

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Georgetown County  
Michael G. Nettles, Circuit Court Judge

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**RECEIVED**

AUG 31 2011

Opinion No. 2011-UP-145 (S.C. Ct. App. filed 4/11/2011)  
08-GS-22-558, 560.

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**S.C. Supreme Court**

THE STATE,

RESPONDENT,

V.

SAMUEL JAMAR GRIER,

APPELLANT

---

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State,

Respondent,

v.

Samuel Jamar Grier,

Appellant.

---

Appeal From Georgetown County  
Michael G. Nettles, Circuit Court Judge

---

Unpublished Opinion No. 2011-UP-145  
Submitted April 1, 2011 – Filed April 11, 2011

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**AFFIRMED**

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Appellate Defender Kathrine H. Hudgins, of  
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy  
Attorney General John W. McIntosh, Assistant  
Deputy Attorney General Salley W. Elliott, Senior  
and Assistant Attorney General Harold M. Coombs,

Jr., all of Columbia; and Solicitor J. Gregory Hembree, of Conway, for Respondent.

**PER CURIAM:** Samuel Jamar Grier appeals his convictions for possession with the intent to distribute cocaine base and failure to stop for a blue light, arguing the trial court erred in denying his Batson<sup>1</sup> motion after the State struck all three African-American males called. We affirm<sup>2</sup> pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Adams, 322 S.C. 114, 123, 470 S.E.2d 366, 371 (1996) ("[T]he trial court's findings regarding purposeful discrimination are entitled to great deference and are to be set aside only if clearly erroneous."); id. at 124, 470 S.E.2d at 372 ("Once a racially neutral explanation is given, the party challenging the strikes must show the explanation is mere pretext for racial discrimination.").

**AFFIRMED.**

**WILLIAMS, GEATHERS, and LOCKEMY, JJ., concur.**

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<sup>1</sup> Batson v. Kentucky, 476 U.S. 79 (1986).

<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

THE STATE,

RESPONDENT,

V.

SAMUEL JAMAR GRIER,

APPELLANT

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Appeal from Georgetown County  
Michael G. Nettles, Circuit Court Judge

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Opinion No. 2011-UP-145

---

PETITION FOR REHEARING

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Pursuant to Rule 221(a), SCACR, counsel for Samuel Jamar Grier petitions the Court for rehearing. Counsel respectfully submits that the Court of Appeals opinion misapprehended the State's explanation for striking two black males as facially race neutral. Additionally, counsel submits that the opinion overlooked the fact that the trial judge failed to conduct the required three step analysis, pursuant to Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996), in reviewing the Batson challenge. The trial judge failed to address Grier's argument that the State's purported racially neutral explanation was a mere pretext for racial discrimination, as required by step three of the analysis.

This Court affirmed pursuant to the following authority: State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996) ([T]he trial court's findings regarding purposeful discrimination are entitled to great deference and are to be set aside only if clearly erroneous.); id. at 124, 470 S.E.2d at 372 (Once a racially neutral explanation is given, the party challenging the strikes must show the explanation is mere pretext for racial discrimination.). The trial judge's denial of the Batson motion was clear error as Grier demonstrated that the explanation given by the State was mere pretext.

At trial Grier objected to the jury selection process and make-up of the jury pursuant to Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). (R. pp. 23-26). The State struck the first black male juror, juror number 33, because he was unemployed. (R. p. 26, lines 7-15). As to the two other black male jurors struck, jurors number 45 and 149, the State argued:

Number 45 is a black male, I am informed that he is much older than the defendant, but I am informed that he lives in the same community as where this happened, the Plantersville area, that is why I struck him. It had nothing to do with race your Honor. And the last guy too, as well, is also from the Plantersville Community. That is why I struck him, too. That is where this chase took place. That is where the dope was found. And for the last guy as well, he also had his shirt untucked, and was not very presentable in my opinion, to come to the Court. But those, the last two people are from the Plantersville Community where this incident happened or from where this defendant is from.

(R. p. 26, lines 23 – p. 27, lines 1-11). Grier argued that because Plantersville was a black community, striking people because they lived in that community was the equivalent of striking them because they are black. (R. p. 27, lines 14-22). The State then argued:

Your Honor, it wasn't that they lived possibly in this neighborhood, this incident, the entire case took place in the Plantersville Community, and I think it's very likely that word travels fast, and people have found out about this incident, and that is why I struck them. It had nothing to do with race. I put two black females who are on the jury, and I would have put another black man if he had not lived in the Plantersville Community and was employed.

(R. p. 28, lines 4-12). The judge denied Grier's Batson motion and stated, "Just by virtue of the fact that there are black males that she struck, that there is a racially neutral reason, it does not require that there be a new jury selected. I am going to deny your Batson motion, and I will protect it on the record." (R. p. 29, lines 25 – p. 30, lines 1-5). The judge failed to address Grier's argument that the reason given for the strike was a mere pretext.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender. State v. Hicks, 330 S.C. 207, 211, 499 S.E.2d 209, 211 (1998). Courts conduct a three step analysis in reviewing Batson challenges. Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996). In State v. Adams, 322 S.C. 114, 470 S.E.2d 366, 372 (1996), the South Carolina Supreme court wrote, "We take this opportunity to adopt the standard delineated in Purkett. Under this new test, the party opposing the strikes will make a case of prima facie discrimination in the same manner as before. In other words, pursuant to State v. Jones, 293 S.C. 54, 358 S.E.2d 701 (1987), the trial judge must hold a Batson hearing when members of a cognizable racial group or gender are struck and the opposing party requests a hearing. The second step of the analysis, however, will require only a race-neutral explanation by the proponent of the strike. In the third step, the opponent of the strike must show that the race-neutral explanation given was mere pretext." See also State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999).

In the present case, Grier made out a prima facie case of racial discrimination by opposing the State's striking of all black males, step one. Proceeding to step two of the analysis, the assistant solicitor explained that she struck one of the black male jurors because he was unemployed. Our courts have held that unemployment can be a race neutral reason for a strike. State v. Green, 306

S.C. 94, 409 S.E.2d 785 (1991). The assistant solicitor explained that she struck the other two black male jurors because they were from the Plantersville Community and Grier's arrest for possession with intent to distribute cocaine base and failure to stop for a blue light took place in the Plantersville Community. Under the facts of this case, striking black males because they lived in a black neighborhood where the incident took place can not be facially race-neutral. See Payton v. Kearsse, 329 S.C. 51, 495 S.E.2d 205 (1998) (striking a juror because she was a redneck evinces a discriminatory intent and is therefore not facially race-neutral).

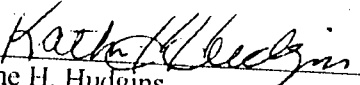
Even if this Court finds the reason given by the State to be facially race neutral, Grier demonstrated that the explanation was a mere pretext to allow the State to engage in purposeful discrimination. The trial judge failed to complete step three of the Batson analysis, simply ruling that the reason given by the State for the strike was race neutral. Pretext can be established by showing that a similarly situated jury member of another race was seated on the jury. "Under 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." State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009) (citing Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999)). There is no showing of disparate treatment in the present case. The explanation given by the State in the present case, however, is so fundamentally implausible that the trial judge should have determined that it was mere pretext. If the State was truly concerned that jurors from the Plantersville Community might have knowledge of the incident, as stated, the State could have requested voir dire to address the purported concern. Knowledge of the facts of the case would clearly be a race neutral explanation for exercising a strike that would survive the step three mere pretext challenge under Batson. Striking jurors simply because they live in the

Plantersville Community, a predominantly black community, is not reasonable without a further showing that these jurors had some knowledge of the case.

Courts will examine the totality of the facts and circumstances in the record to determine if a Batson violation has occurred. Riddle v. State, 314 S.C. 1, 14, 443 S.E.2d 557, 565 (1994). A trial judge's ruling on a Batson motion will be given great deference by the appellate courts and will be reversed only upon a showing of clear error. State v. Dyar, 317 S.C. 77, 79, 452 S.E.2d 603, 604 (1994). The judge erred in finding that the explanation given by the State was race neutral. The judge erred in failing to determine if Grier proved that the State's purported reason for the strike was mere pretext. Grier demonstrated that the explanation was a mere pretext to allow the State to engage in purposeful discrimination.

Based on the above argument, counsel seeks rehearing.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

This 26th day of April, 2011.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Georgetown County  
Michael G. Nettles, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

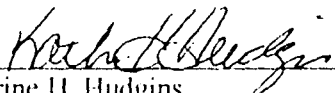
V.

SAMUEL JAMAR GRIER,

APPELLANT

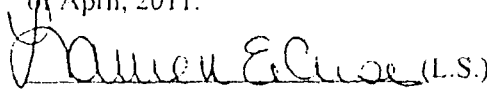
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Harold M. Coombs, Jr., Esquire, this 26th day of April, 2011.

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 26th day  
of April, 2011.

  
\_\_\_\_\_  
Danner E. Chase (L.S.)  
Notary Public for South Carolina  
My Commission Expires: August 23, 2014.

# The South Carolina Court of Appeals

The State,

Respondent,

v.

Samuel Jamar Grier,

Appellant.

Judge Michael G. Nettles  
Georgetown County  
Trial Court Case No. 2008-GS-22-00558

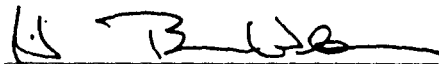
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## ORDER

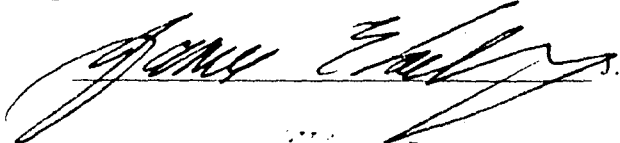
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After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

IT IS SO ORDERED.

 J.





Columbia, South Carolina

**FILED**  
MAY 31 2011

STATE OF SOUTH CAROLINA

In The Court of Appeals

**RECEIVED**

AUG 31 2011

APPEAL FROM GEORGETOWN COUNTY

Michael G. Nettles, Circuit Court Judge

**S.C. Supreme Court**

THE STATE,

RESPONDENT,

V.

SAMUEL JAMAR GRIER,

APPELLANT

AMENDED RECORD ON APPEAL

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	)	
COUNTY OF GEORGETOWN	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
The State	)	
	)	
Plaintiff	)	2008-GS-22-558
	)	2008-GS-22-559
versus	)	2008-GS-22-569
	)	
Samuel Jamar Grier	)	December 15, 2008
	)	
Defendant	)	
_____	)	

BEFORE

THE HONORABLE MICHAEL G. NETTLES

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Attorneys for The State

Stuart M. Axelrod, Esquire  
Walter C. Castro, Esquire  
Attorney for the Defendant

Pamela Ozment-Cartee  
Circuit Court Reporter

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Juror #	Name	Race	Sex	-- Strikes --	
				Ptff.	Defd.
135	Robert A. Tindall	W	F		x
006	Lori E. Avant	W	F		
083	Carolyn J. Kennedy	W	F		
100	Dorothy S. Pieterse	W	F		x
031	Donald B. Clement	W	M		x
131	Mary J. Sullivan	W	F		x
033	Preston J. Cobb	B	M	x	
020	Carol L. Brown	W	F		
069	Edward H. Guilmette	W	M		
125	Denise E. Shelley	W	F		
022	Keisha Y. Brown	B	F		
061	Donald P. Glewwe	W	M		
062	William G. Goggins	W	M		
087	Lisa F. Mace	W	F	x	
148	Janette Wilson	B	F		
024	David E. Burr	W	M		
045	Roy Rogers Deas	B	M	x	
143	Robert C. Weaver	W	M		
149	Quinson L. Woodberry	B	M	x	
120	Mary M. Sasso	W	F		
	<b>ALTERNATES</b>				
050	Michael L. Edwards	W	M		x
128	Michael C. Small, Sr.	W	M		

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transcribed due to a microphone problem in  
the courtroom.

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The State of South Carolina versus Samuel Jamar Grier 5

1           The Court:   Very good.  Ladies and gentlemen of the  
2 jury, we are about to begin the trial of The State of South  
3 Carolina versus Samuel Jamar Grier.  He is charged with  
4 three separate and distinct offenses that are set forth in  
5 the Indictment.  These alleged offenses took place on March  
6 31, 2008.  Mr. Grier, is being accused of failure to stop  
7 for blue light, possession with intent to distribute cocaine  
8 base, and assault while resisting an arrest.

9           Ladies and gentlemen of the jury, I hold in my hand an  
10 Indictments that is essentially just --- Basically by way in  
11 which this case is brought to trial.  It bares no  
12 evidentiary value whatsoever.  It's just the mechanism that  
13 starts this process; it is merely an accusation.

14           Ladies and gentlemen of the jury, in the United State  
15 of America an individual is presumed to be innocent, and the  
16 fact that they are indicted cannot be used against them in  
17 any way, shape, or form.

18           I will be asking you some questions to determine  
19 whether or not you can be fair and impartial with regard to  
20 the trial in this case.

21           Is any member of the jury panel related by blood or  
22 marriage to the Defendant Samuel Jamar Grier?  I'm going to  
23 ask if he could stand up so the jury can see him, Samuel  
24 Jamar Griér, could you stand up?  Thank you, sir, you can  
25 have a seat.  Is anyone related by blood or marriage to this

1 individual? If so, please, stand. No response.

2 Has anyone ever had a close social, personal or  
3 business relationship with Mr. Grier? If so, please, stand.  
4 No response.

5 Yes, yes sir, if you could come forward and I'll speak  
6 with you up front.

7 Bailiff: Juror Number 85.

8 The Court: And your last name is?

9 Mr. Lance: Lance. It has been a while I'm not sure,  
10 but I'm a former principal, and he may have been a student  
11 of mine, but it doesn't matter.

12 The Court: Let me ask you this. I understand you are  
13 not real sure if he has been a student of yours. But, if he  
14 had been, could you stand that relationship aside and give  
15 both, The State and the defendant a fair and impartial  
16 trial?

17 Mr. Lance: I think so, I'm not sure.

18 The Court: You know in polite conversation, we  
19 politely qualify everything we say, but these are matters  
20 where we have to deal in absolutes. So, my question to you  
21 is; if you are called upon to, serve on this jury, could you  
22 listen to the evidence that is presented in this case and  
23 give both, The State and the Defendant a fair and impartial  
24 trial?

25 Mr. Lance: I could do that.

1 The Court: You are qualified to serve, thank you.

2 Bailiff: Juror Number 67.

3 The Court: Yes, ma'am.

4 Ms. Green: I taught Samuel and his brothers.

5 The Court: So you are a school teacher, and you  
6 taught him. Let me ask you this question. If called upon  
7 to, serve as a juror in this case, could you set aside that  
8 relationship and give both, The State and the Defendant a  
9 fair and impartial trial based on the evidence you hear in  
10 this case, and the law as I charge it to you?

11 Ms. Green: I'm not sure; I'll try.

12 The Court: All right. These are matters where we  
13 have to deal with absolutes, and the question I need to pose  
14 to you is; if called upon to, serve on this jury, could you  
15 listen to the evidence as presented in this case, and give  
16 both, The State and Defendant a fair and impartial trial.

17 Ms. Green: Yes.

18 The Court: All right, then, you are qualified to  
19 serve. Thank you.

20 Ladies and gentlemen of the jury, pay close attention  
21 as I read the names of potential witnesses that may or may  
22 not testify in this trial. Deputy Reginald Grant Georgetown  
23 County Sheriff's Office, Sergeant Chris Bailey Georgetown  
24 County Sheriff's Office, Deputy Chuck Weaver Georgetown  
25 County Sheriff's Office, Willie Smith South Carolina Law

1 Enforcement Division. Is anyone related by blood or  
2 marriage, or do you have a close social or personal  
3 relationship with, or business relationship with any of  
4 these witnesses? If so, please, stand. Let the record  
5 reflect there is no response.

6 The attorney for The State is Ms. Biagianti. Did I say  
7 your name right, Ms. Biagianti?

8 Ms. Biagianti: Yes, sir.

9 The Court: All right. Ms. Biagianti, could you  
10 introduce yourself and the members of the Solicitor's Office  
11 for the jury?

12 Ms. Biagianti: Thank you, Your Honor. Good afternoon  
13 --- good morning, I am Dorie Biagianti. I am an Assistant  
14 Solicitor of the Fifteenth Circuit. Next to me, you have  
15 already met Deputy Reginald Grant, he is with the Sea Hawk  
16 Trauma Team. Next to him is Joye Morin, and our Victim's  
17 Advocate Linda Canieen, also sitting with me, our newest  
18 Solicitor in the office, Daniel Selwa.

19 The Court: How many Solicitors are in Georgetown  
20 County?

21 Ms. Biagianti: We have five in the Georgetown Office,  
22 and about twenty in Conway, Your Honor.

23 The Court: Could you list the five that are in  
24 Georgetown County?

25 Ms. Biagianti: Yes, sir. Our Deputy Solicitor Robert

The State of South Carolina versus Samuel Jamar Grier 9

1 Bryant, Daniel Selwa, Nadia Black our Family Court Solicitor  
2 and Will Andrew, our Magistrate Court Solicitor.

3 The Court: Thank you, very much. Is there anyone  
4 related by blood or marriage, have a close social, or  
5 personal relationship with any of these lawyers, or have you  
6 been represented by them in the past or present, if so,  
7 please, stand? No response.

8 All right. Mr. Axelrod and Mr. Castro, I'll ask if you  
9 could stand up and introduce yourself, and the other members  
10 of the Public Defenders' Office.

11 Mr. Axelrod: Stuart Axelrod. I have a law firm in  
12 Myrtle Beach, South Carolina. With me today is Mr. Castro,  
13 an attorney with my firm, who tries litigation these days.  
14 We also have a lawyer by the name of Lisa Carter. Ms.  
15 Carter, and Joshua Bailey, he does our --- He is located at  
16 604 16th Avenue in the city of Myrtle Beach. We represent  
17 Samuel. Thank you.

18 The Court: Is anyone related by blood or marriage to  
19 these attorneys? Have you been represented by them in the  
20 past, or presently? Do you have a close social, personal or  
21 business relationship with any of these lawyers, if so,  
22 please, stand? Very good, let the record reflect, there is  
23 no response.

24 Has any member of the jury panel formed or expressed an  
25 opinion about any issue, or matters involved with this case,

1 if so, please, stand? No response.

2 Is any member of the jury panel aware of any bias or  
3 any prejudice toward either The State or the Defendant in  
4 this case, if so, please, stand? No response.

5 Is there any member of the jury panel who is a former  
6 law enforcement officer, or have a family member, who is a  
7 law enforcement officer, or a former law enforcement  
8 officer, if so, please, stand?

9 Juror: Is this just for Georgetown County?

10 The Court: Just law enforcement.

11 Juror: I have a sister that is a detective in Myrtle  
12 Beach, and I have a nephew who is also an officer in Myrtle  
13 Beach.

14 The Court: Okay and this question will be posed to  
15 each of y'all. By virtue of the fact that you are related  
16 to a law enforcement officer --- I'm going to ask each of  
17 you if you could set that relationship aside and give both,  
18 The State and the Defendant a fair and impartial trial. And  
19 I'll start with the lady up front. Yes, ma'am. Your name?

20 Ms. Swinton: 133, Evelyn Swinton.

21 The Court: Okay and who are you related to?

22 Ms. Swinton: My brother is a police officer.

23 The Court: Where is he?

24 Ms. Swinton: He is in Hawaii right now.

25 The Court: Can you give both, The State and the

1 Defendant a fair and impartial trial?

2 Ms. Swinton: I could.

3 The Court: Very good. You are qualified to serve.  
4 Your full name, sir?

5 Mr. Clement: Donald Clement. My son-in-law is a  
6 State Highway Patrolman.

7 The Court: All right, could you set aside the fact  
8 that you are related to a law enforcement officer and give  
9 both, The State and the Defendant a fair and impartial  
10 trial?

11 Mr. Clement: Yes, sir.

12 The Court: Very good. You are qualified to serve.  
13 Yes, ma'am, in the corner over there.

14 Ms. Pieterse: Dorothy Pieterse, juror number 100.  
15 And I can set everything aside.

16 The Court: You are qualified to serve. Yes, Ma'am,  
17 your name and number?

18 Ms. Benton: Kristi Benton, Juror 15. My father-in-  
19 law is a retired Lieutenant with the Highway Patrol in  
20 Marion.

21 The Court: And his name was?

22 Ms. Benton: Clint Cunningham.

23 The Court: Very good. Could you give both, The State  
24 and the Defendant a fair and impartial trial?

25 Ms. Benton: Yes.

1           The Court:    You are qualified to serve.  Yes, ma'am,  
2           with the purple shirt on?

3           Ms. Ratliffe:    I'm juror 109, Danielle Ratliffe.  My  
4           brother-in-law is an officer for the City of Charleston.

5           The Court:    Okay.  And could you be fair and impartial  
6           to both, The State and the Defendant?

7           Ms. Ratliffe:    Yes, sir.

8           The Court:    You are qualified to serve.  Yes, sir.

9           Mr. Holt:        I'm juror 73, Wendell Holt, my son Caleb  
10          Holt, Deputy Sheriff in Georgetown County.

11          The Court:    Could you likewise --

12          Mr. Holt:     Yes, sir.

13          The Court:    -- Be fair and impartial both, The State  
14          and the Defendant in this case?

15          Mr. Holt:     Yes, sir.

16          The Court:    You are qualified to serve.  Yes, ma'am?

17          Ms. Walters:   Susan Walters, Juror 141.  My husband is  
18          a former deputy with Georgetown County.

19          The Court:    All right.  And, could you be a fair and  
20          impartial juror with regard to this case?

21          Ms. Walters:   Yes, sir.

22          The Court:    You are qualified to service.  Yes, ma'am?

23          Ms. Greene:    Juror 67, Lena Mae Greene.  I have two  
24          nieces in law enforcement, one with the Sheriff's Office and  
25          one with the City of Georgetown.

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1 The Court: In Georgetown County?

2 Ms. Greene: Yes, sir.

3 The Court: Their names?

4 Ms. Greene: Ursula Armstrong and Theresa Walker.

5 The Court: All right. Could you set aside that  
6 relationship, and give both, The State and Defendant, a fair  
7 and impartial trial?

8 Ms. Greene: Yes, sir.

9 The Court: All right, you are qualified to serve.  
10 Yes, ma'am?

11 Ms. Washington: Christy Washington, Juror Number 142.  
12 My son is a Federal Agent.

13 The Court: What is his name, and where does he work?

14 Ms. Washington: COREY Washington. He works in Corpus  
15 Christi, Texas.

16 The Court: Could you give both, The State and the  
17 Defendant, a fair and impartial trial?

18 Ms. Washington: Yes.

19 The Court: You are qualified to serve. I don't  
20 anticipate this being the case, but have any of you heard,  
21 or read, or seen anything about this particular case. Read  
22 anything in the paper, seen anything on tv, or heard anybody  
23 say anything about it, if so, please, stand. No response.

24 Is there any member of the jury panel who belongs to  
25 some organization whose primary goal is promotion of law

1 enforcement? I think just about every law enforcement  
2 agency whether it be the City Police, the Deputy, the  
3 Highway Patrol, quite often, they have organizations that  
4 they organize and help them with law enforcement. Is there  
5 any member of the jury panel who belongs to any such  
6 organization, if so, please, stand? No response.

7 Yes, sir.

8 Madame Clerk: Your Honor, you have a member of the  
9 jury panel standing.

10 The Court: Yes, sir.

11 Juror: I'm an honorary member of the Sheriff's  
12 Department.

13 The Court: Come forward, and let's talk about that  
14 for just, one moment. Your full name, sir?

15 Mr. Fiason: Number 53, Robert Faison.

16 The Court: I've never heard of a honorary deputy.  
17 How do you get to be an honorary deputy?

18 Mr. Fiason: They send me --

19 The Court: -- Do you have any power over --

20 Mr. Fiason: Oh, no. See, it's just office  
21 association. They put me as an honorary member, because --

22 The Court: Let me ask you this, if called upon to  
23 serve on this jury, can you base your decision based on the  
24 evidence that is presented in this case by both, The State  
25 and the Defendant, as I charge it to you, and be fair and

1 impartial?

2 Mr. Fiason: I'm most sure I can.

3 The Court: Sir?

4 Mr. Fiason: I'm most sure that I can. I am most sure  
5 that I can.

6 The Court: By the fact that you belong to this  
7 Sheriff's Association, would you give greater weight to the  
8 testimony of the Deputy Sheriff?

9 Mr. Fiason: I'm an honest person.

10 The Court: All right, very good. You are qualified  
11 to serve. Thank you.

12 Is there any member on the jury panel who knows of any  
13 reason whatsoever why he or she should not serve as a juror  
14 in this case, with particular emphasis being placed on your  
15 ability to be fair and impartial to both, The State, and the  
16 Defendant, if so, please, stand?

17 Yes sir, you can come forward.

18 Mr. Collins: I did not.

19 The Court: Mr. --

20 Mr. Collins: William Collins. I do not socialize, or  
21 do personal things with the attorneys, but I do know office  
22 workers that work at the Solicitor's Office.

23 The Court: I'm glad you pointed that out, and that  
24 certainly does not disqualify you to serve as a juror. But  
25 one thing I do need to ask you, and I want you to respond

1 honestly. If called upon to, serve on this jury, could you  
2 set aside any of those relationships and base your decision  
3 on the evidence presented as I charge it to you?

4 Mr. Collins: Yes.

5 The Court: And who are the people that you know?

6 Mr. Collins: I know Margie Duke.

7 Ms. Biagianti: Our receptionist. I think you know  
8 her daughter.

9 Mr. Collins: Yes, and I also know Geraldine.

10 Ms. Biagianti: Office Manager.

11 Mr. Collins: And the other --

12 The Court: All right. Could you set aside those  
13 relationships and give both, The State and Defendant a fair  
14 and impartial trial?

15 Mr. Collins: Yes.

16 The Court: You are qualified to serve. Thank you.

17 Madame Clerk: There is another one, Your Honor.

18 The Court: All right. Yes, sir.

19 Mr. Skinner: Number 126, Sidney Skinner. I'm having  
20 a hearing problem in my left ear.

21 The Court: Can you hear me when I asked the  
22 questions?

23 Mr. Skinner: I can hear, but I can't understand it  
24 way back in the back off in the distance.

25 The Court: We are going to give you a position up

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1 here in a good spot, and these lawyers talk real loud, so if  
2 you have a problem raise your hand, and we will ask them to  
3 speak up. Is that fair enough?

4 Mr. Skinner: Yes. Thank you.

5 The Court: Thank you. All right. I tell you  
6 selecting a jury here in Georgetown is an aerobic activity.  
7 Normally it's configured a little bit differently. I'm  
8 sorry for the inconvenience.

9 Mr. Axelrod: Your Honor, may we approach a second?

10 The Court: Yes, you may.

11 (Whereupon, a bench conference was  
12 held.)

13 The Court: Ladies and gentlemen of the jury, we will  
14 begin the jury selection process at this time. When the  
15 Clerk calls your name, I'm going to asks that you come  
16 forward. I'm going to asks that you stand right in front of  
17 that microphone, and turn around and face The State's  
18 table, and the Defense table, and they will make a decision  
19 whether or not to select you as a juror.

20 Madame clerk, you may give us the jury. Strikes are  
21 five and five.

22 Mr. Axelrod: Thank you, Your Honor.

23 Madam Clerk: Juror Number 135, Robert Tindall

24 The Court: Mr. Tindall, I am going to ask you to come  
25 right in front of this microphone, and turn around and face

1 the attorneys.

2 Madame Clerk: What says The State?

3 Ms. Biagianti: Please, present Mr. Tindall.

4 Madam Clerk: What says the Defense?

5 Mr. Axelrod: Please, excuse the juror.

6 Madam Clerk: You may return to your seat. Juror  
7 Number 6, Lori Avant. What says The State?

8 Ms. Biagianti: Please, present Ms. Avant.

9 Madam Clerk: What says the Defense?

10 Mr. Axelrod: Please, swear the juror.

11 Madam Clerk: Please, take a seat in the jury box.  
12 Juror Number 83, Carolyn Kennedy.

13 When you come up, you need to bring your belongings  
14 with you in case you are selected.

15 What says The State?

16 Ms. Biagianti: Please, present Ms. Kennedy.

17 Madam Clerk: What says the Defense?

18 Mr. Axelrod: Please, swear Ms. Kennedy.

19 Madam Clerk: Please, have a seat in the juror box.

20 Juror Number 100, Dorothy Pieterse. What says The State?

21 Ms. Biagianti: Please, present Ms. Pieterse?

22 Madam Clerk: What says the Defense?

23 Mr. Axelrod: Please, excuse the juror.

24 Madam Clerk: You may return to your seat. Juror  
25 Number 31, Donald Clement. What says The State?

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1 Ms. Biagianti: Please, present Mr. Clement.

2 Madam Clerk: What says the Defense?

3 Mr. Axelrod: Please, excuse the juror.

4 Madam Clerk: You may return to your seat. Juror  
5 Number 131, Mary Sullivan. What says The State?

6 Ms. Biagianti: Please, present Ms. Sullivan.

7 Mr. Axelrod: Excuse the juror.

8 Madam Clerk: You may return to your seat. Juror  
9 Number 33, Preston Cobb.

10 Ms. Biagianti: What number please?

11 Madam Clerk: Number 33. What says The State?

12 Ms. Biagianti: Please, excuse Mr. Cobb

13 Madam Clerk: You may return to your seat. Juror  
14 Number 20, Carol Brown. What says The State?

15 Ms. Biagianti: Please, present Ms. Brown.

16 Madam Clerk: What says the Defense?

17 Mr. Axelrod: Swear the juror.

18 Madam Clerk: Please, have a seat in the jury box.  
19 Juror Number 69, Edward Guilmette. What says The State?

20 Ms. Biagianti: Please, present Mr. Guilmette.

21 Madam Clerk: What says the Defense?

22 Mr. Axelrod: Swear the juror.

23 Madam Clerk: Please, have a seat in the jury box.  
24 Juror Number 125, Denise Shelley. What says The State?

25 Ms. Biagianti: Please, present Ms. Shelley.

1 Madam Clerk: What says the Defense?

2 Mr. Axelrod: Swear the juror.

3 Madam Clerk: Have a seat in the jury box. Juror.

4 Number 22, Keisha Brown. What says The State?

5 Ms. Biagianti: Please, present Ms. Brown.

6 Madam Clerk: What says the Defense?

7 Mr. Axelrod: Swear Ms. Brown

8 Madam Clerk: Please, have a seat in the jury box.

9 Juror Number 61, Donald Glewwe.

10 Mr. Axelrod: Madame Clerk, the number?

11 Madam Clerk: Number 61. What says The State?

12 Ms. Biagianti: Please, present Mr. Glewwe.

13 Madam Clerk: What says the Defense?

14 Mr. Axelrod: He smiled. Swear the juror.

15 Madam Clerk: Have a seat in the jury box. Juror

16 Number 61, William Goggins. What says The State?

17 Ms. Biagianti: Please, present Mr. Goggins.

18 Madam Clerk: What says the Defense?

19 Mr. Axelrod: He smiled. Swear the juror.

20 Madam Clerk: Juror Number 87, Lisa Mace. What says

21 The State?

22 Ms. Biagianti: Please, excuse Ms. Mace.

23 Madam Clerk: You may return to your seat. Juror

24 Number 148, Janette Wilson. What says The State?

25 Ms. Biagianti: Please, present Ms. Wilson?

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1 Madam Clerk: What says the Defense?

2 Mr. Axelrod: She smiled. Swear the juror.

3 Madam Clerk: Please, have a seat in the jury box.

4 Juror Number 24, David Burr. What says The State?

5 Ms. Biagianti: Please, present Mr. Burr.

6 Madam Clerk: What says the Defense?

7 Mr. Axelrod: Swear the juror.

8 Madam Clerk: Have a seat in the jury box, please.

9 Juror Number 45, Roy Deas.

10 Mr. Axelrod: Madame Clerk, would you repeat that  
11 number?

12 Madam Clerk: Number 45. What says The State?

13 Ms. Biagianti: Please, excuse Mr. Deas.

14 Madam Clerk: You may return to your seat. Juror  
15 Number 143, Ronald Weaver. What says The State?

16 Ms. Biagianti: Please, present Mr. Weaver.

17 Madam Clerk: What says the Defense?

18 Mr. Axelrod: Swear the juror.

19 The Court: Might counsel, approach the bench for a  
20 moment?

21 (Whereupon, a bench conference was held  
22 in the presence of the jury panel, but out of the hearing of  
23 the jury.)

24 Madam Clerk: Juror Number 149, Quinson Woodberry.  
25 What says The State?

1 Ms. Biagianti: Please, excuse Mr. Woodberry.

2 Madam Clerk: You may return to your seat. Juror

3 Number 120, Mary Sasso. What says The State?

4 Ms. Biagianti: Please, present Ms. Sasso.

5 Mr. Axelrod: What says the Defense?

6 Mr. Axelrod: Court's indulgence for one minute, Your  
7 Honor.

8 (Pause)

9 Mr. Axelrod: Swear the juror.

10 Madam Clerk: Please, have a seat in the jury box.

11 Are we going to pull an alternate, Judge?

12 The Court: Yes. One alternate. Strikes will be two  
13 and one.

14 Madam Clerk: Juror Number 50, Michael Edwards. What  
15 says The State?

16 Ms. Biagianti: Please present, Mr. Edwards.

17 Madam Clerk: What says the Defense?

18 Mr. Axelrod: Excuse the juror.

19 Madam Clerk: Return to your seat please. Juror  
20 Number 128, Michael Small, Sr. What says The State?

21 Ms. Biagianti: Please, present Mr. Small.

22 Madam Clerk: What says the Defense?

23 Mr. Axelrod: Swear the juror.

24 Madam Clerk: Have a seat in the jury box.

25 The Court: Are there any objections in regards to the

1 jury selection process?

2 Ms. Biagianti: None from The State, Your Honor.

3 Mr. Axelrod: Yes sir, Your Honor, there is.

4 The Court: Might counsel, approach the bench for  
5 just, one moment?

6 (Whereupon, a bench conference was held  
7 in the presence of the jury panel, but out of the hearing of  
8 the jury.)

9 The Court: All right, I will be glad to hear from  
10 defense.

11 Mr. Axelrod: We want to make a Batson Motion, and we  
12 need to put it all on the record. We need to have a hearing  
13 on this. I need to put it all on the record.

14 The Court: Very good. I am just --- we need to have  
15 this --

16 Mr. Axelrod: -- Sometimes what you could do, you can  
17 put the jury in the jury room, and give them a break and  
18 send them out of the courtroom.

19 (Pause)

20 The Court: Let's do that, very good. Ladies and  
21 gentlemen of the jury, we are going to have to, take up a  
22 matter of law with the attorneys at this time and I'm going  
23 to ask the members who have been selected to serve --- this  
24 jury panel to retire to the jury room. The Bailiff, will  
25 escort you there.

1           Certainly y'all, haven't heard anything about this case  
2           and I'm going to order and instruct there be no discussion  
3           about this case whatsoever. I will give you further  
4           instructions momentarily. Do not discuss the case. Thank  
5           you.

6                         (Whereupon the jury panel departs the courtroom at  
7           12:06 p.m.)

8           **The Court:** We have an unusual situation. We are  
9           going to have to entertain some Motions, and take up some  
10          legal matter, so I'm going to ask the balance of the jury  
11          panel if you could, to exit the courtroom for about fifteen  
12          minutes, and we are going to take up this matter, and we  
13          will address further selection procedures at that time.

14          Thank you very much. Be back in ten minutes, everyone  
15          that is on the jury panel exit the courtroom.

16                         (Whereupon, the jury panel exits the  
17          courtroom at 12:09 p.m.)

18                         (Pause)

19          **The Court:** Mr. Axelrod, you are recognized with  
20          regard to the Motions.

21          **Mr. Axelrod:** Yes sir, Your Honor, I am making a  
22          Batson Motion.

23          **The Court:** Before we do that, is there anyone in the  
24          courtroom who is on the jury panel? Very good, you are  
25          recognized, Mr. Axelrod.

1           Mr. Axelrod: Thank you, Your Honor. Your Honor at  
2 this time, I would like to make a Batson Motion. I think  
3 that it is quite clear, to me it is quite clear, that The  
4 State specifically, intentionally, and purposefully struck  
5 every single, every similarly-situate person as my client.  
6 My client, is the young black gentlemen, and The State  
7 struck --- There are three black men that were in the jury  
8 pool, and she struck all three of them. And at this point,  
9 I would like to know --- I make that Motion that she  
10 identify --- I believe she struck them because of their  
11 gender and their race. There is, no nurtural reason for her  
12 to not select them, and I would ask The Court to grant a new  
13 jury.

14           The Court: All right. And, of course, let's before  
15 we go forward, I'm going to put on the record, the jurors  
16 that were selected.

17           Juror Number 6, Lori Avant, who is a white female.

18           Carolyn Kennedy, who is a white female.

19           Dr. Carol L. Brown, a white female.

20           Edward H. Guilmette, a white male.

21           Denise E. Shelley, a white female.

22           Keisha Brown, a black female.

23           Donald Glewwe, a white male.

24           William G. Goggins, a white male.

25           Janette Wilson, a black female.

1 David Burr, a white male.

2 Robert C. Weaver, a white male.

3 And, Mary M. Sasso, a white female.

4 The alternate jurors.

5 Michael Edwards a white male, and;

6 Michael Small, a white male.

7 And I understand that there were three, the jurors in  
8 question are, the first one would be Preston J. Cobb, and it  
9 is incumbent upon, The State, to give a racially neutral  
10 reason as to why you --- A racially and gender neutral  
11 reason as to why you struck this juror.

12 Ms. Biagianti: He is unemployed, Your Honor.

13 The Court: Pardon?

14 Ms. Biagianti: He is unemployed.

15 The Court: Okay.

16 Ms. Biagianti: I believe I struck four people, Your  
17 Honor.

18 One of which was a white female, Number 33, who was  
19 unemployed.

20 Number 87 is a white female, I believe she was arrested  
21 and convicted of DUI, and she was also unemployed, that is  
22 why I struck her.

23 Number 45 is a black male, I am informed that he is  
24 much older than the defendant, but I am informed that he  
25 lives in the same community as where this happened, the

1 Plantersville area, that is why I struck him. It had  
2 nothing to do with race, Your Honor.

3 And the last guy too, as well, is also from the  
4 Plantersville Community. That is why I struck him, too.  
5 That is where this chase took place. That is where this  
6 dope was found.

7 And for the last guy as well, he also had his shirt  
8 untucked, and was not very presentable in my opinion, to  
9 come to The Court. But those, the last two people are from  
10 the Plantersville Community where this incident happened, or  
11 from where this defendant is from.

12 The Court: I'll be glad to hear from the defense at  
13 this time.

14 Mr. Axelrod: Well, Your Honor, as The Court is well  
15 aware, that the way the community is set up. A lot of time  
16 people in the black communities --- so if The State is going  
17 to always say, well he lives in the Plantersville Community  
18 where the incident occurred, or where my client lives, the  
19 chances are that while my client is going to --- going to  
20 live in the Plantersville Community, and so they can always  
21 just eliminate the black people from this jury, and I think  
22 it is --

23 The Court: -- There is more than one black community  
24 in Georgetown?

25 Mr. Axelrod: Yes sir, Your Honor. Yes sir, Your

1 Honor, but what I'm saying is this scenario that I don't  
2 think it is a correct reason to strike a juror that lived in  
3 possibly a neighborhood.

4 **Ms. Biagiante:** Your Honor, it wasn't that they lived  
5 possibly in this neighborhood, this incident, the entire  
6 case took place in the Plantersville Community, and I think  
7 it's very likely that word travels fast, and people have  
8 found out about this incident, and that is why I struck  
9 them. It had nothing to do with race. I put two black  
10 females who are on the jury, and I would have put another  
11 black man if he had not lived in the Plantersville Community  
12 and was employed.

13 **The Court:** Is being unemployed a legitimate, racially  
14 neutral reason?

15 **Ms. Biagiante:** Yes sir, because I struck a white  
16 female who was unemployed.

17 **The Court:** All right.

18 **Mr. Axelrod:** Your Honor, the white female that she  
19 struck was also convicted of a DUI.

20 **The Court:** Okay.

21 **Ms. Biagiante:** Well, I would have struck her  
22 regardless of whether she had a DUI or not, she was  
23 unemployed, Your Honor. I try never to put unemployed  
24 people on my jury.

25 **The Court:** Why is that?

1 Ms. Biagianti: Because, I feel like people, who have  
2 a job are more in-tune with what is going on, than people  
3 who are unemployed are. But that is a racially neutral  
4 reason, Your Honor.

5 The Court: Anything, further Mr. Axelrod?

6 Mr. Axelrod: Yes Your Honor, one more second.

7 Ms. Biagianti: Your Honor, I'm sorry.

8 Mr. Axelrod: Go ahead.

9 Ms. Biagianti: All of Stuart's strikes were white,  
10 Your Honor. I would not do a reverse Batson Motion. But  
11 for the record, he struck every white person, and never  
12 struck a black person.

13 The Court: Are you making a Motion in that regard?

14 Ms. Biagianti: No, sir.

15 The Court: Okay.

16 Mr. Axelrod: Your Honor, if she wants to make a  
17 reverse Batson Motion, I'll grant it, and we will pick a new  
18 jury.

19 Ms. Biagianti: I just said, No, sir.

20 Mr. Axelrod: Your Honor, twenty-two people were  
21 selected in this jury pool for us. I just want to put on  
22 the record that out of the twenty-two, three black males  
23 were selected, came forward, The State's going to call three  
24 black males, I would ask for a new jury.

25 The Court: Just by virtue of the fact that there are

1 black males that she struck, that there is a racially  
2 neutral reason, it does not require that there be a new jury  
3 selected.

4 I am going to deny your Batson Motion, and I will  
5 protect it on the record.

6 Ms. Biagianti: Thank you, Your Honor.

7 Mr. Axelrod: Thank you, sir.

8 The Court: Anything further from the Defense at this  
9 time?

10 Mr. Axelrod: No, sir.

11 The Court: Anything, further from The State?

12 Ms. Biagianti: No, sir.

13 The Court: Are We ready for the jury?

14 Mr. Axelrod: Your Honor, if I may inquire for one  
15 second, what is The Court's prerogative on how we are going  
16 to proceed? It looks like we will do the trial this  
17 afternoon of some sort. Are we going to proceed? What time  
18 does The Court take lunch?

19 The Court: I'm going to appoint the Foreman, and we  
20 are going to excuse for lunch. We'll come back for the  
21 preliminary charge and then opening statements.

22 Mr. Axelrod: What time will that be, Your Honor?

23 The Court: It's 12:30 now; we'll probably start at  
24 two.

25 Mr. Axelrod: Thank you, sir.

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1 regard to that particular offense or any further argument in  
2 that regard?

3 Mr. Axelrod: Not on that one Your Honor, No, sir.

4 The Court: All right, very good. Any other Motions?

5 Mr. Axelrod: Yes, sir, Your Honor. Also, on the  
6 possession with intent to distribute, there is absolutely no  
7 evidence in the record that he had dominion and control with  
8 the intent to distribute the drugs.

9 The Court: Well, I think the testimony was that it  
10 was under his body and certainly he could --- the jury could  
11 reasonably infer that he had control over it, and I think  
12 the law allows an inference to be drawn by virtue of the  
13 weight. I think that works against you, and in addition to  
14 that the packaging works against you. All of those are  
15 issues that could allow a reasonable jury to convict him in  
16 that regard.

17 Mr. Axelrod: Yes, sir.

18 The Court: So your Motion is denied in that regard.

19 Mr. Axelrod: Yes, sir. And I take exception to  
20 protect the record.

21 The Court: Very good.

22 Mr. Axelrod: Thank you, sir.

23 The Court: All right, anything further?

24 Mr. Axelrod: No, sir, Your Honor. At this time I  
25 would ask --- I want to renew one other Motion, Your Honor.

1 I have one more to renew. I want to renew the Motion for  
2 the Batson. I was denied a new jury. I made a Motion for a  
3 Batson --- I made a Batson Motion and The State's position  
4 was that they struck the three black gentlemen who are  
5 similarly situated to my client being black himself for  
6 reasons that they said it was not, they had reasons for it,  
7 but I think it was protectorial to the point that the  
8 Solicitor said that one of them had, his shirt tail possibly  
9 out, and one of them was unemployed, and she said that they  
10 came from the Plantersville area. I'm not sure if actually  
11 they were listed in the Plantersville area on the jury  
12 qualification sheet. I'm going to, go look at that before  
13 this trial is concluded, but I would like to renew that  
14 Motion. I was not granted a new jury.

15 The Court: All right. The reasons stated by The  
16 State, I do indeed find are racially neutral reasons and  
17 your Motion is noted, but denied.

18 Mr. Axelrod: Thank you, Your Honor.

19 The Court: All right. Anything further?

20 Mr. Axelrod: Yes sir, Your Honor. At this point, I  
21 would ask The Court to inquire of my client if he chooses  
22 to, testify or not testify, and explain --- to explain in  
23 full --- We've gone over it with him, and I would ask The  
24 Court to do a colloquy with him concerning this, so he will  
25 have knowledge of the constitutional and what he is entitled

1           The Court:    You may.

2           Mr. Axelrod:   Your honor, at this time I would ask The  
3           Court to --- The jury has spoken today, by rendering a  
4           verdict of not guilty of assault, they realized that -- the  
5           only way to convict him on a PWID, if I understood, and I  
6           would ask that you grant a new trial.

7           The Court:    All right. With regard to the theory that  
8           the jury could have disbelieved what the officer had to say  
9           with regard to the arrest, the law is very clear on that.  
10          The law says where the jury can believe part of what a  
11          witness says, disbelieve in part, they can believe all of it  
12          or none of it.

13          It is clear to me --- Clear to me from hearing the  
14          case, seeing the verdict, it is clear that the jury believed  
15          a portion of what the officer said, and not the balance.  
16          And, based on that particular Motion, I will deny your  
17          motion I will deny your motion for a new trial.

18          Mr. Axelrod:   Thank you, Your Honor, I take exception.

19  
20          Your Honor, for the record, I would once again renew  
21          the motion, based on Batson that The State's arbitrarily  
22          struck three black gentlemen who are similarly situated to  
23          my client being black himself.

24          The Court:    Your motion is noted for the record, and I  
25          will deny it once again.

1           **Mr. Axelrod:**   And, I take exception to protect the  
2           Record.

3           Further, Your Honor, we think that my client it would  
4           have been beneficial if my client was able to testify before  
5           the jury that day. The Court finding that his prior record  
6           prior record to come in --- I did argue to The Court and  
7           believe that it would have been prejudicial.

8           **The Court:**   But, you do agree that his prior record,  
9           that it falls within the rules allows that it can be used  
10          against you; you do agree with that?

11          **Mr. Axelrod:**   I do Your Honor. I do believe that The  
12          Court has the discretion to --- and it would be prejudicial,  
13          and since this was drug case, the prior drug issue should  
14          have been suppressed.

15          **The Court:**   Legal authority that you have that  
16          indicates, that if a person has a prior drug record that  
17          when they testify in a subsequent trial that that would be  
18          unduly prejudicial.

19          **Mr. Axelrod:**   No. I argue --- I argue --- My  
20          statement would be discretionary with The Court, and I was  
21          saying to The Court, that in my opinion, that it would have  
22          been my opinion that it would have unduly prejudicial to  
23          bring forth -- It would be, as an example, let's just say  
24          that we were here on criminal sexual conduct charge, and my  
25          client had a prior criminal sexual conduct. I would think

WITNESSES

Georgetown County Sheriff

ARREST WARRANT NUMBER

J511762

CDR: 3039 §44-53-0375 (B) (3)  
DOI: March 31, 2008

ACTION OF GRAND JURY

**TRUE BILL**

*William Kennedy*  
Foreperson of Grand Jury  
Date: *02 July 2008*

VERDICT

Foreperson of Petit Jury  
Date:

DOCKET NO. 2008GS2200560

The State of South Carolina

County of Georgetown

Dorie Blagianti

08G00200 *DOB*

COURT OF GENERAL SESSIONS

JULY, 2008 TERM

THE STATE

vs.

SAMUEL JAMAR GRIER

201 Sheba Drive  
Georgetown, SC 29440  
DOB: 11/24/1982  
SSN: 249-55-8694  
B/ M

ATTORNEY: Fox, Jonathan Eric

Indictment for

**POSSESSION WITH THE INTENT  
TO DISTRIBUTE COCAINE BASE**

J. Gregory Hembree, Solicitor

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

INDICTMENT

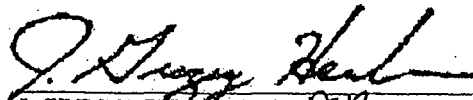
At a Court of General Sessions, convened on July 2, 2008, the Grand Jurors of Georgetown County present upon their oath:

FAILURE TO STOP FOR BLUE LIGHT/SIREN

CDR: 0065 56-05-0750(B)(1)

That Samuel Jamar Grier did in Georgetown County on or about March 31, 2008, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his/her motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56-05-0750(B)(1), 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.

  
J. GREGORY LAMBREE *DLB*  
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA )  
 JNTY OF Georgetown )  
 STATE VS. )  
Samuel Jamar Grier )  
 AKA: )  
 Race: B Sex: M Age: 25 )  
 DOB: 11/24/83 )  
 Address: Georgetown, SC 29440 )  
 DL#: SC01369664 )

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: 2008-GS-22-00560  
 A/W#: J511762  
 Date of Offense: 3/31/2008  
 S.C. Code § : 44-53-0375 (B) (3)  
 CDR Code #: 3039

SENTENCE SHEET Max: 15-30 yr.  
+1/2 up to \$50.  
fine

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS possession w/ Intent to Distribute Cocaine Base 3rd off.

in violation of § 44-53-375(B)(3) of the S.C. Code of Laws; bearing CDR Code # 3039  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (Defendant initial)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:  
Dorie C. Biagiatti Defendant \_\_\_\_\_ Attorney for Defendant SC Bar# \_\_\_\_\_

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 15 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: 12-17-08  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 262 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

**SPECIAL CONDITIONS:**

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP \_\_\_\_\_  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment.  
 Payment Terms: \_\_\_\_\_ Obtain GED \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_  
 \*Fine: \$ \_\_\_\_\_ Substance Abuse Counseling \_\_\_\_\_  
 § 14-1-206 (Assessments 107.5 %) \$ \_\_\_\_\_ Random Drug/Alcohol testing \_\_\_\_\_  
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly  
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_ pmts. of \$ 40.00 beginning on date of release  
 § 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_ \$ \_\_\_\_\_ paid to Public Defender Fund  
 § 35.13 (Public Def/Prob) \$500 \$ \_\_\_\_\_ Other: \_\_\_\_\_  
 § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00  
 § 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00  
 § 50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
 3% to County (if paid in installments) \$ 6.90  
 § 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00  
 TOTAL \$ 236.90

\_\_\_\_\_  
 Clerk of Court/Deputy Clerk  
 Court Reporter: \_\_\_\_\_

PRESIDING JUDGE \_\_\_\_\_  
 Judge Code: 2111410  
 Sentence Date: Dec 17 2008

WITNESSES

Georgetown County Sheriff

DOCKET NO. J511102  
2008 4522-558 (per Geraldine)

*fox*

The State of South Carolina

County of Georgetown

Dorie Blagiant

08G00200 *DOB*

COURT OF GENERAL SESSIONS

JULY, 2008 TERM

ARREST WARRANT NUMBER

J511759

CDR: 0065 §56-05-0750(B)(1)

DOI: March 31, 2008

THE STATE

VS.

SAMUEL JAMAR GRIER

201 Sheba Drive  
Georgetown, SC 29440

DOB: 11/24/1982

SSN: 249-55-8694

B/ M

ACTION OF GRAND JURY  
TRUE BILL

ATTORNEY: Fox, Jonathan Eric

*William Kennedy*  
Foreperson of Grand Jury

Date: *02 July 2008*

Indictment for

VERDICT

FAILURE TO STOP FOR BLUE  
LIGHT/SIREN

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )

INDICTMENT

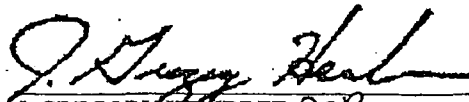
At a Court of General Sessions, convened on July 2, 2008, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE  
COCAINE BASE

CDR: 3039 §44-53-0375(B)(3)

That Samuel Jamar Grier did in Georgetown County on or about March 31, 2008, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), 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.

  
 J. GREGORY HEMBREE *DOB*  
 FIFTEENTH CIRCUIT SOLICITOR

COUNTY OF Georgetown
STATE VS. Samuel Jamar Grier
AKA:
Race: B M 25
DOI
Address: Georgetown, SC 29440
DL#: SID#: SC01369664

INDICTMENT/CASE#: 2008-GS-22-00558
A/W#: J511759
Date of Offense: 3/31/2008
S.C. Code § : 56-05-0750(B)(1)
CDR Code #: 0065

SENTENCE SHEET Max: 90 days - 3 yrs.

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [ ] PLEADS

Failure to Stop for Blue Light/Siren
in violation of § 56-5-750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065
[X] NON-VIOLENT [ ] VIOLENT [ ] SERIOUS [ ] MOST SERIOUS [ ] Mandatory GPS(CSC [ ] §17-25-45

The charge is: [X] As Indicted, [ ] Lesser Included Offense, [ ] Defendant Waives Presentment to Grand Jury.
The plea is: [ ] Without Negotiations or Recommendation, [ ] Negotiated Sentence, [ ] Recommendation by the State.

ATTEST:
Daniel B. Biagiatti, Dorie C. Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [ ] State Department of Corrections, [X] County Detention Center,
for a determinate term of 262 days/months/years or [ ] under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

[X] CONCURRENT or [ ] CONSECUTIVE to sentence on: 12-17-08
[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 262 days -> time served
[ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

[ ] RESTITUTION: [ ] Deferred [ ] Def. Waives Hearing [ ] Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
[ ] set by SCDPPPS
Recipient:
\*Fine:
§ 14-1-206 (Assessments 107.5 %)
§ 14-1-211(A)(1) (Conv. Surcharge) \$100
§ 14-1-211(A)(2) (DUI Surcharge) \$100
§ 56-5-2995 (DUI Assessment) \$12
§ 35.13 (Public Def/Prob) \$500
§ 73.3, 1B TP (Law Enforce. Funding) \$25
§ 33.7, 1B TP (Drug Court Surcharge) \$100
§ 50-21-114(BUI Breath Test Fee) \$50
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea
3% to County (if paid in installments)
§ 90.11 TP (SCCJA Surcharge) \$5
TOTAL

Clerk of Court/Deputy Clerk
Court Reporter: Pamela Oquint-Carter

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:
[ ] Appointed PD or appointed other counsel § 35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE
Judge Code: 2111412
Sentence Date: Dec 17 2008

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended 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."

April 20, 2010



Kathrine H. Hudgins  
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

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Georgetown County

Michael G. Nettles, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

SAMUEL JAMAR GRIER,

APPELLANT

---

FINAL BRIEF OF APPELLANT

---

KATHRINE H. HUDGINS  
Appellate Defender

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

ATTORNEY FOR APPELLANT.

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State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999).....8

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to grant defendant's Batson motion when the State struck all three black male jurors called and the reason given for striking two of the black male jurors, the fact that the jurors were from a certain community, was not a race neutral explanation because the community was predominantly black and the reason was mere pretext to allow the State to exercise strikes in a discriminatory manner?

STATEMENT OF THE CASE

In July of 2008, the Georgetown County Grand Jury indicted Grier for possession with intent to distribute cocaine base and failure to stop for a blue light and assault on a police officer while resisting arrest, indictments #2008-GS-22-558, 559, 560. On December 15, 2008, Grier proceeded to jury trial before the Honorable Michael G. Nettles. The jury found Grier not guilty of assault on a police officer while resisting arrest. The jury found Grier guilty of possession with intent to distribute cocaine base and failure to stop for a blue light. Judge Nettles sentenced Grier to 15 years for possession with intent to distribute cocaine base and a concurrent 262 days, time served sentence for failure to stop for a blue light. A timely notice of intent to appeal was filed on December 22, 2008. An amended notice of intent to appeal was filed on January 5, 2009. This appeal follows.

## ARGUMENT

The trial judge erred in refusing to grant defendant's Batson motion when the State struck all three black male jurors called and the reason given for striking two of the black male jurors, the fact that the jurors were from a certain community, was not a race neutral explanation because the community was predominantly black and the reason was mere pretext to allow the State to exercise strikes in a discriminatory manner.

During the jury selection process all three black male jurors called were struck by the State. There were no black males seated on the jury. In addition to the three black males, the State struck one white female. (R. p. 3, R. pp. 5-22). The defendant is a black male. (R. p. 35). The selected jury consisted of five white females, two black females and five white males. Both alternates were white males. (R. p. 3).

Grier objected to the jury selection process and make-up of the jury pursuant to Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). (R. pp. 23-26). The State struck the first black male juror, juror number 33, because he was unemployed. (R. p. 26, lines 7-15). As to the two other black male jurors struck, jurors number 45 and 149, the State argued:

Number 45 is a black male, I am informed that he is much older than the defendant, but I am informed that he lives in the same community as where this happened, the Plantersville area, that is why I struck him. It had nothing to do with race your Honor. And the last guy too, as well, is also from the Plantersville Community. That is why I struck him, too. That is where this chase took place. That is where the dope was found. And for the last guy as well, he also had his shirt untucked, and was not very presentable in my opinion, to come to the Court. But those, the last two people are from the Plantersville Community where this incident happened or from where this defendant is from.

(R. p. 26, lines 23 – p. 27, lines 1-11). Grier argued that because Plantersville was a black community, striking people because they lived in that community was the equivalent of striking them because they are black. (R. p. 27, lines 14-22). The State then argued:

Your Honor, it wasn't that they lived possibly in this neighborhood, this incident, the entire case took place in the Plantersville Community, and I think it's very likely that word travels fast, and people have found out about this incident, and that is why I struck them. It had nothing to do with race. I put two black females who are on the jury, and I would have put another black man if he had not lived in the Plantersville Community and was employed.

(R. p. 28, lines 4-12). The judge denied Grier's Batson motion and stated, "Just by virtue of the fact that there are black males that she struck, that there is a racially neutral reason, it does not require that there be a new jury selected I am going to deny your Batson motion, and I will protect it on the record." (R. p. 29, lines 25 – p. 30, lines 1-5). The judge failed to address Grier's argument that the reason given for the strike was a mere pretext. At the close of the State's case Grier renewed the Batson motion and the motion was again denied. (R. p. 31, lines 24- p. 32, lines 1-17). The judge erred in refusing to grant the Batson motion.

Courts conduct a three step analysis in reviewing Batson challenges. Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996). In State v. Cochran, 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct. App. 2006) the Court, quoting Purkett wrote, "Under our *Batson* jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial

court must decide (step three) whether the opponent of the strike has proved purposeful racial discrimination.

In the present case, Grier made out a prima facie case of racial discrimination by opposing the State's striking of all black males, step one. Proceeding to step two of the analysis, the assistant solicitor explained that she struck one of the black male jurors because he was unemployed. Our courts have held that unemployment is a race neutral reason for a strike. State v. Green, 306 S.C. 94, 409 S.E.2d 785 (1991). The assistant solicitor explained that she struck the other two black male jurors because they were from the Plantersville Community and Grier's arrest for possession with intent to distribute cocaine base and failure to stop for a blue light took place in the Plantersville Community.

In some instances a juror's neighborhood may be a race neutral explanation for the exercise of a strike. For example, a criminal defendant may wish to strike jurors from the neighborhood where a crime took place because there may be a genuine question about the juror's ability to be objective about a crime taking place so close to home. In the present case, however, it is the State that seeks to strike the jurors who live in the community where the offense took place, a predominantly black community. The State did not offer any reason for the strike similar to the example discussed above. The explanation given by the State was that "word travels fast and people have found out about this incident." Under the facts of this case, striking black males because they lived in a black neighborhood where the incident took place was not race-neutral. See Payton v. Kears, 329 S.C. 51, 495 S.E.2d 205 (1998) (striking a juror because she was a "redneck" evinces a discriminatory intent and is therefore not facially race-neutral). The State can not meet its burden at step two of the Batson analysis. The Batson motion should have been granted.

Alternatively, if this Court finds the reason given to be facially race neutral, Grier demonstrated that the explanation was a mere pretext to allow the State to engage in purposeful discrimination. The trial judge failed to complete step three of the Batson analysis, simply ruling that the reason given by the State for the strike was race neutral. The trial judge erred in failing to follow the procedure outlined in Purkett and Adams.

If the judge had proceeded to step three of the Batson analysis, Grier, as the opponent of the State's strikes, demonstrated that the reason given was mere pretext. See State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999). Pretext can be established by showing that a similarly situated jury member of another race was seated on the jury. "Under 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." State v. Edwards, ---S.E.2d ---, 2009 WL 2709387 (S.C.). There is no showing of disparate treatment in the present case. This is not surprising given the fact that the jurors were struck because of the community from which they were from, a predominantly black community. The reason is so fundamentally implausible that the trial judge should have determined that it was mere pretext. If the State was truly concerned that jurors from the Plantersville Community might have knowledge of the incident, as stated, the State could have requested voir dire to address the purported concern

In People v. Lowery, 88 N.Y.2d 172, 666 N.E.2d 542 (1996), the Court of Appeals of New York addressed a similar Batson challenge and in footnote 2 wrote, "We do not accept the proposition that the potential association of a juror's neighborhood generally with members of one race or ethnicity is a race-related factor, per se, for purposes of the


application of these protocols. That kind of potential geographic or neighborhood linkage may, however, be a factor ultimately to be weighed into the determination whether a proffered reason is pretextual.” The facts of this case demonstrate that striking jurors from the Plantersville community was a pretext for striking black male jurors.

Courts will examine the totality of the facts and circumstances in the record to determine if a Batson violation has occurred. Riddle v. State, 314 S.C. 1, 14, 443 S.E.2d 557, 565 (1994). A trial judge’s ruling on a Batson motion will be given great deference by the appellate courts and will be reversed only upon a showing of clear error. State v. Dyar, 317 S.C. 77, 79, 452 S.E.2d 603, 604 (1994). The judge clearly erred in failing to determine if Grier proved that the State’s purported reason for the strike was pretextual. If the judge’s ruling includes a step three analysis as to pretext, the judge clearly erred in refusing to find pretext. The totality of facts and circumstances surrounding the selection of the jury demonstrates that a Batson violation occurred. The trial judge erred in refusing to grant defendant’s Batson motion when the State struck all three black male jurors called and the reason given for striking two of the black male jurors, the fact that the jurors were from a certain community, was not a race neutral explanation because the community was predominantly black and the reason was mere pretext to allow the State to exercise strikes in a discriminatory manner.

CONCLUSION

Based on the above argument, Grier's conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

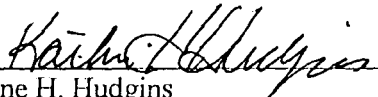
ATTORNEY FOR APPELLANT.

This 20th day of April, 2010.

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."

April 20, 2010

  
\_\_\_\_\_  
Kathrine H. Hudgins  
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 Georgetown County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

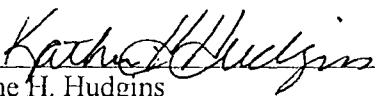
V.

SAMUEL JAMAR GRIER,

APPELLANT

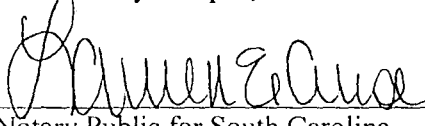
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 20th day of April, 2010.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 20th day of April, 2010.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: August 23, 2014

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Certiorari to Georgetown County  
Michael G. Nettles, Circuit Court Judge

Opinion No. 2011-UP-145 (S.C. Ct. App. filed 4/11/2011)  
08-GS-22-558, 560

THE STATE

RESPONDENT

V

SAMUEL JAMAR GRIER

APPELLANT

FINAL BRIEF OF RESPONDENT

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## STATEMENT OF ISSUE ON APPEAL

The defendant says that the state's striking two jurors on the ground that they were from a particular community was not race neutral since it was predominantly black, and the reason was mere pretext. The defendant asks whether that demonstrates error in refusing to grant his Batson motion. (Appellant's Statement of Issue on Appeal).

## STATEMENT OF THE CASE

The Georgetown County Grand Jury charged the defendant with possession with the intent to distribute cocaine base (2008-GS-22-00560), failure to stop for blue light/siren (2008-GS-22-00558), and assault while resisting arrest. The defendant and his counsel came to trial on December 15, 2008 before the Honorable Michael G. Nettles, Judge, and a jury. The jury found the defendant guilty of the drug offense and failure to stop. The court sentenced him to concurrent terms of 15 years imprisonment (2008-GS-22-00560) and 262 days (2008-GS-22-00558). The defendant served opposing counsel with a timely notice of appeal.

## ARGUMENT

### The trial judge soundly denied the defendant's Batson motion.

The defendant objected on the basis of race and gender to the state's exercise of peremptory challenges. To wit, the state struck three black males. (AROA. pp. 22-25, line 13). The defendant failed to note that he had struck only white prospective jurors, and the state had presented both of the prospective, black female jurors and exercised a peremptory challenge to a white prospective juror. (Jury list; AROA. p. 3; p. 29).

The state explained the peremptory challenges of the three black males. One prospective juror was unemployed. The other two lived in the Plantersville area - the defendant's own community and where the entire case occurred. Prospective jurors from the area could have their own word about the case. (AROA. pp. 26-27, line 11; p. 28, lines 4-12).

The defendant maintained that striking prospective jurors on the basis of the area where they lived was arbitrary, a pretext, and equivalent to striking on the basis of race. When the state mentioned the defendant's own exercise of peremptory challenges, the defendant offered to grant the state's Batson motion - if the state wanted to make it. (AROA. p. 27, lines 14 - p. 28, line 3; p. 29, lines 5-24; pp. 31-32; p. 33).

The court observed rhetorically that one race was not limited to living in a particular area of the county. The court found that the state's reason was racially neutral. (AROA. p. 27, lines 23-25; p. 29, line 25 - p. 30, line 12; p. 32; p. 33).

On appeal the defendant acknowledges that there is no showing of disparate treatment. However, the defendant says that the basis for the state's peremptory challenge is fundamentally implausible, and the trial judge should have determined that it was mere

pretext. If the state were truly concerned about knowledge of the incident, the state could have requested voir dire to address the purported concern. (IBOA p. 8).

There was no error. [1] The court holds a Batson hearing when members of a cognizable racial group or gender are struck and the opposing party requests a hearing. [2] The proponent of the strike is required to give a race neutral explanation for the strike. Here, the issue is the facial validity of the explanation. The explanation is deemed race neutral unless it has inherent discriminatory intent. [3] Finally, the court must decide whether the opponent of the strike has proved purposeful racial discrimination. The opponent of the strike always carries the burden of persuasion regarding racial motivation and must show that the proponent's race neutral explanation was mere pretext. Pretext is established by showing disparate treatment, similarly situated members of another race were seated on the jury, or the court may find that the race neutral explanation is so fundamentally implausible that it is mere pretext, even without a showing of disparate treatment. Purkett v. Elem, 514 U.S. 765, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996).

The defendant acknowledges that there was no showing of disparate application of the racially neutral reason. Further, the state's reason for the peremptory challenges was based upon where the prospective jurors lived, and that community was both where the defendant lived and where the case occurred. The basis for the challenge was related to the case before the court, and it was entirely reasonable. The trial judge soundly denied the Batson motion, and there is no showing of error. Arthur v. Sexton Dental Clinic, 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006)(party struck potential juror based in part on his residence in same general area as other party; reason was facially race-neutral, and opponent

of strike did not meet burden of proving pretext - did not show either disparate application or that reason was fundamentally implausible); State v. Gill, 319 S.C. 283, 460 S.E.2d 412 (Ct. App. 1995)(peremptory challenge based upon defendant having lived on same street as prospective juror and the possibility that juror may have known him is valid, race neutral explanation for strike), modified on other ground and affirmed by State v. Gill, 327 S.C. 253, 489 S.E.2d 478 (1997)(matter not raised to trial judge should not have been reached on appeal); State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990)(affirming trial court's denial of challenge where reasons for peremptory challenges to six black jurors included: juror lived next door to person arrested by officer involved in case; juror lived near and frequented establishment having difficulty with law enforcement; juror lived near defendant; juror lived next door to and had close relationship with one convicted of drug offense; explanations were racially neutral and related to party's view concerning outcome of the case to be tried; burden is on defense counsel to prove solicitor's allegedly neutral reasons were pretextual because they were not applied in a neutral manner, and there was no evidence white juror was seated who had the same disqualification as the black jurors who were struck).

## CONCLUSION

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

Respectfully submitted,

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April 23, 2010

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal From Georgetown County  
Honorable Michael G. Nettles, Judge

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THE STATE,

Respondent,

vs.

SAMUEL JAMAR GRIER,

Appellant.

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**PROOF OF SERVICE**

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I, Harold M. Coombs, Jr., 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 his attorney of record, Kathrine H. Hudgins, Esquire, South Carolina Commission of Indigent Defense, Division of Appellate Defense, PO Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 23<sup>rd</sup> day of April, 2010.

  
HAROLD M. COOMBS, JR.

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STATE OF SOUTH CAROLINA  
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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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