Just relax back there a few minutes. All
18 the members that remain on the panel I need you to return
19 to the assembly area for a few minutes.

20 (WHEREUPON, the jury panel and jury pool were excused
21 from the courtroom at 11:29 a.m.)

22 COLLOQUY

23 THE COURT: All right, sir.

24 MR. COCKRELL: Your Honor, I make a motion under
25 Batson v. Kentucky. The jurors struck by the State:

1 Number 98, young black male; Number 60, young black
2 female; Number 39, young black female; Number 101, young
3 black female. And state a racial reason that the State
4 has struck these four jurors. The only jurors that they
5 struck are in violation of the Batson matter.

6 THE COURT: Solicitor, and make sure I'm correct on
7 mine. Each side had three strikes, correct?

8 MR. JONES: Your Honor, the State struck four.

9 THE COURT: Four. I'm missed something. Mark on
10 someone, Number 17.

11 MR. COCKRELL: Number 98, for the State, Number 60,
12 Number 39, and Number 101.

13 THE COURT: That's the one I missed. Left them on
14 there. So four and three. All right, Solicitor, as you
15 know you've got to give us a racially neutral reason for
16 these strikes.

17 MR. JONES: Yes, Your Honor. As to Juror 98, that
18 jury was unemployed, and per State v. Floyd that's a
19 racially neutral reason.

20 Juror Number 60 that defendant had a prior assault
21 conviction from 1990. Per State v. Martinez that's a
22 racially neutral reason.

23 Number 39, I consulted with the victim on that as to
24 with all the jury strikes, and she indicated that she had
25 an attitude. She didn't think she would participate in

1 jury discussions. And per State v. Casey that is a race
2 neutral reason.

3 And Juror Number 101 that juror had a lip ring. And
4 I believe talked to the victim and co-counsel lives in the
5 area where -- and don't think she would participate in a
6 jury discussion. And we believe those are all a race
7 neutral reasons.

8 THE COURT: Now.

9 MR. JONES: I would also like to point out that we
10 presented -- I presented one black male, Juror Number 141
11 and one black female, Juror Number 24, that the Defense
12 struck.

13 THE COURT: Back to Juror 39, let me make sure. I
14 need a little further explanation get my mind clear on
15 that. When you said the lady that's assisting you and the
16 victim's families, does she know or does she have an
17 opinion that the attitude or that she had an attitude from
18 something she knows out of Court or was what something
19 that was developed in Court?

20 MR. JONES: No, Your Honor, something developed in
21 Court. It was the overall demeanor. She appeared like
22 she didn't want to be here which lead to -- it was the
23 exact discussion in State v. Casey, I believe.

24 THE COURT: Okay. Thank you.

25 MR. COCKRELL: Your Honor, I don't know. To me I

1 think they're fishing for reasons to find compliance with
2 the Batson v. Kentucky. Furthermore, jurors traditionally
3 typically do not -- they've got other things, very
4 important things to do. Work related or family related,
5 and so just the general demeanor of a potential juror I
6 don't think is a valid reason to strike a person.

7 And it specifically shows that the only persons that
8 were struck here were young black males or females, and as
9 such I think that that clearly shows that they are either
10 striking in violation of Batson v. Kentucky Supreme Court
11 opinion.

12 THE COURT: Well, unemployed, assault, appearance in
13 Court, and a lip ring just not enough there for me to set
14 this aside. So I'll have to deny that motion.

15 MR. JONES: Thank you, Your Honor.

16 MR. COCKRELL: Thank you, Your Honor.

17 THE COURT: All right. Fire up in the morning.

18 MR. JONES: Yes, Your Honor.

19 THE COURT: Any extensive pretrial motions, any at
20 all?

21 MR. COCKRELL: Not at this time, Your Honor.

22 MR. JONES: No, Your Honor.

23 THE COURT: All right. Let me take a look at this.
24 Some of them have to travel. Let's start at 10:00. That
25 way we won't be rushing people down here in the morning.

1 BY MR. JONES:

2 Q. Can you hear me right here, Mr. Chapman?

3 A. I think so.

4 Q. All right. State your name for the record, please,
5 sir?

6 A. Ralph W. Chapman.

7 Q. And where do you live?

8 A. Road, Patrick.

9 Q. Actually, I'm going to stand right here so everybody
10 can see you, okay?

11 A. Okay.

12 Q. Now, where do you live again?

13 A. Road, Patrick.

14 Q. Okay. And do you work?

15 A. Not anymore.

16 Q. Where ---

17 A. I haven't worked since 2004.

18 Q. Where did you used to work?

19 A. Crown Cork and Seal was the last place I worked.

20 Q. Will you tell us about the events on December 31st
21 2010?

22 A. Well, somewhere between 6:00 and 6:30 my wife heard
23 somebody beating on our front door. I can't hear, but it
24 happened I think two or three times. She got me up and I
25 said, "Well, it's nobody that knows us. Nobody in the

1 neighborhood." They would come to the side door. What we
2 call the back door.

3 MR. JONES: Yes, sir.

4 THE COURT: And she said, "Might be somebody broke
5 down and need some help." And I said, "Well, that could
6 be," and I said, "Soon as I get my clothes on and
7 everything I'll see what I can do." So I went ahead and
8 got dressed and everything and all, and somewhere around
9 6:30 I went out the house. And I walked around to the
10 front, checked. I couldn't find anybody, didn't hear
11 anything or whatever.

12 Q. Did you see anything?

13 A. Not at that time. When I turned around and started
14 back around down the road towards -- my sister lives maybe
15 a hundred yards, and there was a car parked on the side of
16 the road. I could just, you know, barely see it. And I
17 said, "Well, you know, might be somebody did break down.
18 I'll go get the truck and drive down there and see what's
19 going on."

20 Q. Just a minute. Describe where you live. Are there
21 any other houses that are close to you?

22 A. My sister, which is close to a quarter mile away, at
23 least 300 yards -- 300, 400 yards.

24 Q. She's the closest to where you live?

25 A. Yes, sir.

1 Q. Go ahead.

2 A. Anyway, I walked back to my truck. I unlocked my
3 truck, and when I did two guys grabbed me. And they
4 slammed me into the truck and then they started beating on
5 my head pretty good. And finally took me down. I guess I
6 was in a more or less a fetal position, had my head down,
7 and one of them was choking me. He had his hand over my
8 mouth and nose where i couldn't breathe.

9 Q. Can you describe what they were wearing?

10 A. They had on parkers, I guess you call them. Maybe a
11 pale green. I don't know, not an olive color but a pale
12 green.

13 Q. A parker like a long coat?

14 A. Yes, three quarter length or whatever.

15 Q. Yes, sir.

16 A. With the hoodie.

17 Q. The hood was up?

18 A. Yes, sir.

19 Q. Okay.

20 A. When they first grabbed me I turned around I got one
21 look right in Bruce -- Bruce Walters' face. But, anyway,
22 they took me down and they whooped up on me pretty good.

23 Q. Okay. Let's go back for a second. Was there
24 anything covering their heads?

25 A. No, their hoods were up.

1 Q. Did they have on masks?

2 A. No. No.

3 Q. Okay. What about gloves?

4 A. They had on gloves. They had their hand over my
5 mouth. I kept trying to break one of their fingers
6 because I couldn't breath.

7 Q. Do you think you could have broke one?

8 A. No, I don't think so. I could put enough pressure on
9 it every once in a while so I can get a little air, and I
10 begged them not to kill me. Just go ahead and take what I
11 had and go.

12 Q. Did they ever say anything to you?

13 A. No, never opened their mouth and they left.

14 Q. You asked them not to kill you?

15 A. Yes.

16 Q. Then what happened?

17 A. Well, they, every time I get their hand off where I
18 could breathe I got a little lick up side the head, but
19 they were having trouble getting my billfold out of my
20 pocket I guess because of the position I was in and I had
21 on a pair of blue jeans. And it seems like they would
22 never get it out. But they finally did get my billfolder
23 out, and when they did they jumped up and ran off towards
24 the highway.

25 Q. Okay. And how many of them ran off?

1 A. Two. Two.

2 Q. Okay.

3 A. One appeared to be a little taller than the other and
4 a lot slimmer.

5 Q. Okay.

6 A. And the third person, whoever picked them up, and out
7 at the highway in the automobile.

8 Q. Now, was that the same vehicle that you saw that was
9 parked down the road?

10 A. Yes, sir.

11 Q. Okay. How are you sure of that?

12 A. No other vehicle came by, and it wasn't down there
13 once they left.

14 Q. Right. Was the car in motion when it picked them up
15 or still there?

16 A. It was in motion because when they got to it it
17 stopped. They jumped in, went on down to the stop sign,
18 which is 50, 60-yards and took a left towards Society
19 Hill.

20 Q. Okay. Just to be clear how many men were in that
21 vehicle when they drove off?

22 A. At least three.

23 Q. Okay.

24 A. And the driver and the two that left me.

25 Q. Okay. Now, you mentioned -- let's go back. After

1 they left tell us what you did?

2 A. I got up and went in the house, started in the house.
3 I met my wife coming out of the house cause she could hear
4 me. I tried to call her name a couple of times when they
5 were beating on me, and I said two guys just beat the crap
6 out of me and robbed me. And I went in the kitchen and
7 sit at the kitchen table. After a minute or two I realize
8 that I was bleeding all over everything, and I walked back
9 outside and sit down on the back door steps. And I was
10 still there when the deputies finally got there and the
11 E.M.T. and whatever.

12 Q. Now, you mentioned a name of somebody who you thought
13 was attacking you. Tell us what happened a few days prior
14 that made you believe he was one of the men who attacked
15 you?

16 A. This other guy, Bruce Wayne Walters, had trouble with
17 him Wednesday morning at the truck stop. He came in the
18 truck stop ---

19 Q. Now, Wednesday morning, what day were you attacked at
20 your home?

21 A. The 31st on Friday morning.

22 Q. Friday. On Wednesday ---

23 A. Before that. Two days before.

24 Q. Okay.

25 A. He came in the truck stop and wanted me to take him

1 down to Galey and Lord which was a plant out of Society
2 Hill ---

3 Q. Yes, sir.

4 A. --- for a job interview, and I thought that was
5 pretty strange. But, anyway, I said I would.

6 Q. What time was that?

7 A. That was probably 8:30 in the morning, thereabouts.
8 Some time like that.

9 Q. Okay.

10 A. And I said, "Okay, I can do that. I got a couple of
11 minutes to go that way. He got in the truck. He started
12 to asking me for money, and I tried to explain to him, I
13 said, "Bruce, I don't work anymore. I don't have money to
14 lend. You know, I have to live from month to month."

15 And then he wanted to start trying to sell me pills.
16 Pills, some kind of pills. Zanex to be exact. I said,
17 "Bruce, I don't do stuff like that." He said, "Well, I
18 know there is plenty of them up your way you could
19 probably sell them to." I said, "Yeah, I'm sure they
20 could, but I just done do that."

21 So I proceeded on down the road with him. He jumped
22 me again a time or two about trying to lend him money. I
23 said, "Bruce, I just don't have it."

24 Q. Okay.

25 A. Well, before we got to Galey and Lord we turned down

1 a dirt road and turned back down another one and ended up
2 in a little trailer.

3 Q. At his direction?

4 A. Yeah, in the wooded area. That didn't sound right
5 either, but he said the guy was going to help him get a
6 shutdown job.

7 Q. So you pulled up to a house or a trailer?

8 A. Pulled up to a trailer. He got out and he went and
9 beat on the door. They finally let him in. Then he came
10 back and wanted me to wait on him a little bit. So he
11 talked to the guy a little more. I said, "Okay, I can
12 wait a couple more minutes." He went back in and came
13 back out and wanted to know if I would let him have \$2 to
14 give the guy to buy gas with. I thought that was a little
15 odd, too, but I said, okay and reached back and pulled my
16 billfold out and gave him two more dollar bills and he
17 goes back in the trailer.

18 Q. Now, when you pulled your billfold out describe for
19 us what your billfold looks like?

20 A. Well, I have a lot of \$1 bills in it, and I had a
21 \$100 bill, had six or 7 \$20s, a bunch of \$5 and a stack of
22 \$1's. I'm bad about carrying a lot of \$1 bills especially
23 at certain times of the month.

24 Q. Right.

25 A. And I guess he saw what I had. He must have thought

1 I had a lot of money ---

2 Q. Yes, sir.

3 A. --- in there. Well, I give him the \$2 and put my
4 billfold back in my pocket. I knew then it was time for
5 me to get out of here, but he -- so when he went back in
6 the trailer at that time I backed around and I pulled off
7 and drove down the road and left. He come running out
8 through the woods and tried to flag me down, and I said,
9 "I'm not stopping. I'm gone."

10 Q. Yes, sir.

11 A. And I guess I kind of made him angry, and that Friday
12 morning he got even with me big time.

13 Q. Okay. Now, and finally after it happened who was
14 the -- what name did you tell the police that was somebody
15 you thought did it?

16 A. I told them that it was Bruce.

17 Q. Okay?

18 A. Was one of the ones.

19 Q. Bruce who?

20 A. Walters.

21 Q. Okay.

22 MR. JONES: Beg the Court's indulgence. No further
23 questions, Your Honor.

24 THE COURT: Counsel.

25 MR. COCKRELL: Thank you, Your Honor.

CROSS-EXAMINATION

1
2 BY MR. COCKRELL:

3 Q. Good afternoon, Mr. Chapman. Trey Cockrell here.

4 How are you? I heard your testimony. Isn't it true that
5 earlier on when you were making a report to the
6 investigator, I believe it was Officer Wayne Jordan, that
7 you stated only one individual attacked you?

8 A. No, I never did that.

9 Q. You never did that?

10 A. No. No.

11 Q. So this police report would be incorrect if it stated
12 that?

13 A. If it stated that I only said one, yeah.

14 Q. Okay.

15 A. Now, I probably was mixed up with the names cause I
16 was confused and there was another Wayne person involved
17 that I knew of and everything, but the reason I got and
18 finally got it straighten out in my head was this Bruce
19 guy, he was wearing the same pants he had on on Wednesday
20 morning. The reason I know that was he had a torn place
21 on one leg and what appeared to be a yellow paint stain on
22 the other one. And I had seen that 15, 20 times I guess
23 that Wednesday morning.

24 That led me to place him and to be sure that I was
25 right. I got two of my friends to take me to his daddy's

1 house on Saturday, and one of them went in and brought
2 Bruce out to get it straight in my mind. And my friend
3 said, "I want you to see what those boys did to him." And
4 they looked at me and say, 'yeah'. He said, "I understand
5 you accuse me of it, Mr. Chapman." I said, "Well, you and
6 some more people and everything," and he said, "Well, now,
7 you know, I wouldn't do that to you. The last time I saw
8 you was Wednesday morning in Society Hill." Well, that
9 sealed the deal right there. Everything, you know, came
10 into place.

11 Q. And this was Bruce Walters?

12 A. Bruce Walters, yes.

13 Q. Okay. Okay. Not James Tyner?

14 A. I can't physically put him at that scene. Only thing
15 I can say is the person that ran off with Bruce was a
16 slightly taller and slimmer, but I can't visually put him
17 at that scene.

18 Q. What about the vehicle that was at -- you said there
19 was a vehicle somewhere near the scene?

20 A. Yes, sir.

21 Q. Near your house?

22 A. Yes, sir.

23 Q. Kind of vehicle was that?

24 A. It appeared to be some kind of Pontiac. I can't say
25 for sure. That's what it appeared to me.

1 Q. What color was it?

2 A. It was a reddish burgundy. Some type of color like
3 that. I'm not really sure.

4 Q. Some dark color?

5 A. Yes, sir.

6 Q. Okay. This was 6:30 in the morning?

7 A. Yes, sir.

8 Q. In the wintertime?

9 A. Yes, sir.

10 Q. When it's really dark?

11 A. Well, it was between dark and light, you know. The
12 period between dawn, I guess you would say. When you
13 drive by it wasn't really dark.

14 Q. And how far away was the car?

15 A. The first time I saw it like maybe a hundred yards.
16 When they picked up -- whoever was driving picked these
17 two guys up. It was maybe 45, 50-yards from the end of
18 the driveway.

19 Q. Okay. But it was your -- it's your understanding
20 that Bruce Walters was after that big wad of cash that you
21 had?

22 A. Oh, yes. No doubt in my mind about that.

23 Q. Okay.

24 A. Or what he thought was a big wad of cash.

25 Q. Um hum. Did they have masks on, those individuals?

- 1 A. No, they did have the hood up, but I can see straight
2 in their faces. In Bruce's face anyway.
- 3 Q. So you can be clear about the guy.
- 4 A. Yes.
- 5 Q. Mr. Bruce Walters?
- 6 A. Yes, sir.
- 7 Q. Okay, did you happen to observe Mr. Tyner?
- 8 A. Not that I can tell who it was. Only that it was
9 another person there. And when they ran off it appeared
10 to be a slightly taller and slimmer cause Bruce is short
11 and big around.
- 12 Q. Okay, did you go to -- I know you sustained some hits
13 to the face and to the head?
- 14 A. Yeah.
- 15 Q. Did you go to the hospital?
- 16 A. No. No. My sister sit there on the steps with me
17 and cleaned me up while I was talking to the detectives
18 and everything when they finally got there. The E.M.T.
19 boys got there and they stood over there and watched for a
20 little while. And finally one of them told me,
21 "Mr. Chapman, unless you want us to take you to the
22 emergency room there is really nothing we can do for you."
23 I said, "No, I don't see any need of that. I mean I'm
24 just beat up. I mean, you know.
- 25 Q. Some bruises?

1 A. I was bleeding, you know, cutting.

2 Q. Yes, sir. But you didn't break any bones?

3 A. Not that I know of. No.

4 Q. Yes, sir. Okay, you didn't go -- you haven't since
5 that time gone to see a doctor about this situation?

6 A. No. No.

7 Q. Thank you.

8 MR. COCKRELL: Nothing further, Your Honor.

9 THE COURT: Solicitor?

10 MR. JONES: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. JONES:

13 Q. Mr. Chapman, how many people attacked you that day?

14 A. Two.

15 Q. Two people. Have you ever met James Tyner before?

16 A. Oh, yeah.

17 Q. You have?

18 A. Yes, sir.

19 Q. You met Bruce Wayne Walters?

20 A. Yes.

21 Q. How many of them did you get a good look at their
22 face? Did you get a good look at their faces?

23 A. No. Just Bruce to be for sure.

24 Q. Why couldn't you get a look at the others?

25 A. I just never did. Like I said he ---

1 Q. Because you were being attacked?

2 A. Yes.

3 Q. Now, can you tell us a little bit about your health
4 condition?

5 A. Just about gone. I have a severe heart condition,
6 emphysema. I wear an I.C.D.

7 Q. What is that?

8 A. It's supposedly does the same thing as a pacemaker
9 and the defibrillator. I've got one of each, but this is
10 supposed to do it all the. Whether it does or not I don't
11 know yet, but it's supposed to.

12 Q. Okay.

13 A. And I just feel really fortunate that I didn't get a
14 lick on it or I didn't get a lick right in my chest. All
15 the licks were on my head. They were bad, but I mean, you
16 know.

17 Q. When were you diagnosed with emphysema?

18 A. Over seven years ago.

19 Q. Was it prior to this incident?

20 A. Oh, yeah. Yes, sir.

21 Q. What about your I.C.D. When did you have surgery for
22 that?

23 A. I think the spring was four years ago.

24 Q. Okay.

25 A. I had the I.C.D. put in. I mean I've had open heart

1 surgery before and stints put in.

2 Q. Tell us about the open heart surgery. Tell us about
3 that? When did you have that?

4 A. In 1999.

5 Q. All right.

6 A. And I felt real good for about four, five years.
7 Went back to work. Felt better than I felt in a long time
8 and it went bad again.

9 Q. How many stints have you had put in?

10 A. Four.

11 Q. When those two men were attacking you did you think
12 you were going to die?

13 A. Yeah, I really did. I couldn't breathe. The only
14 time, like I said -- I mean I was trying to break his
15 fingers. I never could, but I could put enough pressure
16 on it to get it off enough for me to get some air and
17 holler for my wife. And I'd tell them, you know, don't
18 kill me. Just take what I got and go. I did that two or
19 three times I know.

20 Q. And when you begged them to stop did they stop?

21 A. When they got my billfold.

22 MR. JONES: No further questions, Your Honor.

23 MR. COCKRELL: No recross.

24 THE COURT: You may step down. Watch your step.

25 MR. JONES: State calls LaJoyce Chapman.

1 LAJOYCE CHAPMAN, after being duly sworn,
2 testified as follows:

3 CLERK OF COURT: Okay. Come around and be seated.

4 DIRECT EXAMINATION

5 BY MR. JONES:

6 Q. Hey, Ms. Chapman. How are you doing?

7 A. I'm very nervous. How are you doing?

8 Q. It's already. Could you state your full name for the
9 record, please, ma'am.

10 A. LaJoyce Chapman.

11 Q. Okay. And tell us where do you live, please?

12 A. Road, Patrick.

13 Q. Is that in Chesterfield County?

14 A. It is.

15 Q. And where do you work?

16 A. I work with the South Carolina Department of Social
17 Services in Hartsville.

18 Q. How long have you worked there?

19 A. Since 1988.

20 Q. All right. How long have you lived at Road?

21 A. The summer of 1966, I think.

22 Q. Well, can you tell us a little bit about what
23 occurred on December 31st 2010?

24 A. Yes, sir. I typically get up about five o'clock in
25 the morning, but this day I had taken the day of annual

1 leave from work. So I had decided I was going to sleep in
2 until about -- and for me sleeping in is like quarter to
3 7:00 or 7:00 because I have to take care of my mom and
4 dad. My dad is legally blind, and mom has advanced
5 Alzheimer's. And this was a morning that I -- Friday
6 morning is one of my mornings so I was going to sleep in
7 until like 7:00.

8 And about -- it was three minutes after 6:00 because
9 I looked on my cell phone that was on the night table.
10 There was a pounding. It wasn't a knocking. It was more
11 of a pound, pound, pound, and then it was like that three
12 more times in that one incident. And I said, "Okay.
13 Somebody is at the door. It's the front door. Somebody
14 must -- because anybody that knows us comes to our back
15 door, side door, because we live at a stop sign.

16 A lot of people coming up on the stop sign don't know
17 it's there, and end up in the woods or something, you
18 know, going too fast. And, anyway, I thought it was
19 somebody having car problems, their hurt or whatever. But
20 they never said anything which I thought was odd and
21 thought ---

22 Q. Did you ever ask who is it or anything like that?

23 A. No, I did not because at -- the front part of our
24 house was closed off even though I had the Christmas tree
25 lights on. The front part of the house is closed off.

1 The doors coming from my den to our living room was closed
2 and the door from my kitchen to my dining room was closed.
3 And that would have been my two ways to get up there, but
4 I never asked who it was. And I didn't go check because
5 my living room door is half glass, and I knew that they
6 would be able to see me looking to see who it was with the
7 light from the Christmas tree. So I did not go up into
8 that part of the house.

9 But, anyway, I'm thinking, okay, somebody is hurt.
10 But they're not saying anything. Other cars, even though
11 it's the holidays, somebody would be surely coming by.
12 And I said, "Okay, maybe they're," you know, everybody's
13 got a cell phone. They could call for help if they needed
14 help. But I also know that cell phone service out there
15 is sketchy. So all this and other things are going
16 through my mind, and so by the time I settled back down to
17 try to scamper -- try to catchy another nap so to speak,
18 it's the same pounding again. It's just like pound,
19 pound, pound. Pound, pound, pound on my door.

20 So I goes and I said I'm going to tell Ralph. I
21 said, "Ralph, somebody is out there beating on the door,"
22 and I said, "You know, they must have had car problems or
23 something." And his -- he says, "Well, lay back down.
24 Maybe they will go away," is what he said to me. And,
25 anyway, they actually did it three times, and so I tried

1 to decide am I going to see who it is, am I not going to
2 see who it is, whatever, and I decided not to. So I lay
3 back down, and it starts again, and so I told Ralph,
4 "Somebody is out there. Somebody is just pounding away on
5 the door."

6 Q. How long did the knocks take?

7 A. I'd say, you know, the first one -- between the first
8 and the second one I'd say two to three minutes. And then
9 the next one the same thing. So by the time Ralph got up
10 it was probably, oh, maybe 15 after 6:00 or something
11 along there. But, anyway, he said, "Okay, well, I'll get
12 on up." So he gets up and he has to get himself dressed,
13 go to the bathroom, and he also has certain medicines that
14 he takes in the morning and he did all that.

15 And I laid back down. He came back in the bedroom
16 and he said, "Are you coming on down there," and which
17 means was I going on down to the truck stop in Society
18 Hill. I said, "Yeah." He said, "Have you got to take
19 care of your momma and daddy this morning?" And I said,
20 "Yeah, I'm about to do that." I said, "Well, I'm about to
21 do that in a few minutes." He said, "Well, I'm going to
22 go around to the front of the house and see if anybody is
23 there and -- or if I see anything by the road."

24 Q. Let's slow down for the court reporter. She has to
25 take down everything you're saying.

1 A. Oh, I'm sorry.

2 Q. That's fine. You're doing good.

3 A. Okay. So he said, "I'll see if anything is out
4 there." So he -- I hear him go out the door, and I don't
5 know what came over me but just something says, this is
6 not right. This just does not feel right. So I get up
7 ---

8 Q. Now, were you laying in bed?

9 A. I was lying in bed, and I -- and he goes out the
10 door, and I'm just thinking to myself, this does not feel
11 right. And just something about this just is not right.
12 So I go to the kitchen and to -- just to see if I can hear
13 anything or see anything, and when I got to the kitchen I
14 hear something. It's sort of like voices, but not, and I
15 hear something. It's like when you're trying to shut a
16 car door, truck door or something and it's not quite
17 closed and you want to slam it or whatever.

18 It was that sound. Just a loud thud, and didn't hear
19 any voices. And I didn't hear Ralph's truck start. So
20 that gave any cause for concern. So I go to the bedroom,
21 and I keep my gun right up under my bed. Well, it wasn't
22 right up under my bed and I thought, what have I done with
23 it. What have I done with it. So I rummaged through my
24 cedar chest at the bottom of the bed. It's not in there.
25 I know this gun is under my bed. I bent down on my knees

1 and looked under the bed. There is it back up under the
2 bed.

3 I said, "Get the broom to get the gun out" and by the
4 time I get the gun out and I get to the back porch Ralph
5 is climbing up the steps. He's actually on his hands and
6 knees climbing up the steps a bloody mess. And he said
7 ---

8 Q. Can you describe a little bit of what he looked like?

9 A. He was bloody. I mean his whole face. His nose,
10 his -- you know, just blood coming from everywhere and
11 crawling which that bothered me; the fact that he was
12 having to crawl up the back doorstep. And he just had
13 blood coming from everywhere. And I said -- in time I
14 stepped -- in time I stepped out onto the porch and opened
15 the screen door he said, "Two guys just beat the hell out
16 of me and stole my billfold," is what he said.

17 Q. Okay.

18 A. I asked him -- and I said, "Do you know who it was?"
19 And he said, "I know who one of them was" and he pointed
20 towards Society Hill meaning the boy that lived down that
21 way. But he came in the house and sat down at the table,
22 and he bleeds a lot anyway because of all the medicine
23 that he takes. And so he was just bleeding so bad that he
24 went back outside to sit on the steps. Well, I called 911
25 and I actually hung up on 911 cause they didn't pick up on

1 the first part of the first ring, you know.

2 As you can tell I'm highly excitable sometimes. And
3 so they called me back and I told them where to come. And
4 then I called his sister and she came on out there to help
5 me with him. So I was just afraid he was going to have
6 another heart attack.

7 Q. And tell us about that a little bit. Mr. Chapman
8 talked about his pacemaker and his heart attack and his
9 heart surgery. Can you give us a little better indication
10 of his health?

11 A. Back in 2004 when he had the four stints put in
12 this -- four of the five bypasses that he had done, his
13 heart doctor took him out of work. And he told us that he
14 needed to go ahead and apply for disability, Social
15 Security Disability. And we thought it was going to be
16 years before we ever got anything.

17 But, anyway, she wrote us -- one of the things that
18 she wrote was that he is very high risk of sudden cardiac
19 death because he is asymptomatic. When he's having a
20 heart attack he doesn't present any of the usual symptoms.
21 He doesn't have the tingling in the arms, or pressure on
22 his chest.

23 Q. Yes, ma'am.

24 A. Or anything of that nature when he's having it it's
25 just on him.

1 Q. All right. Now, let's go back to that particular
2 day. Now, you called his sister. When did you call 911
3 and actually talk to them?

4 A. I called them first. When he was sitting at the
5 table and he walked on outside I called them, hung up, was
6 going to him and they called me back. And I told them
7 what had happened.

8 Q. Okay.

9 MR. JONES: Beg the Court's indulgence. Permission
10 to approach the witness, Your Honor?

11 BY MR. JONES:

12 Q. Handing you State's Exhibits Four and Five. Take a
13 look at that for me please, ma'am?

14 A. Yes, sir.

15 Q. Do you recognize those photographs?

16 A. Yes, sir, I do.

17 Q. What do they depict?

18 A. My husband after he was cleaned up on that morning.

19 Q. And who cleaned him up?

20 A. His sister and I think my sister was there as well.
21 They cleaned him up. Cleaned him up so -- he just had
22 blood everywhere.

23 Q. Yes, ma'am. Is that a fair and accurate
24 representation of your husband the day of the incident
25 after he was cleaned up?

1 A. Yes, sir.

2 MR. JONES: Your Honor, at this time I'd like to
3 enter this into evidence, please, sir?

4 THE COURT: Subject to prior objection.

5 MR. COCKRELL: We -- you heard them. Thank you.

6 MR. JONES: I'd like to publish these to the jury at
7 this time. Beg the Court's indulgence.

8 BY MR. JONES:

9 Q. Mrs. Chapman, can you describe for us the nature of
10 his injuries on that day? Any lasting problems he's
11 having from it?

12 A. I don't know of any physical problems that he's
13 having. I know that eye, we were really concerned that he
14 would -- he was having some trouble with the vision in
15 that one eye that -- but we had a PA look at it and
16 determine that his eye was okay. But what has more than
17 the physical injury have been the emotional and mental
18 injuries to him. He just -- I mean he never wants to
19 leave the house. I mean he -- between staying there all
20 the time. He still goes nowhere inside or outside the
21 house without his gun. He doesn't -- I mean he doesn't
22 take a shower unless someone is in the house. He goes to
23 the bathroom he takes his gun with him.

24 Q. I understand. Now, lets talk a bit more about the
25 injuries that happened that day. Tell us about -- can you

1 describe in more detail way looked crawling up the steps?

2 A. He just had blood everywhere.

3 Q. Compared to that picture that we just showed the
4 jury.

5 A. Yeah, he had blood everywhere. It was all around the
6 place. It was all around his neck, and his nose was just
7 a bloody mess. He was bleeding over on -- like on one of
8 his ears and the back of his head.

9 Q. Is there any bruising that they can't see in that
10 photograph?

11 A. There is. The bruising, yes, around his neck, there
12 was -- which probably showed up about that Sunday or
13 Monday. There was a good bit of bruising around his neck.

14 MR. JONES: Beg the Court's indulgence. No further
15 questions, Your Honor.

16 MR. COCKRELL: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. COCKRELL:

19 Q. Mrs. Chapman, good afternoon. Trey Cockrell.

20 A. Yes, sir.

21 Q. Definitely hate to hear about those unfortunate
22 events. Did you happen to see the individual that
23 attacked your husband?

24 A. No, sir, I did not.

25 Q. Did you happen to see the vehicle that they drove?

1 Q. Okay.

2 MR. COCKRELL: Nothing further, Your Honor.

3 MR. JONES: Nothing from the State, Your Honor.

4 THE COURT: You may step down.

5 MR. JONES: And, Your Honor, we ask that Mr. Bouew be
6 released from his subpoena?

7 MR. COCKRELL: No objection, Your Honor.

8 THE COURT: Witness is excused.

9 MR. JONES: State calls Adam Quick.

10 ADAM QUICK, after being duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. JONES:

14 Q. State your name again for the record, please, sir?

15 A. Adam Raymond Quick.

16 Q. How are you doing, Mr. Quick?

17 A. Fine.

18 Q. Can you tell us where you live, sir?

19 A. Road, Society Hill in Society Hill.

20 Q. Can you tell us your involvement in the events that
21 occurred December 31st 2010 involving Mr. Ralph Chapman.

22 A. I was driving by at the time that they were ---

23 Q. Hold on. Let's start over. Tell us what happened
24 early that morning and start from there?

25 A. Okay. Me and James Tyner, we work together.

1 Q. Say they again, please, sir?

2 A. Me and James Tyner work together at the time, and we
3 drunk that afternoon we got home. We drink together.
4 Then on we met Bruce later on that night at the store.

5 Q. Okay?

6 A. And he said he wanted to go borrow some money.

7 Q. Slow down. I know you might be a little nervous, but
8 show down, speak slowly and clearly. So you and James
9 Tyner worked together?

10 A. We did at the time, yes, sir.

11 Q. And tell us what you did when you got off work?

12 A. Got off work. Went by to my cousin's house, Leon
13 O'Neal.

14 Q. Okay.

15 A. Okay. We were drinking. I don't know what time it
16 was. We left. We went to the store. It was late, real
17 late. We went to the store and got up with Bruce and
18 Walters, and he said he needed a ride somewhere to borrow
19 some money.

20 Q. So you were drinking real late. Can you tell us
21 about what time was it? Can you tell us if it was after
22 midnight?

23 A. It was after midnight.

24 Q. Would it be closer to midnight or closer to the
25 morning hours?

- 1 A. Probably about 2:00.
- 2 Q. All right. Around 2:00 you met up with Mr. Walters?
- 3 A. Yes, sir.
- 4 Q. All right.
- 5 A. Went from there. I took him to one place, first of
- 6 all, in Patrick/Society Hill Road, but they weren't home.
- 7 Went somewhere. Said he, "I want to go to my uncle's
- 8 house."
- 9 Q. He said -- say that again?
- 10 A. Go in my uncle's house.
- 11 Q. Okay. Did you know who he was talking about?
- 12 A. No, sir.
- 13 Q. All right, sir?
- 14 A. Wasn't there.
- 15 Q. Now, when you say that he wanted to get some money
- 16 did he tell you why he wanted to get money? Did he just
- 17 want to go and take a loan out?
- 18 A. To put some gas in my car, buy some more beer, and
- 19 stuff. Yes, sir.
- 20 Q. All right.
- 21 A. And when he went there he told me to park on the side
- 22 of the road. Do not pull up because the dog might start
- 23 barking.
- 24 Q. And, again, when he said, "Don't pull up in there,"
- 25 did you see the house that he was talking about?

1 A. Yes, sir.

2 Q. Okay. Tell us about how far away from the house you
3 parked?

4 A. I was on the opposite side of the road. Maybe twice
5 the distance from hear to that brick wall.

6 Q. Okay?

7 A. All right. And I -- so he said -- he said, "James,
8 will you come with me."

9 Q. Now, did you think that was kind of strange? He told
10 you he was going to his uncle's house, and yet he wants
11 you to park maybe a hundred yards away or so?

12 A. I didn't care. I wasn't drunk, but I was drinking.
13 and when they went and came back maybe 15 minutes they
14 wasn't breathing heavy or they wasn't sweating or nothing,
15 so I didn't think nothing about it. The next time, that
16 was about two or three weeks later, somebody told me my
17 name was in the paper.

18 Q. Okay. Now, did they have wallet or anything with
19 them?

20 A. No, sir.

21 Q. He just said, "My uncle gave me some money?"

22 A. Yes, sir.

23 Q. They didn't talk about anything else?

24 A. No, sir.

25 Q. Now, tell us again whose car you were driving?

1 A. My cousin.

2 Q. Okay, and how did your cousin's vehicle -- why were
3 you driving her car?

4 A. Cause I was at their house at the time when I got off
5 work.

6 Q. Who is their house?

7 A. Lynn and James.

8 Q. You're telling me that James and Lynn O'Neal were in
9 a relationship?

10 A. Yes, sir.

11 Q. And they were living in the same home?

12 A. Yes, sir.

13 Q. Can you tell us one more time what kind of car you
14 were in?

15 A. A burgundy Pontiac Grand Am or Grand Prix. About a
16 '96 or '97 model.

17 MR. JONES: Beg the Court's indulgence.

18 BY MR. JONES:

19 Q. Now, I think you mentioned earlier, but when you
20 pulled up tell me again who got out of the car?

21 A. Bruce Walters and James Tyner.

22 Q. Can you tell me what they were wearing? Do you
23 remember? I know it was a long time ago?

24 A. Couldn't tell you. I don't know.

25 Q. But they weren't wearing a mask or anything to cover

1 their faces?

2 A. No, sir. No, sir.

3 Q. No?

4 A. No, sir.

5 Q. Can you point out James Tyner in the courtroom for us
6 today?

7 MR. JONES: Let the record reflect that he pointed
8 out the defendant. One second, Your Honor.

9 BY MR. JONES:

10 Q. Sorry. One more time. You said you don't remember
11 what they were wearing? You don't remember if they were
12 wearing coats? Shirts? Anything like that?

13 A. No, I couldn't remember. It was cool at that time.
14 Most likely James probably had on some work pants or
15 something like that.

16 Q. Right.

17 MR. JONES: No further questions, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. COCKRELL:

20 Q. Now, Mr. Quick, you indicated that you were the
21 driver of the vehicle?

22 A. Yes, sir.

23 Q. Did you have any idea where you were going?

24 A. No, sir.

25 Q. Had you ever been to the Chapman's house?

1 A. Yes, sir.

2 Q. Okay. Sounded pretty clear to me that you in
3 exchange for your testimony were offered no jail time?

4 A. No, sir.

5 Q. That isn't what your attorney made clear?

6 A. I never made an agreement with him about getting any
7 kind of -- I'm a man. I stand by my place. I was in the
8 wrong. Yes, sir, I was. But I had not idea that they
9 were going to do what they were doing.

10 Q. Okay. So I must be confused what I heard.

11 MR. COCKRELL: Thank you, Your Honor. No further
12 questions.

13 MR. JONES: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. JONES:

16 Q. Mr. Quick, did anybody from the Solicitor's Office
17 ever tell you, "If you testify you will not go to jail?"

18 A. No, sir.

19 MR. JONES: No further questions, Your Honor.

20 MR. COCKRELL: No recross, Your Honor.

21 THE COURT: You may step down. Thank you, sir.

22 MR. JONES: State calls Delton Powers.

23 THE COURT: Come up and be sworn, please.

24 DELTON POWERS, after being duly sworn, testified
25 as follows:

DIRECT EXAMINATION

BY MR. JONES:

Q. How are you doing Mr. Powers?

A. Good. Hope you are.

Q. Yes, sir. Can you tell us what you do? What is your occupation?

A. I'm an attorney. I've been an attorney for 35 years.

Q. Okay. And do you represent Mr. Adam Quick in this matter?

A. I do.

Q. Okay. And were you ever told by a member of the Solicitor's Office or law enforcement that if Mr. Quick testifies that he will not get any jail time or the charges would be dismissed?

A. I discussed with law enforcement that based upon his lack of culpability in this case that he would was willing to cooperate, and I felt the case was worth probation at best. And I also discussed with -- I want to say it was with Kernard Redmond who works with your office about it. I didn't know it was your case at the time until we went for the statement. And at that time it was my understanding that you were coming over to where we were going to take the statement and would be present for that.

Normally, we wanted something in writing about that, but that was just as far as my case had nothing to do with

1 his truth or credibility.

2 Q. Right. So was there an agreement between you and Mr.
3 Kernard Redmond, the Deputy Solicitor, that if he
4 testifies or if he gives -- and some evidence that he
5 would get a certain sentence?

6 A. It was pretty much my understanding and putting him
7 forth that he would certainly get probation and then it
8 was worth -- I felt like he was more of a witness than a
9 defendant was any whole position.

10 Q. Yes, sir. Thank you.

11 MR. JONES: Your Honor, no further questions.

12 MR. COCKRELL: No questions, Your Honor.

13 THE COURT: Thank you, sir.

14 MR. JONES: State calls Bruce Wayne Walters.

15 THE WITNESS: Your Honor, I didn't know I would be
16 testifying. May I be excused? I have to go to Columbia
17 and my client will be back on Thursday.

18 MR. JONES: No objection.

19 MR. COCKRELL: No objection.

20 THE COURT: Witness is excused.

21 BRUCE WAYNE WALTERS, after being duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. JONES:

25 Q. Mr. Walters, will you say your name again for the

1 record, please, sir?

2 A. Bruce Walters.

3 Q. Can you please tell the jury the incidents of
4 December 31st 2010?

5 A. Yes, sir, I can. That night I started -- I was up at
6 the store which is the Markette in Society Hill. James
7 Tyner and Adam, they drove up and I was needing a ride.
8 And they -- I asked them to give me a ride to a certain
9 place to purchase some drugs. And they said they would
10 only if I give them some, and I said, "That's fine." And
11 we went there to score some drugs. And it was -- we were
12 in a truck to start with, and they said -- and I said --
13 excuse me. We were in a truck, and went and scored the
14 drugs.

15 And we pulled to the back road and we are smoking and
16 snorting it. And Tyner had made the request, he was like,
17 "Man, I need to make some money." I was like, "I ain't
18 got none," but I said, "The other day Mr. Chapman -- I
19 said a man had gave me a ride, and he had a pocket full of
20 money," and it was like -- he was like, "And where does he
21 stay at?" And I said, "He stays over there in
22 Chesterfield County." He was like, "Well, let's go get my
23 car," and he said, "And we'll go over there." And I was
24 like, I said, "I ain't." I said, "I don't know about
25 that," but, anyhow, I told him about that and we went on

1 and we went picked up the car. And I was coming back, I
2 was like, "Y'all sure you want to do this."

3 Q. Can you tell us what kind of car it was? Do you
4 remember?

5 A. It was a burgundy Grand Am.

6 Q. Okay.

7 A. And we went back by the store. We stopped at the
8 store. We got a little bit of gas in the car, and before
9 we went to Ralph's I told him, I said, "Man, drove me past
10 my house," and we went by my father's house and I sit in
11 there for a few minutes. And they were sitting outside.
12 So I put the rest of my drugs up and come -- got back in
13 the car, and I was like, "Where do we go to?" And I was
14 like, you had to go right down here to the -- down this
15 road, take a right, and he's down there on the left and
16 Adam was driving.

17 And we were backing out, and he was like, "Man, you
18 got any more drugs?" I was like, "Yeah, I got a little
19 bit." He was like, "Do you mind giving me some?" And I
20 was like, "Hold on. Let me run back in the house." So I
21 went back in the house to got him some. And he was like,
22 "I got to fix it." I don't know if y'all are familiar
23 with drugs or not. That's just stain. You put crack
24 on -- it's called a stem.

25 And he said, "Will you drive while I fix this stem."

1 Plus he said you know where to go. So I said, 'okay'. So
2 I got in the driver's seat and I drove them and went to
3 Ralph's and then pulled up there. I said, "There he
4 stayed right there. He lives right there." I said,
5 "Y'all can do what you want to. I'm going back to the
6 house." And he was like, "Hold on a minute," and I
7 stopped right there. And James and Adam, they jumped out
8 and they walked around the house. I thought they were
9 just staking out for later to come back.

10 And they stayed up there probably about -- I don't
11 know. A good few minutes, and they come back to the car
12 and I said, "Man, what y'all doing?" I said, "Won't
13 y'all -- you got the truck. Why don't you just go rake
14 some pine straw or something." And they were like, no,
15 James, I've got a lot of bills I have to pay. I got to
16 have this money." I was like, I said, "It's simple, man.
17 Just go rake you some pine straw," and he wouldn't.

18 And so they got back out and by that time I was
19 sitting there in the car, and it was like a car come up,
20 and I panicked. The car went around and I cranked up the
21 car and went down and turned around and come back. And by
22 the time I come back I pulled on the side of the road
23 again, and they come back to the car talking about, "Go,
24 go, go. I got wallet."

25 Tyner was the first one got in the car and Adam got

1 in second. And then I said, "Well, man, I'm going to the
2 house." I said, "Man, I was panicking." H was like, "No,
3 get away. Go to my house and get the truck." So I went
4 there to his house and got the truck. He went in there
5 and give his old lady some money. Him and Adam come back.
6 We got in the truck and went down to the bottom of the
7 hill and Tyner disposed of the wallet with all of his I.D.
8 and everything in there.

9 And then he went around the corner and he threwed the
10 wallet in the woods, and then they went -- I said, "Y'all
11 take me to my daddy's house." And he said, "No, man, I'm
12 not going back across the Chesterfield County line." They
13 dropped me off at my cousin's house and I got my cousin to
14 take me to my house. That was the whole thing.

15 Q. Okay, now. Let me ask a few more questions about it.
16 When you went back to get Tyner's car you say you went to
17 his house?

18 A. Went to Tyner's house?

19 Q. Yes, James Tyner's house?

20 A. Yes, sir.

21 Q. Do you know who he was living with at the time?

22 A. He said it was his girlfriend's. I don't know who it
23 was. I don't know who it was. All I seen was her arm.

24 Q. So you never met her before?

25 A. I never met her before. He just went in and got the

1 keys for the car and he come right back out.

2 Q. Okay. You know if the car was her's or was it his or
3 do you know?

4 A. I think it was her's I mean cause like I said I ain't
5 know James to have a car or nothing like that.

6 Q. And when you initially pulled up to Mr. Chapman's
7 house do you remember where you parked?

8 A. Yes, sir.

9 Q. Can you tell us?

10 A. Parked on the right side of the road.

11 Q. And about how far from Mr. Chapman's house was it?

12 A. I'd say probably -- I don't know. Fifty, 60 feet. I
13 was on the right. When I come off of Patrick Highway and
14 turned on Camp Coker Road I pulled on the right side. So
15 you've got the pavement. Probably about 50 feet.
16 Probably about the length of here to the wall, to the back
17 wall back there.

18 Q. Um hum. But you say you cut the car on and drove
19 away and turned around?

20 A. Yeah, I cut off the car and I was sitting there. And
21 it was like this vehicle come up, and I panicked. And
22 when the vehicle went by I cut the lights on, went down
23 the road, turned around and come back.

24 Q. Why did you go down the road turn around and come
25 back?

1 A. I didn't know who it was. I panicked, man.

2 Q. And then after you went down the road, turned back
3 around and came back that's when they were running from
4 the house?

5 A. Yes, sir. It wasn't -- I probably parked -- it
6 wasn't right time I pulled up. It was a few minutes.

7 Q. When did Tyner tell you when he got in the car?

8 A. He said, "Go. Go. I got the wallet. Go. Go. Go,"
9 and Adam jumped in the back. I was like, "I know y'all
10 didn't ---

11 Q. Did he tell you the details of what happened?

12 A. No; that they were just -- it was like they didn't
13 give me no details, but they were mumbling. And I was
14 just in a state and I panicked. And, Adam, he made the
15 request -- he was like, "Yeah, I seen you grab him. Then
16 you was rolling with him," and then he was like, I grabbed
17 him and jumped on top of him." You know, that's as far --
18 I didn't get to see nothing.

19 MR. JONES: Beg the Court's indulgence. No further
20 questions, Your Honor.

21 THE COURT: Mr. Cockrell.

22 MR. COCKRELL: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. COCKRELL:

25 Q. Mr. Walters?

1 A. Yes, sir.

2 Q. Were you charged in this matter?

3 A. Yes, sir.

4 Q. What were you charged with?

5 A. With armed robbery.

6 Q. That the only charge you were facing?

7 A. And A.B.H.A.N, assault and battery of a high and
8 aggravated nature.

9 Q. Okay. And were you found guilty on both of those
10 charges?

11 A. No, I pled guilty to -- cause my lawyer consulted
12 with me and said the hand of one is the hand of all. So I
13 pled guilty.

14 Q. What do you mean, 'the hand of one is the hand of
15 all'?

16 A. Cause they said ---

17 MR. JONES: Objection, Your Honor. I don't believe
18 that's appropriate testimony.

19 THE COURT: I'm going to overrule it. Answer it if
20 you can.

21 THE WITNESS: Well, being that I was in the car, you
22 know, that's why I'm guilty. And plus I'm guilty of -- I
23 told them that Ralph had the money. I mean and if I
24 wouldn't have said nothing Mr. Chapman would have never
25 got hurt.

1 Q. Okay. So you were charged with strong armed robbery;
2 is that -- and assault and battery of a high and
3 aggravated nature?

4 A. Yes, sir.

5 Q. And what penalties were you facing?

6 A. They gave me -- I just pled and do a ten year
7 sentence. Ten years apiece.

8 Q. You were sentenced to ten years?

9 A. Ten years for strong armed robbery and ten years
10 for -- ten years for strong armed robbery and ten run
11 concurrent. That's what they charged me with.

12 Q. Okay. How well do you know Mr. James Tyner?

13 A. I went to school with him. He's a couple of years
14 younger than me and mostly I know him through his father.
15 His father used to rake pine straw and bring it to my
16 grandfather, and my grandfather would buy it.

17 Q. Okay. In the evening we're talking about is December
18 the 31st. I guess the morning of December 31st. Were you
19 under the influence of drugs or alcohol or both?

20 A. Yes, sir.

21 Q. Both or ---

22 A. Both. I don't drink too much alcohol. I've got
23 like -- it was one little fifth of what they call Mad Dog
24 20/20, and that was it.

25 Q. A fifth?

1 Q. Right. And he got his cousin's vehicle?

2 A. I reckon that was his cousin's.

3 Q. Okay. Have you told Officer Jordan or anybody else
4 investigating this matter about Lynn O'Neal?

5 A. No, sir. I didn't know that's who it was. I don't
6 know.

7 Q. Or about this vehicle, this Grand Am we're talking
8 about?

9 A. No. I mean I just -- I told him what had happened
10 and he just asked me a little format and I told him
11 basically what happened.

12 Q. Okay?

13 MR. COCKRELL: Court's indulgence for one minute,
14 Your Honor. Nothing further, Your Honor.

15 MR. JONES: No further questions, Your Honor.

16 THE COURT: Thank you, sir. You may step down.

17 MR. JONES: Your Honor, may we approach.

18 (WHEREUPON, a bench conference was held off the
19 record in the presence of the jury, but out of the
20 hearing of the jury.)

21 COLLOQUY

22 MR. JONES: Your Honor, at this time the State rests.

23 MR. COCKRELL: Your Honor, Defense moves for a
24 directed verdict. Feels the State has carried their
25 burden beyond a reasonable doubt at this time and ask for

1 a directed verdict of not guilty on behalf of all charges
2 of Mr. James Tyner.

3 THE COURT: All right. Okay, and ladies and
4 gentlemen of the jury, if y'all will step back. Let's me
5 take up some matters at this time and hopefully be back a
6 little quicker than we've been operating this morning.

7 (WHEREUPON, the jury panel was excused from the
8 courtroom at 3:35 p.m.)

9 THE COURT: All right. I'll have to deny the motion.
10 Need a little time to talk to your client about his Fifth
11 Amendment rights?

12 MR. COCKRELL: Yes, sir, Your Honor. If I can have
13 just a few minutes to speak with him.

14 THE COURT: I'll give y'all a few minutes to do some
15 soul searching.

16 MR. COCKRELL: Thank you, Your Honor.

17 THE COURT: Court stands at ease for a few minutes.

18 (WHEREUPON, Court was in recess at 3:36 p.m. and
19 reconvened at 3:47 p.m.)

20 MR. COCKRELL: Your Honor Trey Cockrell representing
21 James Tyner. We're going to exercise our right to not
22 take the stand in this matter and not to call any
23 witnesses.

24 THE COURT: All right, Mr. Tyner.

25 MR. TYNER: Yes, sir.

COLLOQUY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Good morning.

MR. COCKRELL: Good morning, Judge.

THE COURT: We got everybody?

MR. COCKRELL: Yes, Your Honor. Your Honor, I've got some requests to charge that I've ear marked if that's okay I'll just hand down the book. He's looked over these.

THE COURT: All right.

MR. COCKRELL: Additional housekeeping on the part of the video exhibit or testimony statement of Adam Quick. I would ask that be admitted as an exhibit for the jury to consider if they want to if they wish to review it while their deliberating.

THE COURT: Any problem?

MR. JONES: No objection to that.

(WHEREUPON, Defendant's Exhibit No. 3 was admitted into evidence.)

MR. COCKRELL: One more housekeeping note, Your Honor. In the interest of -- I was under the impression that we were going to try to charge the jury yesterday and I was trying to speed things up. I'd like to renew my motion for directed verdict specifically on the grounds of the assault and battery of a high and aggravated nature.

The definition of assault and battery of a high and

1 aggravated nature says great bodily injury means -- I'm
2 reading from 16-3-600(a)1, great bodily injury which
3 causes a substantial risk of death or which causes a
4 serious permanent disfigurement or from practice last loss
5 of body member or organ. Then the statute goes on to say
6 that a person committed of the offense of assault and
7 battery of a high and aggravated if the person lawfully
8 injures another and great bodily injury to another results
9 or the act is accomplished by means likely to produce
10 death or great bodily injury. I don't think we have that.
11 I think we have some bruising. The situations is
12 definitely unfortunate, but I don't think it rises to the
13 level of great bodily injury.

14 THE COURT: Anything for the record?

15 MR. JONES: Your Honor, I would say that part of the
16 statute, 'the act accomplished likely to produce death or
17 great bodily injury due to the victim's condition' the
18 fact that he was choked and that he testified to the jury
19 that he thought he was going to die. I think that's more
20 than enough to survive directed verdict.

21 THE COURT: I agree. Technically, in my opinion he
22 could have been charged with assault and battery with
23 intent to kill with that testimony about him almost
24 choking him to death, couldn't breathe. I deny your
25 motion.

1 The property must be taken from the person or
2 immediate presence of another, and.

3 Two, the taking must be accomplished by violence,
4 intimidation or by putting the person in fear. This
5 violence must be actual, personal violence or the threat
6 of it. Further, the violence or intimidation must either
7 proceed or be contemporaneously with the taking.

8 Generally, the element of force in the offense of
9 robbery may be actual or constructive. Actual force
10 implies physical violence. Constructive force includes
11 all demonstration of the force, nemesis and other means by
12 which the person robbed is put in fear sufficient to
13 overcome the free exercise of the person's will or prevent
14 resistance to the taking no matter how slight the cause
15 created the fear is or by what other circumstances the
16 taking is accomplished.

17 If the transaction is accompanied by circumstances of
18 terror such as threatening by word or gesture as in the
19 common experience or likely to create an apprehension of
20 fear and reduce a person to give up the property the
21 victim is placed in fear.

22 The degree of force used is immaterial so long as
23 such force or threat, of course, is actually sufficient to
24 overcome the victim's resistance.

25 Second indictment, assault and battery of a high and

1 aggravated nature. A person is guilty of the offense of
2 assault and battery of a high and aggravated nature if he
3 injures another person and great bodily injury to another
4 person results or the act is established by means likely
5 to produce death or great bodily injury. Assault and
6 battery of a high a aggravated nature is a lessor included
7 offense of attempted murder. They are a lessor included
8 offenses of assault and battery of a high a aggravated
9 nature. Now, we're not concerned with attempted murder
10 here, but I'm just giving you an explanation of how this
11 lessor included offenses work.

12 To prove assault and battery of a high and aggravated
13 nature the State must first prove beyond a reasonable
14 doubt that the defendant unlawfully injured another
15 person. Next, the State must prove beyond a reasonable
16 doubt that either great bodily injury resulted or that the
17 act was accomplished by means likely to produce death or
18 great bodily injury.

19 Grat bodily injury is defined as bodily injury which
20 causes a substantial risk of death or which causes serious
21 permanent disfigurement or protractive loss or impairment
22 of the functions of a bodily member or organ.

23 Now, going down to lesser included offenses. Assault
24 and battery in the first degree. A person commits the
25 offense of assault and battery in the first degree if the

1 person unlawfully injures another person and the act
2 involves non-consensual touching of the private parts of
3 an adult either under or above clothing with lewd and
4 lascivious intent or occur during the commission of a
5 robbery, burglary, kidnapping or theft or offers intent to
6 injury another person with the present ability to do so
7 and the act is accomplished by means likely to produce
8 death or great bodily injury or occurred during the
9 commission of a robbery, burglary, kidnapping or theft.

10 Assault and battery in the first degree is a lessor
11 included offense of assault and battery of high nature.
12 To prove assault and battery in the first degree the State
13 must prove beyond a reasonable doubt that the defendant
14 either unlawfully injured another person and the act
15 occurred during the commission of a robbery, burglary,
16 kidnapping or theft. Or that the defendant offered or
17 attempted to injure another person with the present
18 ability to do so and the act was accomplished by means
19 likely to produce death or great bodily injury or that the
20 act occurred during the commission of a robbery, burglary,
21 kidnapping or theft.

22 Great bodily injury is defined as a bodily injury
23 which causes a substantial risk of death or which causes
24 serious permanent disfigurement or protractive lost or
25 impairment of the function of a bodily member or organ.

1 Assault and battery in the second-degree. A person
2 commits the offense of assault and battery in the second
3 degree if the person unlawfully injures another person or
4 offers or attempts to injure another person with the
5 present ability to do so, and moderate bodily injury to
6 another person results or moderate bodily injury to
7 another person could have resulted. Or the act involved
8 the non-consensual touching of the private parts of an
9 adult either under or above clothing.

10 Assault and battery in the second degree is a lessor
11 included offense of assault and battery in the first
12 degree and as of assault and battery of a high and
13 aggravated nature. To prove assault and battery in the
14 second degree the State must first prove beyond a
15 reasonable doubt that the defendant unlawfully injured
16 another person or offered or attempted to injure another
17 person with the present ability to do so.

18 Next, the State must prove beyond a reasonable doubt
19 that moderate bodily injury to another person resulted or
20 moderate bodily injury to another person could have
21 resulted. Moderate bodily injury is defined as physical
22 injury requiring treatment or an organ system of the body
23 other than the skin, muscles or connective tissue of the
24 body except when there is penetration of the skin, muscles
25 or connective tissues that require surgical repair of a

1 complex nature or the nature of the injury requires the
2 use of regional or general anesthesia.

3 Assault and battery in the third degree. A person
4 commits the assault -- correction. A person commits the
5 offense of assault and battery in the third degree if the
6 person unlawfully injures another person or offers or
7 attempts to injure another person with the present ability
8 to do so. Assault and battery in the first degree is a
9 lesser include offense of assault and battery in the
10 second-degree, assault and batteries in the first degree,
11 and assault and battery of a high and aggravated nature.

12 To prove assault and battery in the third degree the
13 State must prove beyond a reasonable doubt that the
14 defendant unlawfully injured another person or offered or
15 attempted to injure another person with the present
16 ability to do so.

17 Now, ladies and gentlemen of the jury, I further
18 charge you that the law is that if a crime is committed by
19 two or more persons who are acting together in the
20 commission of the crime the act of one is the act of all.
21 This is true if there are two or more people or more than
22 two people involved in the act. Two people or more than
23 two people can be guilty of, example, killing another.
24 This is guilty of murder when only one of the people fire
25 the shot or committed the act that caused the death.

1 weight as to how I quote them to you.

2 The verdict that you render in the case must be the
3 verdict of each and every juror. It must be your
4 unanimous verdict. All 12 jurors must agree on the
5 verdict which you authorize the foreman to write for the
6 jury.

7 Now, concerning the assault and battery of a high and
8 aggravated nature, I already instructed you on the lessor
9 included offenses, and I will go back over that. If you
10 find the defendant guilty but you have a reasonable doubt
11 as to whether the defendant be guilty of the greater crime
12 charged or the lessor crime charged you must resolve that
13 reasonable doubt in favor of the defendant and write a
14 verdict of guilty only as to the lessor charge. But, of
15 course, you could not write a verdict of guilty to any
16 charge unless to that charge you find all the elements of
17 the charge have been proven by the State beyond a
18 reasonable doubt.

19 So you have several options as you find to do so on
20 the assault charges. In other words, don't give any
21 weight to the order that I go to them. I'll just go down
22 the series of them. That's going to be the best way to
23 keep it in my mind. You can find the defendant guilty of
24 assault and battery of a high and aggravated nature,
25 assault and battery first degree or assault and battery in

1 the second degree or assault and battery in the third
2 degree or you can find not guilty. Now, obviously, that
3 implies that you couldn't find him guilty of two or more
4 of those. So that's basically how that works on the
5 lesser included offense.

6 Now, the best way to help you, Mr. Foreman, on this
7 I'm going to ask my law clerk to help me. We will send
8 the strong armed robbery indictment back to you, and there
9 will be a verdict section on the lower part of the back
10 side of form. It will be your duty to write in the
11 appropriate verdict, sign your name, and date it.

12 Now, on the assault and battery of a high and
13 aggravated nature, we will attach an attachment sheet that
14 will give you the options that I've gone over. Simplify
15 it for you. Once again, whatever your verdicts are they
16 must be your unanimous verdict. All 12 deliberating
17 jurors must be in agreement. When I send the verdict and
18 the exhibits back to you along with the verdict forms
19 and/or the indictments, it will once again be your duty to
20 fill out the necessary forms, sign them and date them.

21 Should anyone refuse to take part in the
22 deliberations it will be your duty to immediately notify
23 me of that cause that's why I have some alternates. It
24 normal does not happen but it has happened in the past so
25 I need to talk to you about that. Do not deliberate this

1 MR. JONES: None from the State.

2 MR. COCKRELL: None from the Defense.

3 THE COURT: Okay.

4 (WHEREUPON, Court is in recess at 11:45 a.m. and
5 reconvened at 12:05 p.m.)

6 (WHEREUPON, the jury panel enters the courtroom at
7 12:05 p.m.)

8 VERDICT OF THE JURY

9 THE COURT: Madam Clerk.

10 CLERK OF COURT: Mr. Foreman, have you reached a
11 verdict?

12 JURY FOREPERSON: Yes, sir, we have.

13 CLERK OF COURT: If you will please hand it to the
14 bailiff.

15 THE COURT: Signed and dated. You may publish the
16 verdict.

17 CLERK OF COURT: State of South Carolina v. James
18 Tyner. We the jury find the Defendant, James Tyner,
19 guilty of assault and battery of a high and aggravated
20 nature. David W. Sides, the Jury Foreman. June the 20th
21 2012.

22 State v. James Tyner, strong armed robbery. With the
23 jury find the defendant guilty. David W. Sides, Jury
24 Foreman. Dated June the 20th 2012. The Honorable Paul
25 Burch, presiding judge.

1 burglary second non-violent. Two counts of grand larceny
2 and criminal conspiracy and failure to stop for a blue
3 light. He got a total of nine years for that.

4 In 2007 he was out on parole and received a parole
5 revocation.

6 In 2009 he was convicted of public disorderly
7 conduct.

8 And he has a pending charge in 2011 which occurred
9 after this event; that it was not a conviction but it is a
10 pending receiving stolen goods.

11 I will say just for the history with our office with
12 this defendant he initially hired an attorney, a member of
13 the private bar, and then subsequently fired him. Took a
14 few months with no counsel. It was very difficult to get
15 in touch with him the entire time of this process. He
16 eventually signed up with the Public Defender's Office and
17 they conflicted him to Mr. Cockrell. And it's just been,
18 in general, difficult dealing with this defendant. And at
19 the appropriate time I believe the victim would like to
20 speak.

21 THE COURT: Sure.

22 MRS. CHAPMAN: I'm LaJoyce Chapman. I am the
23 victim's spouse. First, thank you, Your Honor, for -- and
24 to Mr. Jones and to Mr. Cockrell for taking in
25 consideration my husband's hearing impairment with this.

1 The robbery and assault on my husband, Ralph W. Chapman,
2 on the morning of December 31st 2010 has completely
3 consumed his life and has forever adversely affected him
4 psychologically, and to a certain extent the rest of our
5 family as well.

6 The mere fact that he survived being beaten by two
7 younger men, men at least 30 years younger than he, and
8 certainly much more powerful men, was a small miracle
9 considering that he was at very high risk for sudden
10 cardiac death. These are his doctors words not mine. My
11 husband told our son that two or three times during this
12 attack he thought he was going to die.

13 Since the assault he goes nowhere inside of our home
14 or outside in our yard without his gun. Most of the time
15 the gun the drawn. Not to the bathroom, not to watch
16 television, not to sleep or nap without his loaded gun.
17 He eats with the gun on the table by his plate. He
18 doesn't take a shower until someone else is in the house
19 with him.

20 For some time after this robbery and assault I too
21 carried my gun both inside and outside of the house. We
22 still jump at every sound. Vehicles that stop on t he
23 road near our house for whatever reason are viewed with
24 suspicion. If a car stays idling for too long at the
25 nearby stop sign the people are considered potential

1 assailants. A family friend came to the house one morning
2 about five o'clock. Our oldest son, my husband, and I met
3 him at the back door with guns drawn.

4 This is no way to live in constant fear for your life
5 and some type of retaliation. Our son who is with us here
6 today took a demotion and reduced salary with his company,
7 uprooted his family and moved back here from Tallahassee,
8 Florida because of his daddy's mental state. Our 21 year
9 old grandson has moved in with us just so that we can feel
10 more secure.

11 This wasn't just some old guy that drove an old beat
12 up truck that was chosen to be robbed and assaulted. This
13 is Ralph Chapman. A man who has never bothered anyone.
14 He doesn't meddle in other people's business. He doesn't
15 drink. He doesn't do drug, and he doesn't go out
16 carousing. Other than being proud of our son's
17 accomplishments he doesn't brag about what he has and he
18 doesn't have.

19 Until he became disabled in 2004 he has worked since
20 he was a senior in high school at public jobs and for
21 about ten years. During this time he also farmed. Also a
22 law abiding, tax paying, responsible citizen trying to
23 provide for his family. Over the years Ralph has been and
24 is still a positive father figure to several young men in
25 the community. A lot of folks say that some folks cannot

1 His prior attitude toward the Court system sort of
2 backs the notion up, and maybe he does hold some contempt
3 for the Court: I'm not going to get into that because
4 whatever issues are there will be consumed in the sentence
5 I pass here. I can't afford to just pat him on the back
6 and let him be out any time soon because this thing could
7 have really been a lot worse than what it was, not that it
8 wasn't bad enough.

9 MR. TYNER: I'm terribly sorry for what I did.

10 THE COURT: On the common law robbery, sentence of
11 the Court is that James Curtis Tyner be confined to the
12 State Department of Corrections for a period of 15 years.

13 And on the assault and battery of a high and
14 aggravated nature, the sentence is three years
15 consecutive.

16 Good luck to you, Mr. Tyner. You have ten days to
17 get a notice of appeal filed should you desire to do so.
18 If you wait past the ten days it will be too late. So
19 keep that in mind. Your attorney will talk to you about
20 that.

21 Jail time credit, you have to help me with that. How
22 long was he in jail?

23 MR. JONES: Your Honor, I'm not all together sure for
24 these particular charges. I believe he got out on a P.R.
25 bond; is that correct, Mr. Jordan?

WITNESSES

Wayne Jordan

Chesterfield County Sheriff

Law Enforcement Case #: 10-4837

583

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
K274837

ARRESTED ON: 2011-01-25

ACTION OF GRAND JURY**TRUE BILLED**

MAR 22 2011

Grand Jury Foreperson

Date

VERDICT**COPY**

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-13-0239

The State of South Carolina**County of Chesterfield****COURT OF GENERAL SESSIONS**

Term:
March 2011

THE STATE

vs.

James Tyner**INDICTMENT FOR**

**Assault/Assault & Battery of a high and
aggravated nature**

§16-03-0600(B)(1)

CDR Code: 3411**William B. Rogers, Jr., Solicitor**

STATE OF SOUTH CAROLINA) INDICTMENT FOR

COUNTY OF CHESTERFIELD) Assault/Assault & Battery of a high and aggravated nature

§16-03-0600(B)(1)

At a Court of General Sessions, convened on March 22, 2011, the Grand Jurors of Chesterfield County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

CDR: 3411, 16-3-600(B)

That James Tyner did in Chesterfield, on or about 13700, unlawfully injure Ralph Chapman and great bodily injury occurred, in violation of Section 16-3-600(B) of S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Wayne Jordan

Chesterfield County Sheriff

Law Enforcement Case #: 10-4837

583

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
K274838

ARRESTED ON: 2011-01-24

ACTION OF GRAND JURY**TRUE BILLED****MAR 22 2011**

Grand Jury Foreperson

Date

VERDICT**COPY**

Petit Jury Foreperson

Date

DOCKET NUMBER:
2011-GS-13-0240

The State of South Carolina**County of Chesterfield****COURT OF GENERAL SESSIONS**

Term:
March 2011

THE STATE

vs.

James Tyner**INDICTMENT FOR****Robbery / Strong Arm Robbery**

§16-11-0325

CDR Code: 0137**William B. Rogers, Jr., Solicitor**

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF CHESTERFIELD)

Robbery / Strong Arm Robbery

§16-11-0325

At a Court of General Sessions, convened on March 22, 2011, the Grand Jurors of Chesterfield County present upon their oath:

ROBBERY/STRONG ARM ROBBERY

CDR: 0137 C/L, 16-11-0325

That James Tyner did in Chesterfield County on or about December 23, 2010, take personal property from or in the immediate presence of Ralph Chapman with the intent to deprive him/her of possession through the use of force, threats of force, or intimidation, and did carry away the property taken, in violation of the Common Law crime of Strong Arm Robbery.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM B. ROGERS, JR.
SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 14th, 2013



Carmen V. Ganjehsani
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

SEP 19 2014

S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES C. TYNER,

APPELLANT

APPELLATE CASE NO. 2012-212324

FINAL BRIEF OF APPELLANT

CARMEN V. GANJEHSANI
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	4
STATEMENT OF THE CASE	5
STATEMENT OF FACTS	6
ARGUMENT	9
Appellant was entitled to a directed verdict on the charge of assault and battery of a high and aggravated nature where the State did not establish that the alleged acts of Appellant caused “great bodily injury to another person” or used “means likely to produce death or great bodily injury” as required by S.C. CODE ANN. § 16-3-600(B)(1)	9
The Trial Court erred in refusing to quash the jury panel pursuant to Appellant’s <u>Batson</u> motion where (1) the State only struck young black jurors; (2) the State struck one female black juror based upon her alleged attitude; and (3) the State struck another female black juror based upon her residence	14
CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<u>Akbar v. State</u> , 660 S.W.2d 834 (Tex. Ct. App. 1983).....	12
<u>Batson v. Kentucky</u> , 476 U.S. 79 (1986).....	4,14,15,16,17,18,19,20,21,22
<u>Haynes v. Union Pac. R.R. Co.</u> , 395 S.W.3d 192 (Tex. Ct. App. 2012)	19,20
<u>Hernandez v. New York</u> , 500 U.S. 352 (1991).....	16
<u>Payton v. Kearsse</u> , 329 S.C. 51, 495 S.E.2d 205 (1998)	16
<u>People v. Brown</u> , 243 A.D.2d 749 (N.Y. App. Div. 1997)	13
<u>People v. Felipe</u> , 79 A.D.3d 1454 (N.Y. App. Div. 2010)	11
<u>People v. Perron</u> , 172 A.D.2d 879 (N.Y. App. Div. 1991).....	12
<u>People v. Snipes</u> , 112 A.D.2d 810 (N.Y. App. Div. 1985).....	10
<u>Powers v. Ohio</u> , 499 U.S. 400 (1991).....	16
<u>Purkett v. Elem</u> , 514 U.S. 765 (1995).....	17
<u>Riddle v. State</u> , 314 S.C. 1, 443 S.E.2d 557 (1994)	18
<u>Robinson v. Bon Secours St. Francis Health Sys., Inc.</u> , 382 S.C. 224, 675 S.E.2d 744 (2009).....	20
<u>Snyder v. Louisiana</u> , 552 U.S. 472 (2008).....	16
<u>State v. Adams</u> , 322 S.C. 114, 470 S.E.2d 366 (1996).....	17
<u>State v. Cochran</u> , 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006)	17,18,19
<u>State v. Edwards</u> , 384 S.C. 504, 682 S.E.2d 820 (2009)	16,17,18
<u>State v. Haigler</u> , 334 S.C. 623, 515 S.E.2d 88 (1999)	16
<u>State v. Johnson</u> , 302 S.C. 243, 395 S.E.2d 167 (1990).....	18
<u>State v. Oglesby</u> , 298 S.C. 279, 379 S.E.2d 891 (1989).....	19
<u>State v. Rayfield</u> , 369 S.C. 106, 631 S.E.2d 244 (2006).....	16

<u>State v. Salters</u> , 273 S.C. 501, 257 S.E.2 91979).....	15
<u>State v. Sorrell</u> , 568 A.2d 376 (Vt. 1989).....	12
<u>State v. Vidaurri</u> , 919 So.2d 803 (La. Ct. App. 2005).....	11
<u>State v. Wilder</u> , 306 S.C. 535, 413 S.E.2d 323 (1991)	19
<u>U.S. v. Bishop</u> , 959 F.2d 820 (9 th Circ. 1992).....	20
<u>Williams v. State</u> , 125 P.3d 627, 635 (Nev. 2006).....	21

Statutes

S.C. CODE ANN. § 16-3-600(A)(1)	9,10
S.C. CODE ANN. § 16-3-600(B)(1)	4,5,9,22

Constitutional Provisions

U.S. Const. Amend. VI.....	15
S.C. Const. art. I, § 14.....	15

STATEMENT OF ISSUES ON APPEAL

- I. Appellant was entitled to a directed verdict on the charge of assault and battery of a high and aggravated nature where the State did not establish that the alleged acts of Appellant caused "great bodily injury to another person" or used "means likely to produce death or great bodily injury" as required by S.C. CODE ANN. § 16-3-600(B)(1).
- II. The Trial Court erred in refusing to quash the jury panel pursuant to Appellant's Batson motion where (1) the State only struck young black jurors; (2) the State struck one female black juror based upon her alleged attitude; and (3) the State struck another female black juror based upon her residence.

STATEMENT OF THE CASE

On March 22, 2011, Appellant James C. Tyner was indicted by the Chesterfield County Grand Jury for (1) assault and battery of a high and aggravated nature in violation of S.C. CODE ANN. § 16-3-600(B); and (2) strong armed robbery. R. 89.

A trial was held before the Honorable Paul M. Burch and a jury from June 18-20, 2012. R. 1. Tyner was represented by Trey Cockrell and Jason Turnblad, and the State was represented by Assistant Solicitor Chris Jones. Id.

On June 20, 2012, the jury found Tyner guilty of (1) assault and battery of a high and aggravated nature; and (2) strong armed robbery. R. 84, ll. 17-25. Judge Burch sentenced Tyner to fifteen years imprisonment for strong armed robbery and three years consecutive on the assault and battery of a high and aggravated nature. R. 88, ll. 10-15.

Tyner timely filed and served his Notice of Appeal on June 21, 2012.

STATEMENT OF FACTS

On December 31, 2010, Ralph Chapman and his wife heard someone beating on their door between 6:00 and 6:30 a.m. R. 30, ll. 20-15. Chapman went outside his house to check to see if anyone needed help. He saw a car parked on the side of the road about a hundred yards away and thought perhaps someone's car had broken down. Chapman decided to go get in his truck and drive down to the car to see what was the matter. R. 31, ll. 4-19.

After Chapman walked to his truck and unlocked it, he said two guys grabbed him and according to Chapman: "[T]hey slammed me into the truck and then they started beating on my head pretty good. And finally took me down. I guess I was in more or less a fetal position, had my head down, and one of them was choking me. He had his hand over my mouth and nose where I couldn't breathe." R. 32, ll. 2-8.

The two men finally got his billfold out of Chapman's pocket and ran off toward the highway. R. 33, ll. 18-24. The two men got into the car Chapman saw parked on the side of the road. The vehicle drove away. Chapman said there were three men in the vehicle as it drove away. R. 34, ll. 1-22.

Chapman recognized one of his attackers as Bruce Walters. R. 32, ll. 20-22. Two days before the attack, Chapman ran into Bruce Walters at a truck stop. Walters wanted Chapman to take him to Society Hill for a job interview. When Walters got into Chapman's truck, Walters started asking Chapman for money. R. 35, l. 16 – 36, l. 12. Chapman told Walters he did not have any money to lend him. R. 36, ll. 12-14.

The two finally pulled up at a trailer where Walters got out and asked Chapman if he could wait on him for a little bit. Walters then came out and asked Chapman for just two

dollars, which Chapman gave him. Chapman said when he pulled out his billfold, Walters would have seen that Chapman was carrying a lot of bills in it, including a \$100 bill, six or seven \$20 bills, a bunch of \$5 bills, and a stack of \$1 bills. R. 37, ll. 7 – 25.

After Chapman gave Walters the two dollars, he told Walters he had to leave and was not waiting on him any longer. Chapman thought that must have made Walters mad, mad enough to get even with him “big time” two days later on December 31. R. 38, ll. 3-12.

After the attack, Chapman informed the police that he thought it was Walters who was one of the attackers. R. 38, ll. 13-20.

At trial, two of Tyner’s alleged accomplices, Adam Raymond Quick and Bruce Walters, told conflicting stories. Quick testified that after midnight on December 31, 2010, he, Walters, and Tyner were up late drinking when Walters said he needed a ride to his uncle’s house to borrow some money. R. 57, l. 1 – 58, l. 10. Walters told Quick, who testified that he was driving the car, to park on the side of the road. R. 58, ll. 21-23.

Quick said Walters asked Tyner to go with him up to the house and Tyner did. Quick said they came back about fifteen minutes later, and since they were not breathing heavy or sweating, he did not think anything of it. R. 59, ll. 7-15. Quick testified that Walters said his uncle had given him some money. R. 59, ll. 21-22.

Walters testified that Tyner said he needed to make some money and Walters told him about seeing Chapman with a “pocket full of money.” R. 65, ll. 3-20. Walters said he drove Quick and Tyner to Chapman’s house and pulled up on the side of the road. He said Quick and Tyner jumped out of the car and walked around the house. He said Quick and Tyner came back running and yelling that they had the wallet. R. 67, ll. 1 – 24.

At trial, Chapman said that he could not physically or visually put Tyner at the scene of the attack. R. 40, ll. 13-17; 42, ll. 7-11.

Walters pled guilty to strong armed robbery and assault and battery of a high and aggravated nature. R. 71, ll. 4-13. He received a ten year sentence on each charge to run concurrent. R. 72, ll. 1 – 11. Quick did not receive any jail time in exchange for his testimony against Tyner. R. 62, ll. 2-3; 63, l. 8 – 64, l. 9. Tyner proceeded to trial where he was convicted of assault and battery of a high and aggravated nature and strong armed robbery. This appeal follows.

ARGUMENT

- I. **Appellant was entitled to a directed verdict on the charge of assault and battery of a high and aggravated nature where the State did not establish that the alleged acts of Appellant caused “great bodily injury to another person” or used “means likely to produce death or great bodily injury” as required by S.C. CODE ANN. § 16-3-600(B)(1).**

At trial, Appellant Tyner moved for a directed verdict on the assault and battery of a high and aggravated nature (ABHAN) charge because the State did not establish that the alleged acts of Tyner caused “great bodily injury to another person” or used “means likely to produce death or great bodily injury.” R. 73, l. 23 – 74, l. 2; 75, l. 19 – 76, l. 25.

The offense of ABHAN was codified by the South Carolina Legislature in June 2010. Under S.C. CODE ANN. § 16-3-600(B)(1), a person commits ABHAN “if the person unlawfully injures another person, and: (a) great bodily injury to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury.”

“Great bodily injury” is defined as “bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.” § 16-3-600(A)(1).

Chapman testified that the two attackers grabbed him and started “beating on [his] head pretty good.” R. 32, ll. 2-5. After the attack, Chapman went into his kitchen to sit at the table, but upon realizing that he was bleeding, walked outside to sit on the back door steps to wait for the deputies and the EMT. R. 35, ll. 6-11.

The EMTs arrived and looked over Chapman and told him, “Mr. Chapman, unless you want us to take you to the emergency room, there is really nothing we can do for you.” Chapman replied, “No, I don’t see any need of that. I mean I’m just beat up.” R. 42, ll. 16-24. Chapman did not go to the hospital. R. 42, ll. 15-16.

Chapman sustained some bruises and bleeding in the attack, but he did not break any bones and never went at any time to see a doctor about his injuries. R. 42, l. 25 – 43, l. 6.

Chapman's wife testified that her husband's face was very bloody and that he told her, "Two guys just beat the hell out of me" R. 51, ll. 8-16.

The offense of ABHAN requires bodily injury which "causes a substantial risk of death" or which results in "serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." § 16-3-600(A)(1). Chapman did not sustain any injuries rising to that level.

Other courts have found that the type of injuries suffered by Chapman did not constitute an injury which created a "substantial risk of death" or resulted in protracted disfigurement or protracted impairment of any bodily member or organ. In People v. Snipes, 112 A.D.2d 810 (N.Y. App. Div. 1985), the court held that there was insufficient evidence to conclude that the victim suffered serious physical injury so as to support a conviction for assault in the second degree where the victim suffered bruises, swollen eyes and multiple contusions and pain which lasted for two days, but there was no physical injury which created a substantial risk of death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

The Supreme Court, Appellate Division of New York also found no physical injury which "creates a substantial risk of death, or which causes . . . serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ" where a victim testified that the defendant "came up behind her, grabbed the phone out of her hand, covered her nose and mouth and dragged her through a fenced-in area and into a bathroom by the horse stalls." The defendant then

“threw her to the ground, ripped her pants off, punched her in the face and ribs, and attempted to rape her.” Finding no serious physical injury resulting in the above-referenced definition, the court noted the record revealed that the victim was “conscious and communicative when she arrived at the hospital after the attack, with normal vital signs and neurological state, despite extensive bruising, lacerations and pain.” The victim also suffered no internal bleeding or bone fractures. The victim’s hospital discharge summary indicated that her lacerations would heal without surgical intervention. People v. Felipe, 79 A.D.3d 1454, 1454-56 (N.Y. App. Div. 2010).

The Louisiana Court of Appeal also held that the evidence did not show the victim suffered any “protracted and obvious disfigurement, any protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or was put at a substantial risk of death” where the defendant came into the victim’s bedroom and while she was holding a baby, “grabbed her, slammed her to the ground, and started hitting and kicking her in her face and arms.” The victim also testified that the defendant had his hands around her neck and was choking her. The victim had swollen eyes, a busted lip, and a cut on her face. In finding that the evidence was insufficient to sustain the second degree battery conviction, the court noted that the record indicated that the victim never lost consciousness at any time or sought medical attention for her injuries. State v. Vidaurri, 919 So.2d 803, 804-08 (La. Ct. App. 2005).

As in these above-referenced cases, Chapman, while sustaining bruises and bleeding from the attack, did not sustain any bone fractures or any protracted impairment of any bodily member or organ. He never lost consciousness during the attack. Other than the EMTs who looked him over and informed Chapman that there was nothing they could do

for him, Chapman never sought any medical attention for his injuries. The State did not present sufficient evidence of great bodily injury to another person” or used “means likely to produce death or great bodily injury” to obtain a conviction of ABHAN against Tyner.

In ruling on Tyner’s directed verdict motion, the Trial Court stated that in its opinion the State presented sufficient evidence as to whether “means likely to produce death or great bodily injury” were used where Chapman testified that one of the attackers was choking him and had his hand over Chapman’s mouth and nose. R. 32, ll. 2-8; 75, ll. 21-25.

However, courts from other jurisdictions finding that choking or strangling was an action creating a substantial risk of death have pointed to evidence such as unconsciousness and severe bruises and marks on the victim’s neck and have even noted physician testimony that the victim was only minutes from death. None of that type of evidence is present in this case.

In People v. Perron, 172 A.D.2d 879 (N.Y. App. Div. 1991), the court held the defendant’s actions created a substantial risk of death where the victim testified that after the defendant raped her, he told her, “I’m not going to let you go back there. I’m not going to let you tell them,” and thereafter “strangled her into unconsciousness.” The physician who examined the victim testified “that the pressure applied to the victim’s windpipe, which cut off her oxygen supply, was significant in time and quantity as to be ‘life threatening.’” The physician also testified that the victim had severe bruises on her neck and was “choked to an extent sufficient to cause unconsciousness and that ‘it’s just a matter of minutes between someone whose going to be unconscious to someone who’s going to be dead.’” See also State v. Sorrell, 568 A.2d 376, 378 (Vt. 1989) (finding defendant’s actions constituted a substantial risk of death to the victim where defendant choked his victim while

swearing he would kill her and the victim passed out twice).

The Texas Court of Appeals also held that a defendant's actions created a substantial risk of death where the defendant choked the victim with a towel, a belt, and his hands and told the victim that he was trying to kill her. The victim testified she nearly blacked out. The investigating police officer testified that the victim sustained large bruises and red marks around her neck and that he could see fingerprints on her throat and marks where some object had been around her throat. The office observed that these injuries were consistent with injuries suffered by those who have been strangled. Akbar v. State, 660 S.W.2d 834, 835-87 (Tex. Ct. App. 1983).

In People v. Brown, 243 A.D.2d 749, 749-50 (N.Y. App. Div. 1997), the court also sustained the assault conviction where the defendant choked the victim to the point where her tongue hung out of her mouth, she could not breathe, and almost passed out. After the incident, the victim also had visible marks on both sides of her neck and had a hard time swallowing.

Unlike the evidence in these cases, Chapman only testified that he was being choked and that one of the attackers had his hand over Chapman's nose and mouth. Chapman did not indicate how long this "choking" may have occurred or how long the attacker had his hands over Chapman's nose and mouth. Chapman did not become unconscious or come even close to passing out, he did not have any marks on this neck, and he never indicated that he had any pain in his neck or throat area. He was conscious and communicative after the attack. This evidence is simply not sufficient to establish the presence of an act accomplished by "means likely to produce death or great bodily injury." The Trial Court therefore erred in refusing to grant Tyner's directed verdict motion on the ABHAN charge.

II. The Trial Court erred in refusing to quash the jury panel pursuant to Appellant's Batson motion where (1) the State only struck young black jurors; (2) the State struck one female black juror based upon her alleged attitude; and (3) the State struck another female black juror based upon her residence.

During jury selection, the State struck a total of four jurors, one young black male and three young black females. R. 21, l. 16 – 27, l. 12. Following jury selection, defense counsel for Tyner made a motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) challenging the State's strike of the four black jurors. R. 26, l. 24 – 27, l. 5. The Trial Court then requested the solicitor to offer a race-neutral reason for striking each juror. R. 27, ll. 13-16.

The State stated that it struck Juror 98, a young black male, because he was unemployed. The State asserted it struck Juror 60, a young black female, because she had a prior assault conviction. R. 27, ll. 17-22.

With respect to Juror 39, a young black female, the solicitor said he "consulted with the victim on that as to with all the jury strikes, and she indicated that she had an attitude. She didn't think she would participate in jury discussions." R. 27, l. 23 – 28, l. 1.

As to Juror 101, another young black female, the solicitor gave the following explanation:

And Juror Number 101 that juror had a lip ring. And I believe talked to the victim and co-counsel lives in the area where - - and don't think she would participate in a jury discussion.

R. 28, ll. 3-7.

After further questioning by the Trial Court, the solicitor said he did not have previous knowledge of Juror 39 having an attitude, but something just "developed in Court. It was the overall demeanor. She appeared like she didn't want to be here" R. 28, ll. 13-23.

Defense counsel argued that the State just seemed like they were “fishing” to find compliance with [Batson]. Defense counsel noted that jurors traditionally have other, important things to do that might be on their mind, whether work-related or family-related, and “so just the general demeanor of a potential juror I don’t think is a valid reason to strike a person.” R. 28, l. 25 – 29, l. 6.

Defense counsel also argued that because the State only struck young black males or females, that was evidence that the State was clearly striking jurors in violation of Batson. R. 29, ll. 7-11.

The Trial court ruled: “Well, unemployed, assault, appearance in Court, and a lip ring just not enough there for me to set this aside. So I’ll have to deny that motion.” R. 29, ll. 12-14.

The Trial Court erred in refusing to quash the jury panel pursuant to Appellant Tyner’s Batson motion where the State used its peremptory strikes to only strike black jurors and where there is no support in the record that Juror 39’s demeanor could be credibly said to have exhibited the basis for the strike attributed to the juror by the solicitor. Furthermore, with respect to Juror 101, the solicitor began to mention the area in which she lived, although stopping short of a full explanation, showing that the solicitor was about to use the juror’s residence as a substitute for her race and as a stereotype of the experiences that can be ascribed to that race.

A criminal defendant has the right to a fair trial by an impartial jury under the federal and state constitutions. *See* U.S. Const. Amend. VI; *see also* S.C. Const. art. I, § 14; State v. Salters, 273 S.C. 501, 257 S.E.2d 502 (1979). This guarantee includes the right to a selection process that is unbiased and fair to the defendant and the jurors. See

Powers v. Ohio, 499 U.S. 400, 410-16 (1991). The United States Supreme Court has 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). Consequently, a trial court must hold a Batson hearing when members of a cognizable racial group are struck and the opposing party requests a Batson hearing. See State v. Haigler, 334 S.C. 623, 629, 515 S.E.2d 88, 90 (1999). "A party has standing to object to race-based peremptory strikes of venire persons even if the challenging party and the potential juror are not of the same race." Payton v. Kearsse, 329 S.C. 51, 54, 495 S.E.2d 205, 207 (1998).

Batson and its progeny "protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process." State v. Rayfield, 369 S.C. 106, 112, 631 S.E.2d 244, 247 (2006). Therefore, "[t]he Constitution forbids striking even a single prospective juror for a discriminatory purpose." Snyder v. Louisiana, 552 U.S. 472 (2008).

Furthermore, "[w]hether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record." State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009). The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. Id. at 509, 682 S.E.2d at 823. "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] mind lies peculiarly within a trial [court's] province.'" Id. (quoting Hernandez v. New York, 500 U.S. 352,

365 (1991)). This court will give the trial court's finding great deference on appeal and review the trial court's ruling under the "clearly erroneous" standard. Id., 384 S.C. at 509, 682 S.E.2d at 822.

In Purkett v. Elem, 514 U.S. 765, 767 (1995), the United States Supreme Court set forth the procedures for a trial court to follow when a party challenges a peremptory strike. The South Carolina Supreme Court adopted that procedure in State v. Adams, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996). Specifically, Batson challenges follow a three step process: (1) the opponent of the strike requests a hearing and asserts a *prima facie* case of racial or gender discrimination; (2) the proponent of the strike must offer a race or gender neutral explanation; and then (3) the opponent must show the race or gender neutral explanation was mere pretext. See State v. Cochran, 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct. App. 2006).

The "second step of this process does not demand an explanation that is persuasive, or even plausible." Purkett, 514 U.S. at 767-68. The South Carolina Supreme 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; see Purkett, 514 U.S. at 768 (finding unless discriminatory intent is inherent in the explanation, it is deemed race neutral at step two).

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." Cochran, 369 S.C. at 315, 631 S.E.2d at 298 (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.

However, “[u]nder some circumstances, the explanation given by the proponent may be so fundamentally implausible the trial judge may determine the explanation was mere pretext, even without a showing of disparate treatment.” Edwards, 384 S.C. at 508-09, 682 S.E.2d at 822. Accordingly, 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. Cochran, 369 S.C. at 315, 631 S.E.2d at 298; see Riddle v. State, 314 S.C. 1, 14, 443 S.E.2d 557, 565 (1994) (finding courts will examine the totality of the facts and circumstances in the record to determine if a Batson violation has occurred); see also State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990) (finding the composition of the jury panel is also a factor that may be considered when determining whether a party engaged in purposeful discrimination).

In this case, the totality of the facts and circumstances surrounding the selection of the jury demonstrates that a Batson violation occurred and that the jury panel should have been quashed. See generally State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009) (finding “[w]hether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record”).

First, the Solicitor only struck young black male or females, which proves a “pattern” of solely striking jurors from a single racial group. Cf. Cochran, 369 S.C. at 315, 631 S.E.2d at 298 (finding “we disagree with the State’s argument that Appellants embarked on a “pattern” of striking jurors because of their race. Appellants did not use their

peremptory challenges solely on jurors from a single racial group”); see also State v. Oglesby, 298 S.C. 279, 379 S.E.2d 891 (1989) (finding a prosecutor's asserted reason for excluding prospective jurors of one race is a pretext for racial discrimination in light of a failure to strike jurors of another race who differed in no significant way from the jurors who were excused).

Second, although demeanor can be considered race neutral,¹ “reliance upon non-verbal conduct or demeanor may mask a racially motivated strike” and the courts should carefully examine such explanations. Haynes v. Union Pac. R.R. Co., 395 S.W.3d 192, 200 (Tex. Ct. App. 2012). “Peremptory strikes may legitimately be based on nonverbal conduct, but permitting strikes based on an assertion that nefarious conduct ‘happened’ without identifying its nature and without any additional record support, would strip Batson of meaning. Verification of the occurrence may come from the bench if the court observed it; it may be proved by the juror’s acknowledgement; or, it may be otherwise borne out by the record as, for example, by the detailed explanations of counsel.” Id.; see also Cochran, 369 S.C. at 318, 631 S.E.2d at 300 (finding “if a party were able to overcome every Batson challenge by merely claiming that a prospective juror’s demeanor and disposition were somehow inappropriate, the equal protection principles underlying Batson would be weakened. The trial court serves an important gatekeeping role in this regard. . . .)

While the State said that Juror 39 just looked like she had an attitude and would not participate in jury discussions, nothing in the record supports the State’s assertions. The record demonstrates that the Trial Court did not observe such behavior of Juror 39. R. 28, ll. 13-19. In ruling against defense counsel’s assertion that the State’s reason was pre-

¹ See State v. Wilder, 306 S.C. 535, 413 S.E.2d 323 (1991).

textural, the Trial Court did not even credit Juror 39's attitude in rejecting the Batson challenge and rather ruled that "appearance in Court" was not enough for the Trial Court to set the jury aside. R. 29, ll. 12-14. See Haynes, 395 S.W.2d at 201 ("[T]he record does not show that the trial court credited the non-verbal conduct explanation in rejecting the Batson challenge. Although [the defendant's] lawyer described Juror No. 3's "pleasant smile," the trial court made no express findings to confirm this account, and the record contains no other indication of Juror No. 3's demeanor.").

The record does not demonstrate a legally sufficient racially neutral explanation for the exclusion of Juror 39, and the Trial Court erred in denying the Batson challenge as to Juror 39.

The Trial Court further erred in denying the Batson challenge as to Juror 101. While at first noting that she had a lip ring, the solicitor then began to discuss the area in which the juror lived before stopping himself short to say that he did not think she would participate in jury discussions. R. 28, ll. 3-7. The invocation of a juror's residence as justification for a strike without further explanation, such as the juror living near the defendant, is nothing more than a surrogate for racial stereotypes and as such runs afoul of the guarantees of equal protection. U.S. v. Bishop, 959 F.2d 820, 825-27 (9th Cir. 1992), overruled on other grounds by, U.S. v. Nevils, 598 F.3d 1158 (9th Cir. 2010).

An explanation for a jury strike is not deemed race-neutral if a discriminatory intent is inherent. Robinson v. Bon Secours St. Francis Health Sys., Inc., 382 S.C. 224, 227, 675 S.E.2d 744, 746 (2009). If the stated reason is inherently discriminatory, the inquiry ends and a pretext inquiry is obviated. Id.

Here, the solicitor invoked Juror 101's residence in his explanation for striking her

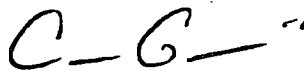
and as such the solicitor's decision was inherently race-based and failed the second prong of Batson "because a juror's residence is a substitute for the juror's probable race and stereotypes of experiences that can be ascribed to that race." See Williams v. State, 125 P.3d 627, 635 (Nev. 2006). Accordingly, the Trial Court also erred in rejecting Tyner's Batson challenge with respect to Juror 101.

Where the State improperly embarked on a pattern of striking young black jurors and further struck two of the jurors for racially discriminatory reasons, the Trial Court erred in refusing to grant Tyner's Batson motion and in refusing to quash the jury.

CONCLUSION

Based upon the foregoing arguments, Appellant James C. Tyner respectfully requests this Court to grant his directed verdict motion on the offense of assault and battery of a high and aggravated nature under S.C. CODE ANN. § 16-3-600(B)(1). In addition, Appellant also respectfully requests this Court to reverse his remaining convictions and remand the case for a new trial where the Trial Court erred in granting Appellant's Batson motion.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of December, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 3rd, 2013



Carmen V. Ganjehsani
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chesterfield County
Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES C. TYNER,

APPELLANT

CERTIFICATE OF SERVICE

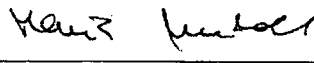
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of December, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of December, 2013.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 19 2014

S.C. Supreme Court

Appeal from Chesterfield County
Honorable Paul M. Burch, Circuit Court Judge
Appellate Case Tracking No. 2012-212324

THE STATE,

RESPONDENT,

V.

JAMES C. TYNER,

APPELLANT

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
ARGUMENT	3
I. The trial court did not err in denying Appellant's motion for directed verdict on the assault and battery of a high and aggravated nature (ABHAN) charge because the State established sufficient evidence demonstrating Appellant injured the victim and the act was accomplished by means likely to produce death or great bodily injury.	3
II. The trial court did not err in denying Appellant's Batson motion when the State presented race neutral reasons for the strikes and Appellant failed to demonstrate the reasons were mere pretext.	8
CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<u>Akbar v. State</u> , 660 S.W.2d 834, 836 (Tex. App. 11 Dist. 1983)	7
<u>Cooper v. Com.</u> , 569 S.W.2d 668, 671 (Ky. 1978)	6
<u>Haynes v. Union Pac. R.R. Co.</u> , 395 S.W. 3d 192 (Tex. Ct. App. 2012)	11, 12
<u>Hernandez v. New York</u> , 500 U.S. 352, 365 (1991).....	11
<u>Lockett v. State</u> , 517 So.2d 1346 (Miss.1987).....	12
<u>Mathis v. State</u> , ___ S.W.3d ___, 2012 Ark. App. 285 (Ark. App. 2012).....	7
<u>McCray v. State</u> , 271 S.C. 185, 188, 246 S.E.2d 230, 232 (1978)	3
<u>People v. Miller</u> , 736 N.Y.S.2d 773, 774 (N.Y. App.Div. 3 2002)	7
<u>Purkett v. Elem</u> , 514 U.S. 765 (1995).....	10
<u>Sellers v. State</u> , 108 So.3d 456, 459 (Miss. App. 2012)	6
<u>State v. Adams</u> , 322 S.C. 114, 470 S.E.2d 366 (1996)	10
<u>State v. Carpenter</u> , 580 A.2d 497, 500 (Vt. 1990)	7
<u>State v. Casey</u> , 325 S.C. 447, 453 n.2, 481 S.E.2d 169, 172 n.2 (Ct. App. 1997).....	15
<u>State v. Cochran</u> , 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct.App.2006)	10, 12
<u>State v. Dunbar</u> , 356 S.C. 138, 142, 587 S.E.2d 691, 693 94 (2003)	8
<u>State v. Evins</u> , 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007)	9, 10
<u>State v. Freiburger</u> , 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005)	9
<u>State v. Guess</u> , 318 S.C. 269, 273, 457 S.E.2d 6, 8 (Ct. App. 1995).....	12
<u>State v. Haigler</u> , 334 S.C. 623, 515 S.E.2d 88 (1999)	9, 10
<u>State v. Haselden</u> , 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003)	9
<u>State v. Jordan</u> , 255 S.C. 86, 177 S.E.2d 464 (1970).....	3

<u>State v. Kennerly</u> , 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998).....	3
<u>State v. Rogers</u> , Op. No. 5170 (S.C.Ct. App. Filed September 4, 2013).....	11
<u>State v. Sterling</u> , 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012).....	3
<u>State v. Taylor</u> , 333 S.C. 159, 508 S.E.2d 870 (1998).....	3
<u>State v. Tomlin</u> , 299 S.C. 294, 299, 384 S.E.2d 707, 710 (1989)	12
<u>State v. Tucker</u> , 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1999).....	13
<u>State v. Wright</u> , 304 S.C. 529, 533, 405 S.E.2d 825, 827 (1991).....	12
<u>State v. Young</u> , 800 So.2d 847, 852 (La. 2001).....	6
<u>U.S. v. Bishop</u> , 959 F.2d 820 (9 th Cir. 1992).....	14, 15
<u>U.S. v. Uwaezhoke</u> , 995 F.2d 388 (3 rd Cir. 1993)	15
<u>United States v. Forbes</u> , 816 F.2d 1006 (5th Cir.1987).....	12
<u>Williams v. State</u> , 125 P.3d 627 (Nev. 2006)	13, 14

Statutes

S.C. Code Ann. § 16-3-600 (Supp. 2011).....	4
---	---

STATEMENT OF ISSUES ON APPEAL

- I. The trial court did not err in denying Appellant's motion for directed verdict on the assault and battery of a high and aggravated nature (ABHAN) charge because the State established sufficient evidence demonstrating Appellant injured the victim and the act was accomplished by means likely to produce death or great bodily injury.
- II. The trial court did not err in denying Appellant's Batson motion when the State presented race neutral reasons for the strikes and Appellant failed to demonstrate the reasons were mere pretext.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

- I. **The trial court did not err in denying Appellant's motion for directed verdict on the assault and battery of a high and aggravated nature (ABHAN) charge because the State established sufficient evidence demonstrating Appellant injured the victim and the act was accomplished by means likely to produce death or great bodily injury.**

Appellant contends the trial court erred in denying his motion for a directed verdict arguing the State failed to produce evidence sufficient to convict Appellant of ABHAN. Specifically, he maintains the State failed to produce evidence he either caused great bodily injury or used means likely to produce death or great bodily injury. The State presented testimony Appellant or others acting with Appellant choked the victim in such a way that the injury was accomplished by means likely to produce death or great bodily injury.

Preservation

First, the issue is not properly preserved for review on appeal. "A general directed verdict motion, however, does not preserve any issue for appeal." State v. Sterling, 396 S.C. 599, 612, 723 S.E.2d 176, 183 (2012). "In reviewing a denial of directed verdict, issues not raised to the trial court in support of the directed verdict motion are not preserved for appellate review." State v. Kennerly, 331 S.C. 442, 455, 503 S.E.2d 214, 221 (Ct. App. 1998) (citing State v. Jordan, 255 S.C. 86, 177 S.E.2d 464 (1970)); see also, State v. Taylor, 333 S.C. 159, 508 S.E.2d 870 (1998) (noting a general or nonspecific objection presents no issue for appellate review); McCray v. State, 271 S.C. 185, 188, 246 S.E.2d 230, 232 (1978) (questioning whether a motion on the ground that the evidence did not support the verdict was sufficiently specific to preserve any

issue on appeal). The motion in the instant case merely stated: "Defense moves for a directed verdict. Feels the State has carried their burden beyond a reasonable doubt at this time and ask for a directed verdict of not guilty on behalf of all charges of Mr. James Tyner." (T.134-135; R. pp. 73-74). This generic motion did not preserve the specific argument raised on appeal the testimony regarding choking was insufficient to establish great bodily injury as required for a conviction on ABHAN.

Merits

On the merits, Section 16-3-600 of the South Carolina Code (Supp. 2011) provides in part:

A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

- (a) great bodily injury to another person results; or
- (b) the act is accomplished by means likely to produce death or great bodily injury.

S.C. Code Ann. § 16-3-600 (B)(1) (Supp. 2011). The statute defines great bodily injury:

"Great bodily injury" means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

S.C. Code Ann. § 16-3-600(A)(1) (Supp. 2011).

In the instant case, the State submits the victim was injured by an act likely to produce death or great bodily injury. Appellant, Bruce Walters, and Adam Quick went to the victim's home to try and get some cash off of the victim. (T.111; R. p.58). When they arrived, two of the individuals got out of the car and attacked the victim. (T.113; 125; R.

p.60; p.67). While the co-defendants each testified they were the driver, both testified Appellant was one of the individuals who got out of the car.¹

The individuals beat the elderly victim to the ground and one began choking him, covering his mouth and nose so the victim could not breathe. (T.52-53; R. pp. 32-33). The victim testified he kept trying to pry or break the person's fingers because they were covering his mouth and he could not breathe. He testified: "I could put enough pressure on it every once in a while so I can get a little air, and I begged them not to kill me." (T.53; R. p. 33). The victim testified he believed he was going to die. He stated:

I couldn't breathe. The only time, like I said - - I mean I was trying to break his fingers. I never could, but I could put enough pressure on it to get it off enough for me to get some air and holler for my wife. And I'd tell them, you know, don't kill me. Just take what I got and go. I did that two or three times I know.

(T.65; R. p.45).

The victim was an elderly man who has a severe heart condition and emphysema. (T.64; R. p. 44). He has to wear an ICD, which acts as a pacemaker and defibrillator in one. He had open heart surgery several years before the beating and choking and indicated: "I just feel really fortunate that I didn't get a lick on it or I didn't get a lick right in my chest." (T.64; R. p. 44). Even the beating in this case could have proven fatal given his condition.

The victim's wife testified regarding the effects on the victim. She stated she found him on his hands and knees crawling onto the back doorstep. She said he was a "bloody mess." (T.71; R. p. 51). Significantly, she testified bruising appeared around his

¹ The victim identified Bruce Walters as one of his assailants.

neck after the beating and choking. She testified: "There was a good bit of bruising around his neck." (T.75; R. p.55).

The State presented ample evidence the victim was injured by means likely to produce death or great bodily injury. The choking of the victim, requiring him to pry up fingers of his assailant in order to breathe at all and to gasp "don't kill me," is certainly a means likely to produce death or great bodily injury. Choking is a unique form of assault in that it may not leave a severe resulting injury, but may create a substantial risk of death. It is hard to fathom how choking a victim to the point he believes he could die does not amount to a means likely to produce death or great bodily injury.

The fact the victim was able to spare his own life by several times prying up the finger of his attacker does not lessen the impact or likely result of the choking. Further, the victim was an elderly man, who already had heart and lung issues. The strain and impact of the beating and choking certainly were likely to cause death in this case.

Other states have also found choking to be a means to cause death or great bodily injury. See State v. Young, 800 So.2d 847, 852 (La. 2001) ("defendant's act of choking [the victim] could have resulted in a substantial risk of death."); Cooper v. Com., 569 S.W.2d 668, 671 (Ky. 1978) (Court found, considering the totality of the evidence and the circumstances, the physical injuries sustained, including choking and bruising inflicted to a 74-year-old woman in poor health, were sufficient to support a conclusion that a substantial risk of death had been created); Sellers v. State, 108 So.3d 456, 459 (Miss. App. 2012) (finding choking the victim with hands until she nearly passed out and she felt like he was "choking [her] to death" was sufficient evidence to show the act was likely to produce death or serious bodily harm); People v. Miller, 736 N.Y.S.2d 773, 774

(N.Y. App.Div. 3 2002) (finding defendant's strangulation of the victim was an impairment of her physical condition which created a substantial risk of death); Mathis v. State, ___ S.W.3d ___, 2012 Ark. App. 285 (Ark. App. 2012) (Finding evidence defendant choked victim, she could not breathe, he had his hands around her neck, and he threatened to kill her and "take her out" sufficient to demonstrate substantial risk of death); Akbar v. State, 660 S.W.2d 834, 836 (Tex. App. 11 Dist. 1983) (finding "it is certainly common knowledge that the throat is a particularly vulnerable part of the body, as exemplified by the popular expression 'go for the throat' and "[f]rom the evidence in the instant case since the victim was strangled to the point of 'near blackout,' we hold that the jury could draw the inference that her injuries created a substantial risk of death."); State v. Carpenter, 580 A.2d 497, 500 (Vt. 1990) ("It is equally clear that an act can create a substantial risk of death without resulting in either death or permanent impairment, and choking is a good example of such act.").

Accordingly, this Court should find Appellant's directed verdict motion was properly denied because the State presented sufficient evidence the victim was attacked and injured by means likely to produce death or great bodily injury when he was choked to the point he could not breathe and believed he was going to die.

II. The trial court did not err in denying Appellant's Batson motion when the State presented race neutral reasons for the strikes and Appellant failed to demonstrate the reasons were mere pretext.

Appellant maintains the trial court erred in refusing to quash the jury panel pursuant to his Batson² motion. He asserts the State's reasons for striking the jurors were mere pretext. Further, he argues there is "no support in the record that Juror 39's demeanor could be credibly said to have exhibited the basis for the strike attributed to the juror by the solicitor." (App. Br. 15). Finally, he asserts "with respect to Juror 101, the solicitor began to mention the area in which she lived, although stopping short of a full explanation, showing that the solicitor was about to use the juror's residence as a substitute for her race and as a stereotype of the experiences that can be ascribed to that race." (App. Br. 15).

The State proffered race-neutral reasons as required when conducting a Batson analysis. Appellant failed to demonstrate any of the reasons were mere pretext. As a result, the trial court properly denied his motion to quash the jury panel. Finally, the specific arguments as to Jurors 39 and 101 were never raised to the trial court and are clearly not preserved for review on appeal.

Preservation

In order to preserve grounds for review on appeal, they must be raised to and ruled upon by the trial court. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 94 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court). Further, Appellant cannot articulate one ground at trial and raise another ground on appeal. See State v. Freiburger,

² Batson v. Kentucky, 476 U.S. 79 (1986).

366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another ground is raised on appeal); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (same).

At trial after the State presented its race neutral explanations for the strikes, Appellant's counsel stated:

To me I think they're fishing for reasons to find compliance with the Batson v. Kentucky. Furthermore, jurors traditionally typically do not - - they've got other things, very important things to do. Work related or family related, and so just the general demeanor of a potential juror I don't think is a valid reason to strike a person.

(T.29; R. p. 29). Counsel never argued the record failed to demonstrate the demeanor relied upon by the State in its grounds and certainly never argued the use of the juror's residence as the basis for a strike was merely a substitution for their race. As a result, these arguments are clearly not preserved for review on appeal.

Merits

On the merits, in Batson the United States Supreme Court, through the Equal Protection Clause, forbade the use of peremptory challenges to strike jurors because of their race. See, State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999). In State v. Evins, the South Carolina Supreme Court reiterated the procedure the trial court is to follow for a Batson hearing:

After a party objects to a jury strike, the proponent of the strike must offer a facially race neutral explanation. Once the proponent states a reason that is race neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were 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. The burden of persuading the court that

a Batson violation has occurred remains at all times on the opponent of the strike.

State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007) (citing Purkett v. Elem, 514 U.S. 765 (1995); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996)). Step two of this process “does not demand an explanation that is persuasive or even plausible.” State v. Cochran, 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct.App.2006) (quoting Purkett, 514 U.S. at 767–68). At step two, “the proponent of the strike does not carry ‘any burden of presenting reasonably specific, legitimate explanations for the strikes.’” Id. (quoting Adams, 322 S.C. at 123, 470 S.E.2d at 371). “Therefore, ‘[u]nless a discriminatory intent is inherent’ in the explanation provided by the proponent of the strike, ‘the reason offered will be deemed race neutral’ and the trial court must proceed to the third step of the Batson process.” Id. (quoting Purkett, 514 U.S. at 768).

The South Carolina Supreme Court explained the standard of review of a Batson motion:

Whether a Batson violation has occurred must be determined by examining the totality of the facts and circumstances in the record. The opponent of the strike carries the ultimate burden of persuading the trial court that the challenged party exercised strikes in a discriminatory manner. Appellate courts give the trial judge’s finding great deference on appeal and review the trial judge’s ruling with a clearly erroneous standard.

State v. Edwards, 384 S.C. 504, 682 S.E.2d 820, 822 (2009) (internal citations omitted).

The trial court’s finding of purposeful discrimination rests on its evaluation of demeanor and credibility. Id. at 509, 682 S.E.2d at 823. “Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an ‘evaluation of the [attorney’s] mind lies peculiarly within a trial [court’s] province.’” Id. (quoting

Hernandez v. New York, 500 U.S. 352, 365 (1991)). This Court recently utilized the same standard in reviewing a challenge to the trial court's finding on a Batson motion. See State v. Rogers, Op. No. 5170 (S.C.Ct. App. Filed September 4, 2013).

In the instant case, the State provided the following reasons for striking the jurors:

Number 39, I consulted with the victim on that as to with all the jury strikes, and she indicated that she had an attitude. She didn't think she would participate in jury discussions. And per State v. Casey that is a race neutral reason.

And Juror Number 101, that juror had a lip ring. And I believe talked to the victim and co-counsel lives in the area where - - and don't think she would participate in a jury discussion.

(T.27-28; R. pp. 27-28). On their face, the reasons are race neutral and provide no inherent discriminatory intent. Counsel pointed to no jurors who were similarly situated and provided no other basis for determining the reasons were mere pretext.

On appeal, Appellant maintains there is no evidence in the record supporting the State's reason given as to Juror 39. South Carolina has never required the trial court, or anyone else, to verify the non-verbal conduct or demeanor of a juror prior to allowing their demeanor to satisfy a race neutral basis for a strike. Appellant points to Haynes v. Union Pac. R.R. Co., 395 S.W. 3d 192 (Tex. Ct. App. 2012), for support in his argument that verification in the record must be shown in order to support the strike. In that case, the attorney provided four grounds for the strike. Three were determined to be mere pretext based on similarly situated individuals. The fourth and final basis was the demeanor of the juror. The Court did not specifically find it could not have served as a basis for a strike, but instead found because the trial court did not credit it as a basis and

the others were mere pretext, the Court rejected it. Id. at 201. This is clearly inapposite to the situation here.

Further, South Carolina has specifically recognized the juror's demeanor as a valid basis for a strike without requiring any additional evidence in the record supporting the finding. See State v. Wright, 304 S.C. 529, 533, 405 S.E.2d 825, 827 (1991) (finding demeanor and apparent disinterest in the courtroom proceedings a race neutral explanation and not racially discriminatory); State v. Tomlin, 299 S.C. 294, 299, 384 S.E.2d 707, 710 (1989) (finding "demeanor has been upheld by many jurisdictions as a legitimate reason.") (citing Lockett v. State, 517 So.2d 1346 (Miss.1987) and cases cited therein); State v. Guess, 318 S.C. 269, 273, 457 S.E.2d 6, 8 (Ct. App. 1995) ("Demeanor has been upheld by many jurisdictions as a legitimate reason to strike a juror."); see also, United States v. Forbes, 816 F.2d 1006 (5th Cir.1987) (upholding a strike based on prosecution sensing "by her posture and demeanor that she [the juror] was hostile to being in court and feared that she might respond negatively to the prosecution simply because the government was responsible for calling her to jury duty").

Further, this Court examined a strike in State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006). In Cochran, Appellants' counsel explained the strike by stating: "[the juror] gave an 'indignant' and 'shocked' look." Id. at 317, 631 S.E.2d at 299. This Court expounded: "The trial judge preempted the State's response, noting that he did not observe any such indignant or shocked expression from Juror 52. The trial court pronounced Appellants' reason as pretextual." Id. This Court then held: "The demeanor of a prospective juror is generally a race-neutral reason for employing a peremptory challenge. We hold, however, that where a strike is based solely on a

purported specific demeanor and disposition, and the trial judge makes an express and contrary finding, the deferential clearly erroneous standard of review applies.” Id. No such express finding was made in the instant case. Furthermore, both the prosecutor and defense counsel must be allowed to make credibility determinations when exercising peremptory challenges. State v. Tucker, 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1999).

The trial court found the reason given was race neutral and Appellant failed to provide any basis for a finding of pretext. The trial court did not make any express finding similar to that made in Cochran. As a result, this Court should affirm the trial court’s finding as to Juror 39.

As to Juror 101, the solicitor struck the juror on the basis the juror had a lip ring and “don’t think she would participate in jury discussion.” Further, the solicitor began stating: “I believe talked to the victim and co-counsel lives in the area where - -” but he failed to complete his sentence. (T.28; R. p.28). Appellant attempts to argue he was using residence as a substitution for race. A fair reading of the statement indicates co-counsel lives in the area where the juror lived. However, nothing about the reason, even if based on residence, demonstrated an inherent racially discriminatory intent. Instead, the reason was entirely race neutral.

Appellant points to Williams v. State, 125 P.3d 627 (Nev. 2006), for support of its conclusion that residence is a substitute for race. The issue of the juror’s residence played no part in the Williams decision. The case involved Nevada’s jury venire selection process and random selection. The State objected to the venire “contending it was not randomly constituted since three African Americans sat in the first twelve spots of the venire.” Id. at 634. The basis for the strike was explicitly based on race and the

Court concluded it could envision no justification by the State to “purge the taint of its racial remarks.” Id. at 635.

Even the case partially relied on by Williams, U.S. v. Bishop, 959 F.2d 820 (9th Cir. 1992), provides no basis of support in the instant case. In Bishop, the reason provided for the strike relied on race. The Court explained:

The prosecutor then volunteered an explanation for his decision. He stated that he felt that an eligibility worker in Compton is likely to take the side of those who are having a tough time, aren't upper middle class, and probably believes that police in Compton in South Central L.A. pick on black people.

To some extent the rules of the game down there are probably different than they are in upper middle class communities. And they probably see police activity, which is, on the whole, more intrusive than you see in communities that are not so poor and violent.

In response to a question from the bench, he added that “her primary sympathy . . . is likely to lay with people whom she comes into contact with every day.”

Bishop, 959 F.2d at 822. Other courts have clearly distinguished Bishop. Further, Bishop itself indicates residence may be an appropriate consideration in using a peremptory strike. In U.S. v. Valenzuela, 17 F.3d 397 (9th Cir. 1994), the Court explained:

Defendant cites Bishop, in which this court reversed a conviction where the prosecutor's explanation for striking a black prospective juror was that the juror lived in a poor, predominantly black neighborhood, and hence was likely to think that the police “pick on black people.” 959 F.2d at 822. The court concluded that this socio-geographic criterion for exclusion was little more than a proxy for race, and hence was impermissible.

Id. Further, the Third Circuit Court of Appeals specifically disavowed the holding in Bishop and concluded the use of residence was appropriate. In U.S. v. Uwaezhoke, 995

F.2d 388 (3rd Cir. 1993), the Court concluded a strike because a juror is a single parent, is a person that rents, and may be involved in a drug situation where she lives was race neutral and not inherently discriminatory especially in light of the fact the likely residence of the juror was not tied to one particular race. Id. at 393-394.

In the instant case, there is no indication the strike by the State in this case was a proxy for race. We know nothing of the residence of the juror, other than a fair reading of the comment makes her residence in the same area as one of the solicitors on the case. The reason provided certainly contained no basis similar to that in Bishop which directly connected an African American juror to a predominantly African American neighborhood and indicated she was likely to believe police “pick on black people.”

Further, the trial court made no ruling based on the juror’s residence, and instead, he expressly based his decision regarding the propriety of the strike on the fact the juror has a lip ring. This basis is race neutral, and can be upheld similar to a strike of a juror for wearing a white t-shirt. See State v. Casey, 325 S.C. 447, 453 n.2, 481 S.E.2d 169, 172 n.2 (Ct. App. 1997).

The trial court properly concluded the State’s reasons for the strike were not racially motivated and correctly refused to set aside the jury panel because Appellant failed to demonstrate any of the strikes were based on mere pretext. Accordingly, this Court should affirm the decision of the trial court.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

BY: 
William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 4, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County
Honorable Paul M. Burch, Circuit Court Judge
Appellate Case Tracking No. 2012-212324

The State,

Respondent,

vs.

James C. Tyner,

Appellant.

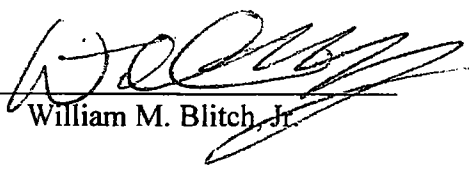
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY:


William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 4, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chesterfield County
Honorable Paul M. Burch, Circuit Court Judge
Appellate Case Tracking No. 2012-212324

The State,

Respondent,

vs.

James C. Tyner,

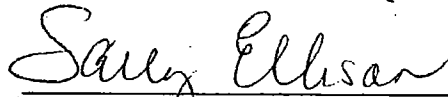
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 4th day of December, 2013.



SALLY ELLISON
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803)734-4156