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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin Culbertson, Circuit Court Judge

THE STATE,

Respondent,

v.

ODOM BRYANT,

Appellant,

Appellate Case No. 2015-000170.

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

I. Did the trial court err by allowing the State's main witness to reference the status of the case against a conspiracy co-defendant when the evidence was irrelevant and highly prejudicial and when counsel stipulated the evidence would not be admitted, the trial court ruled the evidence would not be admitted, and the defense reasonably relied upon the stipulation and ruling?

II. Did the trial court err by failing to follow the proper *Batson* procedure and shifting the burden to the defense, and thereafter improperly granting the State's *Batson* motion, resulting in a member of the venire stuck by the defense being on the jury?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

I. In response to defense counsel asking him to "sum up" what Appellant told the investigator to reinitiate a voluntary confession, the State's lead investigator testified that Appellant asked the investigator if his co-defendant "cut a deal." Does the investigator's testimony warrant a mistrial, or was the testimony otherwise improper, where defense counsel elicited the complained-of testimony in contravention of a pre-trial ruling not to mention the status of the co-defendant's case?

II. Did the trial court properly employ the trifurcated *Batson* procedure prior to granting the State's motion and finding that Appellant used pretext in his predominant exercise of peremptory strikes on white men over similarly situated women? Was that ruling in error where Appellant exercised a strike on a white male with a military background but did not exercise a peremptory strike on at least one similarly situated female who also had a military background, and did the outcome of that motion prejudice Appellant so as to require reversal?

STATEMENT OF THE CASE

A Horry County Grand Jury indicted Appellant Odom Bryant for the September 2011, murder of father and son victims Amos and Thomas Hatfield. (R. p. *Indictments). Dean Mureddu and Casey Brown, Esquires, represented Appellant at a jury trial held January 12-15, 2015. (R. p. *1). The Honorable Benjamin Culbertson presided. Bradley Richardson and Monica Wooten of the Fifteenth Circuit Solicitor's Office prosecuted the case. (R. p. *1). A jury convicted Appellant on each murder charge and Judge Culbertson sentenced Appellant to concurrent life sentences. (Tr. p. 601, lines 18-23; R. p. *Sentencing Sheets). This appeal follows. (R. p. *Notice of Appeal).

STATEMENT OF FACTS

Sandy Locklear called 911 in the early morning hours of August 19, 2012, to report a burglary in progress and a shooting at a residence on Red Bluff Road in Loris. (Tr. p. 156, lines 11-21; Tr. p. 160, line 11 – p. 161, line 6). Arriving minutes later at 4:05 AM, law enforcement scanned the premises and witnessed two men lying face-down through the mobile home's wide-open back door. (Tr. p. 164, lines 2-24). Amos Hatfield was discovered with a single gunshot wound to the back of the head and an additional laceration on his forehead. (Tr. p. 228, lines 13-24). A green pillow lay several inches in front of his head. The pillow was immersed with blood, and it bore a burn mark surrounding a through-and-through circular hole. Taken together, the blood and burn mark indicated that the fatal shot was fired flush against the pillow, which was simultaneously placed against the back of the victim's head. (Tr. p. 229, lines 3-10; Tr. p. 232, lines 5-20).

A few steps away lay the younger victim Thomas Hatfield. Thomas was Amos' son. (Tr. p. 233, lines 7-15). He lay prone, feet facing the front door to the trailer with his left arm extended slightly beneath the couch. (Tr. p. 235, lines 12-17). His injuries were remarkably similar to his father's in that he sustained a laceration to his forehead and a single gunshot wound to the back of the head. (Tr. p. 236, lines 1-17). A heavy, stone-topped coffee table lay to the immediate left of the victim's body, flipped upside down. (Tr. p. 236, lines 21-23; Tr. p. 454, lines 2-9). As with the elder Hatfield, blood spatter and a pillow with a burnt through-and-through hole were found three to four inches in front of his head. (Tr. p. 236, lines 8-16; Tr. p. 237, line 5 – p. 238, line 24).

Hearing a female voice calling for assistance, the first responding officer

approached a bedroom and found Sandy Locklear on the bed in nightclothes. She appeared upset and "didn't seem to know what all was going on." (Tr. p. 165, line 17 – p. 166, line 18; Tr. p. 173, lines 15-20). Locklear otherwise exhibited no obvious signs of a struggle despite her contention that she had been bound with tape and sexually assaulted. (Tr. p. 214, line 2 – p. 215, line 6). "[S]he was free to move around" when the officers arrived, but one officer did witness Locklear pull a piece of tape off of herself. (Tr. p. 173, line 21 – p. 175, line 4). After clearing the residence and finding no additional occupants, the officer assisted Locklear from the bedroom to his patrol car. (Tr. p. 167, line 16 – p. 168, line 4). Law enforcement collected an off-white brassiere and a pair of black "stretched" underwear from the bed. They considered both items damaged and potential evidence of the sexual assault that Locklear alleged occurred in the back bedroom. (Tr. p. 256, line 1 – p. 257, line 6).

An inspection of the crime scene returned a clump of black tape cast off in the hallway of the mobile home. (Tr. p. 245, line 23 – p. 246, line 25). Officers also found a similar roll of tape steps away on a shelf above the washer and dryer. (Tr. p. 247, line 15 – p. 248, line 1). A first aid kit appeared to have spilled out of a toiletry cabinet and across the hallway floor. (Tr. p. 249, line 25 – p. 250, line 5). But the remainder of the mobile home showed little to no sign of struggle or disarray. No beds were flipped or drawers emptied. (Tr. p. 251, line 1 – p. 255, line 14). Law enforcement found no signs of forced entry. (Tr. p. 218, lines 1-9; Tr. p. 221, lines 6-18).

Within hours of the initial 911 call, law enforcement also located a burned Kia sedan abandoned roadside near Longs, approximately five miles away from the crime scene. (Tr. p. 278, lines 16-21; Tr. p. 367, lines 11-13). Locklear claimed that her

assailant stole her vehicle when he left the scene. (Tr. p. 367, lines 3-4). Though completely burned and containing no contents of import to the investigation, the VIN number on the burned sedan indeed matched the Kia on loan to Locklear. (Tr. p. 279, lines 11-22; Tr. p. 281, line 11 – p. 282, line 4). Her car dealership loaned Locklear the Kia while her own vehicle underwent service. (Tr. p. 370, lines 6-18).

Law enforcement took Locklear to the hospital as a result of her alleged sexual assault. Afterward, she went to the station to be questioned as a witness and victim. (Tr. p. 373, line 8 – p. 374, line 1). However, the leads she provided quickly proved false when investigated. (Tr. p. 375, lines 1-25). As a result, Locklear's questioning morphed into an interrogation; she was *Mirandized*, questioned, arrested, and charged with two counts of murder. (Tr. p. 376, line 1 – p. 377, line 6). During her interrogation, Locklear provided the names of two potential suspects, Nehemiah James Evans, and a second she knew only by his street name, "PooPoo." (Tr. p. 377, lines 7-14).

"PooPoo" was later identified as Appellant Odom Bryant. (Tr. p. 381, lines 10-16). He assisted in Evans' landscaping business. Together, they cut the grass at Locklear's house. (Tr. p. 377, lines 13-23; Tr. p. 430, lines 9-10; State's Exhibit 136). Locklear also informed law enforcement that Appellant and Evans frequented the Vasco convenience store near her house to purchase fuel. (Tr. p. 430, lines 8-13). That store's surveillance camera footage showed Appellant arriving at the store at 11:06 on the same morning as the murders. (Tr. p. 431, line 23 – p. 434, line 13).

It turned out that Locklear lived in Tabor City, North Carolina, in a home purchased for her by her husband, victim Amos Hatfield. (Tr. p. 340, line 8 – p. 341, line 11). After hearing about the murders, Faye Hunt, Locklear's cousin and friend,

voluntarily informed law enforcement of Locklear's living arrangement and marriage. (Tr. p. 343, lines 3-25). Additionally, Hunt told law enforcement about a life insurance policy that she witnessed Amos Hatfield hand to Locklear for safekeeping. (Tr. p. 342, lines 1-8). Amos then left the Tabor City home that night, and Locklear proclaimed to Hunt that "if that son-of-a-bitch died today [she'd] be a rich bitch tomorrow." (Tr. p. 342, lines 9-21). When law enforcement executed a search warrant on the Tabor City home, they located a life insurance policy naming Locklear and Amos' daughter beneficiaries. (Tr. p. 419, line 9 – p. 420, line 25).

Hunt also pointed out to law enforcement that Locklear offered to sell Hunt's boyfriend a small, pearl-handled pistol about five months prior to the murders. Hunt knew what the pistol looked like because Locklear took it from the top of her refrigerator and showed it to Hunt. (Tr. p. 344, line 10 – p. 345, line 25). That pistol matched the description of a pistol that Amos' brother, Clayton Hatfield, loaned to Amos several years prior to his murder. Amos never returned that pistol to Clayton. Clayton described the pistol as a white or pearl-handled .25 caliber Lorcin. (Tr. p. 325, line 21 – p. 326, line 16).

Investigators did not find this pistol or any other firearms in the Hatfield's mobile home during their crime scene investigation. (Tr. p. 252, line 19). But still frames of Appellant entering a Vasco convenience store hours after the murder revealed a white pistol handle in his upper pants pocket. (Tr. p. 434, line 14 – p. 435, line 4; R. pp. *State's Exhibits 131 & 132).

United States Marshals took Appellant into custody about a month after the murders. (Tr. p. 437, lines 2-10). Once in custody, Appellant provided a voluntary

statement which law enforcement audio recorded. (Tr. p. 440, lines 2-25; R. p. *State's Exhibit 2; State's Exhibit 136). Appellant was not forthcoming at first and in fact asked to stop his interview so that he could talk to a lawyer. (Tr. p. 463, lines 13-18; State's Exhibit 136). As law enforcement gathered their items to leave the interview room, Appellant reneged on his invocation of the right to counsel and voluntarily reinitiated the interview after being re-advised of that right. (Tr. p. 442, line 8 – p. 444, line 21).

It was not until he began giving a statement this second time[1] that Appellant divulged his participation in the murders. Appellant admitted that he knew Evans because they cut grass together, and he met Locklear through Evans' landscaping venture. (Tr. p. 472, lines 1-21; State's Exhibit 136). On the night of the murders, Evans enlisted Appellant's help and the two met up with Locklear. (Tr. p. 474, line 1 – p. 475, line 23; State's Exhibit 136). Together they went to the Hatfield's mobile home "to scare a dude up"—meaning the younger Hatfield—as a favor for Locklear. (Tr. p. 476, line 15 – p. 477, line 16; State's Exhibit 136). Locklear signaled Appellant to enter the back door of the mobile home through a series of text messages, which were read and admitted into evidence at trial. (Tr. p. 191, line 3 – p. 193, line 23; Tr. p. 477, line 22 – p. 478, line 14; State's Exhibit 136). Appellant did not expect any payment for his partaking in the home invasion. (Tr. p. 478, lines 21-23; State's Exhibit 136). Additionally, despite bringing a baseball bat along, he did not expect anyone to be harmed. Appellant maintained that he did not know that anyone had a gun when he first entered the mobile home. Appellant

[1] Appellant was also allowed to make a private phone call to his mother. (Tr. p. 445, lines 14-25). Following a hearing pursuant to *Jackson v. Denno,* 378 U.S. 368, 84 S.Ct. 1774 (1964), the trial court ruled Appellant's audio-recorded statement admissible, subject to some redactions. (Tr. p. 75, line 4 – p. 92, line 1; Tr. p. 107, line 7 – p. 109, line 4).

was also able to confirm that no one subjected Locklear to sexual assault. (Tr. p. 479, line 3 – p. 480, line 15; Tr. p. 484, lines 2-9; State's Exhibit 136). As to the murders, Appellant stated that Locklear shot the Hatfields while he was in a back bedroom looking through the residence. (Tr. p. 482, lines 6-21; State's Exhibit 136). Appellant left quickly after the gunshots, taking nothing but the wooden baseball bat and the Kia in which they arrived. (Tr. p. 485, lines 2-10; State's Exhibit 136). Appellant admitted to burning the Kia. (Tr. p. 485, lines 11-24; State's Exhibit 136).

The State prosecuted Appellant under the theory of the hand of one is the hand of all. (Tr. p. 533, line 6 – p. 534, line 3). Appellant's confession did state that Locklear did have a pearl handled handgun inside the mobile home, (Tr. p. 456, lines 18-22; State's Exhibit 136), and that the gun Appellant had in his pants pocket at the convenience store hours after the murders "was exactly like" Locklear's (though he maintained that it was not the same gun). (Tr. p. 456, line 23 – p. 457, line 3; State's Exhibit 136). Moreover, the small caliber bullets recovered from the heads of Amos and Thomas Hatfield at the time of autopsy had visibly similar characteristics. (Tr. p. 272, lines 12-17; Tr. p. 277, lines 18-23). Expert testimony in the field of forensic firearm examination demonstrated that the projectiles were each consistent with a .25 auto caliber bullet. Though the markings among these projectiles contained limited similarities, the ballistics expert could not conclusively determine that the damaged bullets were in fact fired from the same gun. (Tr. p. 402, line 2 – p. 404, line 1). But no marking on either bullet led the expert to believe that they were fired from anything other than a .25 auto caliber firearm. (Tr. p. 404, lines 2-9). A list of potential firearms which could have fired the bullets included Lorcin. (Tr. p. 409, lines 4-19).

ARGUMENT

I. The trial court did not err in denying Appellant's motion for a mistrial and allowing Sgt. Strickland's testimony that Appellant asked him if his co-defendant "cut a deal," because defense counsel elicited the complained-of testimony, and because Sgt. Strickland's answering counsel's question caused no error and prejudice so as to warrant a mistrial.

Standard of Review

"The admission or exclusion of evidence falls within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion," which occurs "when the trial court's decision is based on an error of law or upon factual findings that are without evidentiary support." *State v. McEachern*, 399 S.C. 125, 136-37, 731 S.E.2d 604, 609-10 (Ct. App. 2012). Moreover, "the scope of cross-examination is within the discretion of the trial court, and the court's decision will not be reversed on appeal absent a showing of prejudice." *Id.*

Similarly, a trial court's grant or denial of a mistrial motion is a matter within that court's sound discretion. *State v. Culbreath*, 377 S.C. 326, 331, 659 S.E.2d 268, 271 (Ct. App. 2008). "It is only in cases of abuse of discretion which result in prejudice that [the appellate] court will intervene and grant a new trial." *Id.* A trial court, however, should declare a mistrial only when absolutely necessary, and only upon a defendant's successful showing of error and resulting prejudice. *State v. Council,* 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999).

How the Issue Arose

Prior to trial, defense counsel moved to limit any testimony regarding the status or outcome of co-defendant Evans' case, which remained pending. (Tr. p. 45, line 19 – p. 46, line 23). The State consented:

> We will not mention anything, and we'll instruct our witnesses not to mention the disposition of Ms. Locklear's case or Mr. Evans' case. I think the only time they will mention it is typically during the investigation they'll say this person was charged and this person was charged, without going into any other great detail.

(Tr. p. 46, line 24 – p. 47, line 6).

The trial court granted "the motion with the consent of the State, with the exception that if the [ ] door is opened by the defense, [the parties] can readdress the issue." (Tr. p. 48, lines 8-11).

During direct examination of its lead investigator, the State inquired of Sgt. Strickland if Appellant "asked to speak with [law enforcement] more thoroughly.". (Tr. p. 443, lines 8-14). Defense counsel objected to Sgt. Strickland answering that Appellant "inquired about [ ] one of the codefendants," the State agreed to "move on," and the trial court sustained the objection. (Tr. p. 443, lines 12-24).

But during defense counsel's cross-examination of the State's lead investigator, counsel asked a non-leading question which inquired as to specifically what Appellant stated to the investigator when recommencing his confession:

> DEFENSE COUNSEL: So when he reinitiated the interview, according to him, basically, [Appellant] told you all, [']Okay, I was lying, now I'm going to tell you really what happened,['] **can you sum it up, something like that?** Do you want me to say it a different way?
>
> SGT. STRICKLAND: I'll say exactly what he told me. He said as we're walking out, he said, [']James [Evans] cut a deal, didn't he,['] that is what [Appellant] said to me.

(Tr. p. 466, lines 2-9 (emphasis added)).

Defense counsel objected to the witness' answer. An *in limine* discussion ensued in which defense counsel relied upon the court's pre-trial ruling that the co-defendant's

pending case not be discussed. (Tr. p. 466, line 10 – p. 467, line 7). Defense counsel moved for a mistrial on the basis that Sgt. Strickland's testimony improperly exceeded the boundaries agreed to by the parties regarding co-defendant Evans. (Tr. p. 467, lines 13-19). He additionally argued that Sgt. Strickland's testimony was unresponsive to the question asked. (Tr. p. 468, lines 19-22). Defense counsel represented that he asked only a leading question and that the witness "basically blurted out" an unresponsive answer instead of answering "yes" or "no." (Tr. p. 469, line 18 – p. 470, line 5).

The State defended the propriety of Sgt. Strickland's response, positing that they "retracted [Sgt. Strickland's full response] during the case-in-chief, but when defense goes into what had changed, the Defendant had an epiphany and started to tell the truth after lying . . . [Sgt. Strickland's answer] gives a reason as to why he changed his mind [and reinitiated the interview]. It fully informs the jury what is in the Defendant's mind." (Tr. p. 467, line 21 – p. 468, line 17).

The trial court denied the motion for mistrial, ruling that "[defense counsel] asked the question. It is not hearsay. It was a statement made by [Appellant] indicating why he wanted to go back and continue with the questions." (Tr. p. 469, line 23 – p. 470, line 1). The trial court also ruled that it believed Sgt. Strickland's answer "was responsive to what [counsel] asked." (Tr. p. 469, lines 12-17; Tr. p. 470, lines 6-9).

A. The trial court neither erred nor caused Appellant prejudice in allowing the reference because defense counsel's inquiry opened the door for Sgt. Strickland's testimony and the testimony is otherwise admissible.

The trial court's allowing Sgt. Strickland's testimony did not inject Appellant's trial with fundamental unfairness so as to warrant a mistrial. "It is firmly established that

otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence." *State v. Page,* 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008) (citing *State v. Young,* 364 S.C. 476, 485, 613 S.E.2d 386, 391 (Ct. App. 2005). When counsel makes a clear tactical decision in questioning a witness on a certain topic but then asks "that proverbial 'one question too many,' and is dissatisfied with the result from taking that risk," no abuse of discretion results from the trial court's allowing the responsive testimony and denying a mistrial. *State v. Beam,* 336 S.C. 45, 51-53, 518 S.E.2d 297, 300-01 (Ct. App. 1999). "Since appellant opened the door to this evidence, he cannot complain of prejudice from its admission." *State v. Robinson,* 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991).

In *State v. Sullivan,* 277 S.C. 35, 45, 282 S.E.2d 838, 844 (1981), our Supreme Court applied this axiom to an assertion that "the State used unsolicited responses to get prejudicial evidence before the jury." The *Sullivan* court found the issue unpreserved for appeal, but additionally ruled that defense counsel's question "opened the door for [the investigative agent's] response." *Id.* Our courts have consistently applied this principle. *E.g. State v. Beam, supra*; *contra State v. Foster,* 354 S.C. 614, 623-24, 582 S.E.2d 426, 431 (2003) (finding it reversible error to allow the State to admit a witness' written statement in an effort to rehabilitate her after being impeached on cross-examination) ("the instant case is distinguishable from other cases where we have found that defense counsel contributed to the error by opening the door to otherwise arguable impermissible evidence"). Similarly, this Court has specifically held that where otherwise inadmissible bad acts evidence becomes injected into the trial as a result of defense counsel's questioning on cross-examination, no abuse of discretion results from the trial court's

refusal to grant a mistrial. *State v. Culbreath,* 377 S.C. at 333-34, 659 S.E.2d at 272.

In the instant case, Appellant postures that the State's lead investigator "sandbagged" the defense and used counsel's open-ended question "as a springboard" to testify about the Appellant's asking whether his co-defendant "cut a deal." (Br. of Appellant, p. 10). Appellant's counsel asked Sgt. Strickland to "sum up," or at the very least agree, with counsel's characterization of what Appellant stated to recommence his interview. The sergeant's response indicates that he disagreed with counsel's representation of how Appellant acted in the interview room—the sergeant replied with "exactly what [Appellant] told [him]." (Tr. p. 466, lines 2-9). Accordingly, the record reflects that Sgt. Strickland merely answered the question asked. And, the totality of the record reflects that Sgt. Strickland's testimony on this subject remained substantially similar through the *Jackson v. Denno, infra,* hearing and cross-examination. (Tr. p. 85, line 21 – p. 86, line 8; Tr. p. 466, lines 2-9; *see also* Tr. p. 443, lines 8-24 (direct examination)).

Given that defense counsel opened the door, the admissibility of Sgt. Strickland's answer rests in its direct responsiveness to defense counsel's question.[2] Because defense counsel opened the door to the alleged injurious response, no prejudice can derive from the inclusion of Sgt. Strickland mentioning that Appellant questioned the investigator about whether his co-defendant "cut a deal." *State v. Robinson, supra.* A mistrial was not

[2] Though not the basis for the objection, Sgt. Strickland's recitation of what Appellant told him during the interview was otherwise admissible. Because Appellant's asking the sergeant if his co-defendant "cut a deal" constitutes a self-inculpatory statement, and because Appellant did not testify at trial, Sgt. Strickland's relaying Appellant's inquiry falls within the statements against interest exception to the hearsay rule. *State v. Doctor,* 306 S.C. 527, 529-30, 413 S.E.2d 36, 38 (1992); *see* Rule 804(a)(5) & (b)(3), SCRE.

warranted and no abuse of discretion occurred.

B. Any error in Sgt. Strickland's testimony was harmless so as not to prejudice Appellant.

An insubstantial error not affecting the result of the trial will be found harmless so long as "guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached." *State v. Bailey,* 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). "Error is harmless where it could not reasonably have affected the trial's outcome. No definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." *State v. Page*, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008) (internal citations omitted).

Harmless error must be determined from the particular facts of the case, along with various other factors including:

> . . . the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

Id. (quoting *Delaware v. Van Arsdall,* 475 U.S. 673, 684, 106 S.Ct. 1431, 1438 (1986)).

The testimony at issue cannot be found to have substantially altered the outcome of Appellant's trial. It bears noting that the pre-trial ruling did not preclude any mention of whether either Evans or Locklear were charged during the course of the investigation, only that "any other great detail" of these co-defendants' pending cases not be divulged. (Tr. p. 46, line 24 – p. 47, line 6). By the time Sgt. Strickland took the stand, two detectives had referred to Evans as a suspect. Detective Todd Cox testified that Locklear

implicated Evans and Appellant in her voluntary statement to law enforcement. (Tr. p. 377, lines 7-23). Detective Cox further testified that Evans was arrested and charged with two counts of murder. (Tr. p. 379, line 1 – p. 381, line 24). Detective Jonathan Martin also testified that he searched a vehicle linked to Evans during the investigation. (Tr. p. 285, line 15-22). The complained-of testimony merely reflects a fact already known to the jury through other testifying officers: Evans had pending charges. And, Sgt. Strickland never disclosed any potential outcome of any co-defendant's case—he reiterated what Appellant asked him in the interview room.

The State also put forward overwhelming evidence of guilt. Appellant confessed that he accompanied Evans and Locklear to the Hatfield residence on the night of the murders to "scare a dude up" as a favor for Locklear. (Tr. p. 476, line 15 – p. 477, line 16; State's Exhibit 136). Locklear signaled Appellant to enter the back door of the mobile home through a series of text messages, which were read and admitted into evidence at trial. (Tr. p. 191, line 3 – p. 193, line 23; Tr. p. 477, line 22 – p. 478, line 14; State's Exhibit 136). Appellant confessed that he was not armed with anything other than a wooden baseball bat, but heard gunshots while he searched the back rooms of the mobile home for any additional occupants. (Tr. p. 482, lines 6-21; Tr. p. 485, lines 2-10; State's Exhibit 136). He admitted to leaving in Locklear's Kia and then burning it. (Tr. p. 485, lines 11-24; State's Exhibit 136). Footage from a convenience store frequented by Appellant revealed that he visited that store with a white or pearl-handled pistol in his front pocket just hours after the murders. (Tr. p. 252, line 19; Tr. p. 434, line 14 – p. 435, line 4; R. pp. *State's Exhibits 131 & 132). The visible gun handle matched the description of a pistol Locklear offered to sell a friend a few months before the murders.

(Tr. p. 344, line 10 – p. 345, line 25). And, the pistol's description matched a handgun on loan to one victim, Locklear's husband Amos Hatfield. (Tr. p. 325, line 21 – p. 326, line 16). Even more, the white-handled pistol is consistent with the small caliber bullets recovered from each victim. (Tr. p. 272, lines 12-17; Tr. p. 277, lines 18-23).

By all indications in the record, Appellant acted in conjunction with his co-defendants in the carrying out of the victims' murders and took part in efforts to conceal the evidence. Any error in this testimony's inclusion proves harmless given its cumulative and corroborative effect in relation to previous detectives' testimony and in light of evidence of Appellant's guilt.

II. The trial court exercised proper *Batson* procedure in regards to the State's motion and did not inappropriately shift the burden to the defense at any time. The trial court also properly found that Appellant used pretext when exercising a peremptory strike on Juror 49, a National Guardsman, where Appellant seated at least one similarly situated female juror who was a retired military pilot.

Standard of Review

In its review of errors of law, this Court is bound by the trial court's factual findings unless clearly erroneous. *State v. Inman,* 409 S.C. 19, 25, 760 S.E.2d 105, 107 (2014), *reh'g denied* (July 24, 2014). "The trial court's findings regarding purposeful discrimination are accorded great deference and will be set aside on appeal only if clearly erroneous." *State v. Haigler,* 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999). "This standard of review, however, is premised on the trial court following the mandated procedure for a *Batson* hearing." *State v. Cochran,* 369 S.C. 308, 312-13, 631 S.E.2d 294, 297 (Ct. App. 2006). Thus, if this Court finds that the proper *Batson* hearing procedure was not followed at the trial level, it will exercise its plenary review to answer the question of law. *Id.*

A. The trial court adhered to each step of the trifurcated *Batson* procedure and did not engage in any impermissible burden-shifting.

The trial court employed proper *Batson* procedure and rationale in granting the State's motion. It is unconstitutional for either the State or Appellant to strike a venireperson on the basis of race or gender. *J.E.B. v. Alabama,* 511 U.S. 127, 114 S.Ct. 1419 (1994); *Georgia v. McCollum,* 505 U.S. 42, 112 S.Ct. 2348 (1992); *State v. Shuler,* 344 S.C. 604, 545 S.E.2d 805 (2001). This prohibition derives from the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Id.* Upon motion

by either party, *Batson v. Kentucky,* 476 U.S. 79, 106 S.Ct. 1712 (1986), provides a mechanism for the trial court to evaluate whether a party executed one or more of its peremptory challenges in a manner in violation of the Equal Protection Clause. "When one party strikes a member of a cognizable racial group or gender, the trial court must hold a *Batson* hearing if the opposing party requests one." *State v. Shuler*, 344 at 615, 545 S.E.2d at 810. South Carolina most recently restated its application of *Batson's* three-prong test in *State v. Inman, supra.*

> First, the [the party asserting the *Batson*] challenge must make a prima facie showing that the challenge was based on race [or gender]. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the [party opposing the *Batson*] challenge to provide a race [or gender] neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the [party asserting] the challenge has proved purposeful discrimination.

Inman at 25, 760 S.E.2d at 108 (alterations in original) (quoting *State v. Giles*, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014), *reh'g denied* (Feb. 21, 2014), *and cert. denied,* 134 S.Ct. 2888, 189 L.Ed.2d 845 (2014)).

i. *Step One*

In order to make the initial prima facie showing, a movant is required to note that the strikes' proponent exercised peremptory challenges to remove venire members of a particular race or gender. *Batson v. Kentucky,* 476 U.S. at 96, 106 S.Ct. at 1712. The movant "is entitled to rely on the fact, as to which there can be no dispute, that peremptory challenges constitute a jury selection practice that permits 'those to discriminate who are of a mind to discriminate.'" *Id.* (quoting *Avery v. Georgia,* 345 U.S. 559, 563, 73 S.Ct. 891, 892 (1953)).The movant may point to particular circumstances in

his opponent's jury strike which give rise to an inference of discrimination, such as demonstrating to the trial court that his opponent exercised a "pattern" of strikes against a particular race or gender. *Id.* at 96, 106 S. Ct. at 1723.

A pattern of discrimination does not mean that every potential juror of a specific race or gender must be struck by a party. In finding a prima facie case has been made, the relevant inquiry is not whether it is more likely than not that the peremptory challenge, if unexplained, were based on an impermissible bias. *Johnson v. California,* 545 U.S. 162, 164, 125 S.Ct. 2410, 2413-14 (2005). "[A] prima facie case of discrimination can be made out by offering a wide variety of evidence, so long as the sum of the proffered facts gives 'rise to an inference of discriminatory purpose.'" *Id.* at 169, 125 S.Ct. at 2416. "The [remainder of the] *Batson* framework is designed to produce actual answers to suspicions and inferences that discrimination may have infected the jury selection process." *Id.* at 172, 125 S.Ct. at 2418. "In deciding whether the [movant] has made the requisite showing, the trial court should consider all relevant circumstances." *Batson* at 96, 106 S.Ct. at 1723.

Appellant is an African-American male whose counsel exercised peremptory strikes on three white men and one white woman. Appellant's predominate use of peremptory strikes against white men gives rise to an inference of discrimination. The State made a prima facie showing by pointing out this pattern to the trial court. While acknowledging that Appellant sat one white male and "several" white females on the jury without use of peremptory strikes, the State motioned the court to conduct the *Batson*

framework due to its belief that Appellant employed an impermissible bias in its strikes.[3] (Tr. p. 32, line 7 – p. 33, line 4).

Appellant postures that defense counsel should have been able to "respond to the prosecutions' initial burden of a prima facie case" prior to moving on to step two, and asserts that "the trial court [erroneously] put the onus on defense counsel to first justify each strike." (Br. of Appellant, p. 20). But *Batson* procedure dictates that the defense's initial response *is* the giving of its race-neutral reason for each strike, for "[a]fter a party objects to a jury strike, the proponent of the strike must offer a facially race-neutral explanation." *E.g., State v. Rayfield,* 369 S.C. 106, 112, 631 S.E.2d 244, 247 (2006). Given the pattern in Appellant's striking predominately white men, the trial court appropriately moved on to *Batson's* step two. *Purkett v. Elem,* 514 U.S. 765, 767, 115 S.Ct. 1769, 1770 (1995).

ii. *Step Two*

At this juncture, the neutral reason for each strike need not prove persuasive or plausible. *State v. Inman,* 409 S.C. at 26, 760 S.E.2d at 108 (citing *Purkett v. Elem,* 514 U.S. at 768, 115 S.Ct. at 1769). "The explanation must only be 'clear and reasonably specific such that the [party asserting the *Batson* challenge] has a full and fair opportunity to demonstrate pretext in the reason given." *Id.* (alterations in original). The explanation must also be clear and reasonably specific enough for the trial court to effectuate its step three duty to assess its plausibility "in light of all the evidence with a bearing on it." *Id.*

[3] The record demonstrates that the initial *Batson* motion occurred at a bench conference so as not to share the cause for objection with the remainder of the potential jurors still situated in the gallery. (Tr. p. 32, lines 3-22). The conference was not transcribed.

(quoting *State v. Giles,* 407 S.C. at 21-22, 754 S.E.2d at 265).

On this point, the trial court guided the *Batson* proceeding into the second stage. "Let's go down the list," constitutes the trial court's asking Appellant to provide facially race-neutral reasons for each of his six strikes. Indeed, that is how defense counsel interpreted the court's statement as he responded to the court by delivering his facially neutral reasons for the record.[4] (Tr. p. 33, line 8 – p. 35, line 22).

iii. *Step Three*

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[4] Respondent addresses each in turn, though the parties do not dispute that the reasons given at this stage meet the requirements of facial neutrality.

Juror 259: Appellant struck this white male because he appeared to be a comptroller, or have "some sort of government affiliated job" and counsel sought "to avoid anyone who worked in the field [of] government related [jobs]" due to the number of law enforcement and other government officials related to Appellant's trial. (Tr. p. 33, lines 8-20).

Juror 199: Appellant struck this white male because he worked "as an active security guard" and thus was "quasi law enforcement." (Tr. p. 33, lines 21-25).

Juror 26: Appellant struck this white male not because he worked as a real estate agent, but because his wife "had some affiliation" as a youth pastor. (Tr. p. 34, lines 1-8).

Juror 42: Appellant struck juror 42, a white female, because she was an executive officer for telephone provider HTC. Counsel stated that he does not "know that you would call HTC a government agency, but in the utility range, again, those are official duties." Counsel also cited that he struck this juror in relation to the cell phone evidence he anticipated challenging at trial. (Tr. p. 34, lines 9-19).

Juror 49: This white male was affiliated with the Army National Guard, though it was unknown to counsel whether the juror was active in the Guard. Appellant struck this juror due to his "being somehow affiliated with the military, and [thought] probably not only is the victim in this case . . . one of the retired military, but so many law enforcement officers you find are from that background as well." (Tr. p. 34, line 20 – p. 35, line 4).

Juror 121: Appellant exercised a final strike on this white male based upon his demeanor. Counsel reasoned that that his body language indicated a predisposition to convict. (Tr. p. 35, lines 5-21)

The trial court next "shifted the ultimate burden of persuasion back to the State to show that the proffered reason[s] w[ere] pretextual," *State v. Inman,* 409 S.C. at 28, 760 S.E.2d at 109, by plainly asking the State to rebut them. (Tr. p. 35, lines 22-15). The State complied by making its case against gender-neutrality. (Tr. p. 36, lines 2-22). The trial court then gave Appellant a final sur-reply before ruling. (Tr. p. 36, line 23 – p. 38, line 10). Accordingly, the trial court appropriately navigated the trifurcated process prescribed by *Batson* and its progeny.

B. Based on the evidence before it that female jurors were seated by Appellant who had similar military backgrounds to male Juror 49, who was stricken because he was a National Guardsman, the trial court did not error in granting the State's *Batson* motion.

Having established the use of proper *Batson* procedure by the trial court, Respondent focuses on the State's third-prong argument to addresses whether the lower court erred in granting the motion. This Court reviews the trial court's grant of that motion under the clear error standard. *State v. Haigler,* 334 S.C. at 630, 515 S.E.2d at 91 (1999). The trial court ruled:

> I think the law requires that there be an articulated reason that shows that it is both race and sexually neutral reason for striking potential jurors. As I understand, once you see a pattern, and the pattern here is struck white males predominately, then you have to give the reason, the burden shifts to the State, State has shown that there were people employed in the government that were seated, and there were people in the military that were seated. There were females versus males, which is the [pretextual] reason that [the State] gave for [Appellant's] striking the Jurors [2]59, 199, 42 and 49. So then the reason comes back to [Appellant]. I understand what you [Appellant] are saying [in your gender-neutral explanation], but **I have to go on whether or not there is an articulated justification for striking a juror that is racially and gender neutral, and I don't really see a reason as to why you seated females that have military ties and didn't seat males that had military ties, so I'm going to grant the motion.**

(Tr. p. 38, line 11 – p. 39, line 4 (emphasis added)).

At this stage, "[w]hether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record. *State v. Shuler,* 344 S.C. at 615, 545 S.E.2d at 810; *Riddle v. State,* 314 S.C. 1, 443 S.E.2d 557 (1994). When the movant establishes that the proponent of the strikes practiced purposeful discrimination in its use of peremptory strikes, "the trial court must quash the entire jury panel and initiate another jury selection de novo." *State v. Cochran,* 369 S.C. at 315, 631 S.E.2d at 298.

This third prong constitutes the State's opportunity to make its case for discrimination. To establish pretext, the movant "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 or gender. *Id.* In other words, the movant must establish that his opponent struck potential jurors whom were similarly situated to seated jurors. *State v. Haigler*, 334 S.C. at 629, 515 S.E.2d at 91; *State v. Edwards,* 384 S.C. 504, 508-09, 682 S.E.2d 820, 822 (2009). Similarly situated does not mean "identical in all respects." *State v. Scott,* 406 S.C. 108, 115, 749 S.E.2d 160, 164 (Ct. App. 2013). "Rather, the potential jurors need only alike in all relevant aspects." *Id.* (internal quotations omitted). The inquiry is focused on "whether there are meaningful distinctions between the individuals compared." *Id.* Sometimes, the neutral "'explanation given by the proponent may be so fundamentally implausible that the judge may determine . . . that the explanation was mere pretext even without a showing of disparate treatment.'" *State v. Haigler, supra* (quoting *Payton v. Kearse,* 329 S.C. 51, 55, 495 S.E.2d 205, 207 (1998)).

Our courts have defined when counsel may selectively utilize preemptory strikes among jurors who appear similarly situated. Case law recognizes a discernable difference between striking a potential juror who is actively employed versus one who is retired or unemployed. *See State v. Williams,* 379 S.C. 399, 402-03, 665 S.E.2d 228, 230 (Ct. App. 2008) ("employment, or lack of it, is a well-understood and recognized consideration in the exercise of peremptory challenges"). And it is not implausible that "counsel may draw a distinction between the employment status of a prospective juror and the employment status of the spouse [or family and friends] of a prospective juror." *Id.*; *State v. McCray,* 332 S.C. 536, 506 S.E.2d 301 (1998). Counsel may also exercise strikes based upon his perception of jurors' differing job responsibilities. *See State v. Scott,* 408 S.C. 108, 749 S.E.2d 160 (Ct. App. 2013) (sufficient distinction between a teacher and a warehouse manager to justify striking one but not the other). But in this case, the record supports the trial court's finding that Appellant practiced purposeful discrimination by exercising his peremptory strikes on men over women.

Appellant's neutral reasons were not consistently applied in a neutral manner. *State v. Oglesby,* 298 S.C. 279, 281, 379 S.E.2d 891, 892 (1989) (finding race-neutral reason for strike proven to be pretext where not applied in neutral manner); *State v. Stewart,* 413 S.C. 308, 317-18, 775 S.E.2d 416, 421 (Ct. App. 2015) (same). Examine the totality of the comparative juror analysis put forth by the State at the third step:

Stricken Juror Number and Gender	**Reason Stricken**	**Categorical Relation to Seated Juror**	**Manner Similarly Situated to Stricken Juror**	**Seated Juror Number and Gender**
Male Juror 49	Army National Guard (Uncertain if active or retired)	Affiliation with Military or Law Enforcement	Retired Military Pilot and Married to Retired Navy	Female Juror 13
Male Juror 199	Security Guard		Married to Retired Georgia State Patrol	Female Juror 78
Male Juror 259	Comptroller	Government-Type Employee	Retired Georgia Power Employee	
Female Juror 42	HTC Employee; Phone Records at Issue at Trial		Mental Health Director at Waccamaw Mental Health	Female Juror 50

(*Compare* Tr. p. 33, line 8 – p. 35, line 4 *with* Tr. p. 36, lines 2-25).

Appellant articulated that he struck the male comptroller because he worked for a governmental agency and sought to avoid anyone who worked in a government-related field because of any bias related to their potential interaction with "numerous law enforcement and other government officials." (Tr. p. 33, lines 8-20). However, Appellant did not strike a female of strikingly similar association. Juror 50 was employed by Waccamaw Mental Health of the South Carolina Department of Mental Health. (Tr. p. 36, lines 15-20). Additionally, as ruled by the trial court, Appellant sat two females with personal and spousal ties to both the military and law enforcement, yet struck men on the

basis that they were employed with the National Guard or as a security guard. (Tr. p. 36, lines 3-15; Tr. p. 38, line 11 – p. 39, line 4).

Given the totality of the facts and circumstances in this record, Appellant's reliance upon *State v. McCray,* 332 S.C. at 540-41, 506 S.E.2d at 303, is distinguishable from the case at bar. In regards to Juror 49 specifically,[5] Appellant stated that he struck the National Guardsman because military affiliation may have some bearing on his view of *retired* military personnel, noting that one victim and some State's witnesses were also retired military. (Tr. p. 34, line 20 – p. 35, line 4). Given this reason, no meaningful distinction endures between Female Juror 13, male Juror 49, and the cited gender-neutral bias towards Appellant's case. Juror 13 was retired military in her own right, yet Appellant did not strike this female, who was arguably more poignantly related to Appellant's gender-neutral reason. Appellant sought to avoid seating any juror who may be sympathetic to the retired military associated with Appellant's trial. (Tr. p. 34, line 20 – p. 35, line 4). But Appellant sat Juror 13. Moreover, like Juror 13, female Juror 78 was married to retired military. Yet Appellant did not strike this juror.

Given this comparison, Appellant's neutral reason for striking Juror 49 does not overcome the pretextual nature of his striking three white men over similarly situated white women. The trial court correctly pointed out that Appellant did not offer a valid

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[5] Since Juror 49 was the only challenged juror who received a seat on the jury of conviction, it may result that this Court limits its analysis to Juror 49. *State v. Scott, infra* at 111, 749 S.E.2d at 162; *State v. Edwards, infra* at 509, 682 S.E.2d at 823 ("If a trial court improperly grants the State's *Batson* motion, but none of the disputed jurors serve on the jury, any error in improperly quashing the jury is harmless because a defendant is not entitled to the jury of her choice."). But even on a limited review, Appellant's race-neutral reason for striking Juror 49 patently discloses that he employed an impermissible bias for the reason argued above.

reason "as to why [he] seated females that have military ties and didn't seat males that had military ties." (Tr. p. 39, lines 1-4). Appellant failed to point out any legally defined distinction which may otherwise rationalize the apparent pretext when given the opportunity. At no time did Appellant articulate for the record that he appreciated any difference between a potential juror being active or retired military. Nor did Appellant argue that he appreciated any difference between a potential juror with his or her own military résumé and a juror having a spouse with an analogous association. (*See* Tr. p. 37, line 1 – p. 38, line 10 (arguing that he struck jurors based upon their apparent demeanor and that the racial makeup of Horry County presumably placed a larger number of whites in the jury pool)).[6]

Because the record supports the trial court's finding of pretext, that court committed no error in granting the State's motion. *State v. Adams,* 322 S.C. 114, 470 S.E.2d 366 (1996) (trial judge's findings regarding purposeful discrimination are entitled to great deference and are to be set aside only if clearly erroneous).

C. As the trial court properly decided the State's *Batson* motion, reversal is not warranted despite Juror 49's inclusion in Appellant's final jury.

"When an appellate court finds that the circuit court improperly granted a *Batson* motion, and 'one of the disputed jurors is seated on the jury, then the erroneous *Batson* ruling has tainted the jury and prejudice is presumed in such cases because there is no

[6] On this point, Appellant's present argument extends beyond the gender-neutral justification argued before the trial court and is not preserved for appellate review. *See, e.g. State v. McKnight,* 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003) (noting that an argument must be raised to and ruled upon by a trial court in order to be preserved for appellate review). At any rate, Appellant is not entitled to reversal on the merits of the present argument for the reasons herein discussed.

way to determine with any degree of certainty whether a defendant's right to a fair trial by an impartial jury was abridged.'" *Inman* at 29-30, 760 S.E.2d at 110 (quoting *State v. Edwards,* 384 S.C. at 509, 682 S.E.2d at 823 and *State v. Rayfield, supra* at 114, 631 S.E.2d at 248). "The proper remedy in such cases is the granting of a new trial." *Id.*

Because the trial court properly granted the State's motion, the fact that Juror 49, the National Guardsman, was seated on Appellant's final jury causes no prejudice. But should this Court determine that the trial court erroneously granted the State's *Batson* challenge, prejudice results such that a new trial is warranted. *Id.*

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should affirm the Appellant's murder convictions.

Respectfully submitted,

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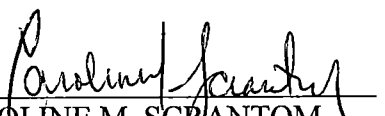
By: 
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February 12, 2016
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ATTORNEY FOR RESPONDENT

RECEIVED
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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Honorable Benjamin Culbertson, Circuit Court Judge

THE STATE,

Respondent,

v.

ODOM BRYANT,

Appellant

Appellate Case No. 2015-000170.

PROOF OF SERVICE

I, Caroline M. Scrantom, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appeal by depositing two (2) copies of the same in the United States mail, addressed to his attorneys of record at:

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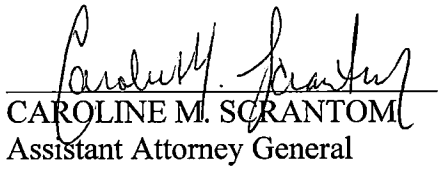
I further certify that all parties required by Rule to be served have been served. This 12th day of February, 2016.



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ALAN WILSON
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February 12, 2016

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: The State v. Odom Bryant
Appeal from Horry County
Appellate Case No. 2015-000170

Dear Ms. Kitchings,

Enclosed please find the original and one (1) copy of the ***Initial Brief of Respondent and Designation of Matter***, dated February 12, 2016, along with proof of service, in the above-referenced case.

By copy of this letter, I am serving opposing counsel with same. Thank you for your consideration in this matter.

Sincerely,

Caroline M. Scrantom
Assistant Attorney General

CMS/pcm
Enclosure

cc: Reid T. Sherard, Esquire
Robert M. Dudek, Chief Appellate Defender
The Honorable Jimmy Richardson, III, Solicitor, Fifteenth Judicial Circuit
Trisha Allen, Victim Services