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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V

DADRIN JEROME JOHNSON

APPELLANT

Appeal from Spartanburg County

J Derham Cole, Circuit Court Judge

Opinion No 2012-UP-528

Appellate Case No. 2010-180607

PETITION FOR REHEARING

Petitioner seeks rehearing pursuant to Rule 221(a), SCACR because this Court may have overlooked the fact that the striking of a bad woman because she has red hair and an attitude is racially stereotypical in the same way striking a black juror for "shucking and jiving" is racially stereotypical and racially discriminatory. See State v Tomlin, 299 S C. 294, 299, 384 S.E.2d 707, 710 (1989) (Also second juror walked slow, talked slow, etc) Both reasons were discriminatory

As this Court will recall Appellant Johnson is a black man. Appellant did not challenge three black potential jurors being struck by the state R 11, l. 22 – 12, l 22.

And then to No. 49, Your Honor, **was the same attitude. When she showed up she had the streaks in her hair, the red hair. From that standpoint her attitude** while she was on jury selection, standing up and answering the questions from the judge and from the clerk's office in that case in that case, Your Honor, I felt like she would not be a good juror from that standpoint

R. 12, l. 23 – 13, l. 4. (emphasis added)

The judge asked defense Counsel Jones if she wished to be heard and she argued that the solicitor citing streaks in Juror 49's hair was racially pre-textual and that, since appellant was African-American and the juror was African-American, the judge should find the strike racially motivated "[W]e would say in regard to Juror 49, regardless of whether she had streaks in her hair not, that is not a, good reason to cut somebody. Again, she was an African-American person. We have an African-American client, Your Honor Therefore, we do believe it was race motivated." R 13, ll. 7-12.

The judge asked the co-defendant for his position, and defense counsel Thompson joined in the objection of the strike of Juror #49 for the co-defendant. R. 13, ll 7-14

The Judge stated "It [the strike] can't be exercised in an unconstitutional fashion, and you can't invidiously discriminate or [have] exercised challenges based upon racial reasons, as in this case all of the jurors that were struck that are being challenged were black " [T]here are good reasons and bad reasons for striking jurors, it's not what I have to determine." The judge ruled the peremptory challenge used on juror #49, the only juror appellant challenged, was not racially pre-textual "All [the chosen jurors] shall remain and he sent the jurors chosen to lunch R. 14, ll. 3 - 15, l 24

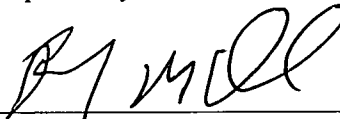
Appellant argued to this Court The red streaks in her hair or red hair reason cited by the solicitor here was racially stereotypical in the same way as was defense counsel's explanation that he felt "uneasy" over a juror's dreadlocks in McCrea v Gheraibeh, 380 S.C. 183, 669 S E.2d 333

(2008). In McCrea our Supreme Court found counsel's explanation that he struck the particular juror because of his "uneasiness" over the juror's dreadlocks "was not a race-neutral reason for exercising a peremptory strike" McCrea, 380 S C at 187, 669 S E 2d at 335

The Court in McCrea distinguished the dreadlocks from the "long unkempt hair" looking suspicious reason which was held to be constitutionally permissible in Purkett v Elem, 514 U.S. 765 (1995). The Court noted that while long unkempt hair is not associated with any race, counsel's specific reference to the juror's hair as "dreadlocks" in conjunction with an otherwise *vague explanation for the strike* "carries with it an inherently discriminatory intent." McCrea 380 S.C. at 187, n 2, 669 S E.2d 335, n. 2.

This Court dispensed with this red hair and black woman with an attitude argument in one paragraph of citations. Appellant requests rehearing on what he submits is a highly meritorious issue

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 4th day of October, 2012

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THE STATE,

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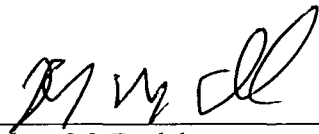
V.

DADRIN JEROME JOHNSON

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 Alphonso Simon, Jr, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of October, 2012



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 4th day
of October, 2012


_____(L S.)
Notary Public for South Carolina

My Commission Expires October 2, 2013.