STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2015-000306

THE STATE,

Respondent,

V.

KADRIN RAJUN SINGLETON,

Appellant,

INITIAL BRIEF OF RESPONDENT

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II. Whether the trial court erred in granting the State's motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986) because the defense gave race-neutral explanations for its strikes and the State failed to prove pretext?

STATEMENT OF THE CASE

On November 20th, 2012, appellant [Kadrin Rajun Singleton] murdered Sharrell Williams in Charleston County. Appellant was arrested for the murder four (4) days later on the night of November 24, 2012. On March 4, 2013, the Charleston County grand jury indicted appellant for Williams' murder, possession of a stolen motor vehicle, failure to stop for a blue light, and trafficking in cocaine (Ind. #s *2013-GS-10-1153, 2602, 2603, & 1457*). (Tr. Vol. 1, p. 11, ll. 5-24; p. 33, l. 2 – p. 37, 1. 22). Immediately before trial, appellant pled guilty to all charges except murder. Sentencing was deferred on the charges to which appellant pled guilty. Appellant was tried for the murder before a jury of his peers from January 5th – 9th, 2015, the Honorable Kristi L. Harrington, Circuit Court Judge, presiding. (Tr. Vol. 1, p. 1). Michael T. Cooper and Megan Ehrlich, Esquires, represented appellant. (Tr. Vol. 1, p. 2). At the conclusion of the trial, the jury found appellant guilty of murder. Judge Harrington sentenced appellant to life imprisonment for murder (Ind. # *2013-GS-10-1153*) and concurrent sentences of ten (10) years for trafficking in cocaine (Ind. # *2013-GS-10-1457*), five (5) years for possession of a stolen vehicle (Ind. # *2013-GS-10-2602*) and three (3) years for failure to stop for a blue light (Ind. # *2013-GS-10-2603*). (Tr. Vol. 5, p. 40, l. 3 – p. 41, l. 9).[1] Appellant appeals his conviction for murder raising two (2) issues.

[1] At sentencing, appellant's prior record was provided to Judge Harrington. Appellant was previously convicted of burglary 3rd degree, common law *or* strong armed robbery, and unlawful carrying a pistol, in addition to the crimes he pled guilty to at the beginning of the trial; trafficking in cocaine, possession of a stolen vehicle, and failure to stop for a blue light. The State also informed Judge Harrington that appellant was a member of a Blood's street gang from Summerville, S.C. (Tr. Vol. 5, pp. 33-41).

RESPONDENT'S STATEMENT OF FACTS

At the time of this murder, appellant, Kadrin R. Singleton ("Singleton"), was an admitted marijuana dealer. (Tr. Vol. 4, p. 31, ll. 1-5). Before this murder, Singleton had also previously been convicted of several felonies, including burglary in the third degree and strong armed robbery. (Tr. Vol. 4, p. 23, ll. 16-21, p. 86, ll. 5-21).

On November 20, 2012, Singleton was trying to obtain marijuana to sell. (Tr. Vol. 4, p 25, ll. 12-13). Singleton wanted to purchase a quarter (1/4) pound of marijuana. He contacted a friend, who set him up with Chris Felder ("Felder"), whose cousin by marriage, Kenneth Fludd ("Kenny"), could arrange a deal for the marijuana Singleton wanted to purchase. (Tr. Vol. 4, p. 25, ll. 12-16; Tr. Vol 2, pp. 68-69).

Felder contacted Kenny by phone at Kenny's place of employment, a Pizza Hut in Charleston, and asked if Kenny could arrange the transaction. Kenny informed Felder he thought he knew someone who could sell that amount of marijuana and would see what he could do. Kenny contacted his cousin by blood relation, Sherrell Williams ("Williams" or "the victim") by phone, and Williams agreed to sell the quarter (1/4) pound of marijuana to Singleton. (Tr. Vol. 2, pp. 68-70, 72).

Singleton and Felder drove from Summerville to the Pizza Hut where Kenny worked. After arriving at the Pizza Hut and waiting there for approximately five (5) minutes, Kenny came out of the Pizza Hut, and got in the car with the two (2) men. (Tr. Vol. 4, p. 28, l. 23 – p. 31, l. 12). They all sat and waited for approximately an hour for the victim to return from Walmart, where he was shopping with his girlfriend, so Kenny could take the men to the victim to get the marijuana. (Tr. Vol. 2, p. 72, l. 20 - 74, l. 25; Tr. Vol. 4, p. 28, l. 23 – p. 31, l. 12).

The victim eventually phoned Kenny and told him to meet him at a house on Cambridge Avenue. (Tr. Vol. 2, pp. 74–75). Kenny got in his own car, started it, and told Singleton and Felder to follow him, which they did for approximately five (5) minutes. (Tr. Vol. 2, pp. 74-75; Vol. 4, p. 32, ll. 5-23).

Felder and Singleton then pulled-over a couple of blocks away from the final destination in order to be close to the interstate. (Tr. Vol. 2, p. 75, l. 11 – p. 79, l. 6). Kenny then instructed Felder and Singleton to ride with him, which Singleton initially refused to do because he was acting nervous. (Tr. Vol. 2, p. 79, ll. 9-14; Tr. Vol. 4, p. 32, l. 20 – p. 36, l. 6). After trying to reassure Singleton he was in no danger, Kenny, exasperated, left in his car alone giving up on the drug deal. (Tr. Vol. 2, p. 79, l. 21 – p. 80, l. 6).

Singleton and Felder then phoned Kenny in his car and informed him they had decided to go ahead with the transaction and ride with Kenny to meet the victim. (Tr. Vol. 2, pp. 79 - 80; Tr. Vol. 4, p. 36, l. 20 – p. 37, l. 5). Kenny turned his car around and returned to the location at which Singleton and Felder were parked. Singleton and Felder got in the car with Kenny, and left Felder's vehicle parked near the interstate. (Tr. Vol, 2, pp. 79–81).

Singleton, Felder, and Kenny then rode together to a house on Cambridge Avenue, 2364 Cambridge Ave., about two (2) blocks from where Singleton and Felder parked their car, and pulled up alongside an SUV containing the victim Sharrell Williams, which arrived at approximately the same time. (Tr. Vol. 2, pp. 78-79, 82-86, State's Ex. 2; Tr. Vol. 4, p. 37, l. 20 – p. 38, l, 1). The victim's girlfriend was driving the SUV, and after dropping the victim off, she drove down the street to her mother's house, just two (2) houses away. (Tr. Vol. 2, pp. 84-86; State's Ex. 2; Tr. Vol. 3, pp. 11-24). Singleton, Felder, and Kenny got out of Kenny's vehicle and followed the victim Williams into the house. (Tr. Vol. 2, pp. 83-87; State's Ex. 2; Tr. Vol. 3,

pp. 11-24; Vol. 4, p. 39, ll. 13-20).

Unknown to any of the four (4) men involved in the drug transaction, the FBI had this residence under video surveillance [unrelated to this murder]. A video camera captured the men getting out of their cars and entering the residence before the murder. (Tr. Vol. 2, pp. 81-86; 121-22; State's Ex. 2).

Once all four (4) men were inside the house, the victim got some marijuana out of the refrigerator and placed it on the counter. (Tr. Vol. 2, pp. 87-91; Tr. Vol. 4, p. 39, ll. 16-20). Kenny noticed that there was a pistol resting on the same counter in the kitchen. (Tr. Vol. 2, p. 92, l. 23 – p. 94, l. 8). The victim then began weighing the marijuana and bagged it for Singleton. (Tr. Vol. 2, pp. 87-91; Tr. Vol. 4, p. 40, ll. 5-9). Singleton sent Felder outside, allegedly to get his money to pay for the marijuana. (Tr. Vol. 2, p. 92, ll. 2-17). Felder was captured on the FBI surveillance video leaving the house. (Tr. Vol. 2, pp. 92, 94; State's Ex. 2). Kenny went to use the bathroom next to the kitchen. (Tr. Vol. 2, p. 94, ll. 22-25).

After Kenny returned from the bathroom, Kenny was standing in the kitchen area. Singleton and the victim were standing in the living room/den area, and Singleton was facing the victim. Felder had not returned with the money. Singleton had his hands behind his back. (Tr. Vol. 2, p. 96, ll. 20-23, p. 123, ll. 21-24).

At this point, Singleton stated: "give it up"—at which point Kenny and the victim laughed thinking it was a joke. (Tr. Vol. 2, p. 96, ll. 20-23). Singleton then pulled a gun [a .40 caliber semi-automatic pistol] out from behind his back and fired on the victim Williams. Williams was shot several times and collapsed on the floor. (Tr. Vol. 2, p. 96, l. 20 – p. 98, l. 15).

In reaction to the gunshots, Kenny dove on the kitchen floor behind the kitchen counter.

At gun point, Singleton ordered Kenny to give him his car keys. Kenny complied by tossing the keys up in the air to Singleton. Singleton then grabbed the quarter (1/4) pound of marijuana and the gun on the counter and fled out of the residence—firing again on Williams as he left with the pistol he retrieved from the counter. (Tr. Vol. 2, pp. 96-100).[2]

Singleton was captured on the FBI surveillance video leaving the residence and fleeing toward Kenny's parked car. Singleton and Felder [who had remained outside the apartment and never reentered] then fled the crime scene in Kenny's car using Kenny's car keys to start and operate the vehicle. Singleton and Felder abandoned Kenny's car where Singleton and Felder had left Felder's car earlier near the interstate. Singleton and Felder then fled the area in Felder's car. (Tr. Vol. 2, p. 99, ll. 18-21, pp. 119-20; State's Ex. 2; Tr. Vol. 4, p. 55, l. 7 – p. 56, l. 9).

The victim Sharell Williams died from one (1) of the gunshot wounds inflicted by Singleton. Williams bled to death at the scene. Kenny ran outside and called 911. Kenny was captured on the FBI surveillance video calling for assistance. The victim's girlfriend, who heard about the shooting, ran from her mother's house to the house where the victim was killed finding his body. (Tr. Vol. 3, pp. 117-33, p. 33; Tr. Vol. 2, pp. 99-103; State's Ex. 2; Tr. Vol. 3, pp. 1-24; Tr. Vol. 4, p. 101, ll. 6-13).

Several days later, at night, Singleton was arrested after a car chase, with police blue lights flashing, and an eventual foot chase, and the use of a police dog. Singleton was driving a stolen vehicle before he fled on foot, and during the foot chase, he discarded a bag of cocaine and marijuana. In the bag with the drugs were two (2) cell phones. At the time of Singleton's arrest, police did not recover these items because the officer chasing Singleton did not see him

[2] Kenny could not see which gun Singleton fired on the victim with as he left the house, he only heard Singleton fire another gunshot as he fled the scene. Ballistics later determined Singleton fired with the pistol off the counter as he fled the house.

discard the bag containing the items. (Tr. Vol. 3 pp. 153-69).

After his arrest, from the Charleston County Detention Center, Singleton phoned an associate and requested the associate or others recover the drugs and cell phones he had discarded during the foot chase.[3] Before the drugs and phones could be recovered by Singleton's associates, a neighbor, in whose yard the drugs and phones had been thrown by Singleton during the foot chase with police, discovered the items and contacted police. Police recovered the evidence. One (1) of these cell phones was directly linked to Singleton at trial, and Singleton's movements on the night of the murder were established with the use of cell phone tower information. The cell phone tower information established Singleton drove from Summerville to the Pizza Hut and then to the area of the house where the murder occurred. And, Singleton then fled the area after the murder occurred. (Tr. Vol. 3, pp. 95-112, 153-69, 173-78, 181-86, State's Ex. 62, 200-06; Vol. 4, pp. 81-82)).

After his arrest, Singleton was questioned by police. He denied knowing anything about the victim's murder and denied being present when Williams was murdered. (Tr. Vol. 4, pp. 64-66). He claimed he was at a friend's house at the time the victim was murdered. (Tr. Vol. 4, pp. 64-66). Singleton admitted at trial this was a lie. (Tr. Vol. 4, p. 66).

Police also recovered the .40 caliber pistol used in the murder from another individual. (Tr. Vol. 3, pp. 188-98). The weapon forensically matched two (2) fired shell casings found inside the crime scene. (Tr. Vol. 3, pp. 48-49, pp. 208-14, 216-21). Cell phone tower information also showed Singleton's cell phone "pinged" in Holly Hill, S.C., in close proximity to the residence of the individual who was arrested for possession of the .40 caliber pistol. (Tr. Vol. 3, pp. 188-98, 234-61). Singleton admitted at trial he gave the gun to a friend and asked him to

[3] These phone calls were recorded by the Detention Center and introduced at trial.

hold it. (Tr. Vol. 4, p. 84-85).

ARGUMENT I

Judge Harrington properly refused Singleton's requested jury charge.

The Issue

On appeal, Singleton argues Judge Harrington erred in refusing his requested charge that he did not have to wait until he was attacked and allow the assailant to "get the drop" on him. Singleton is wrong.

What Occurred Below

During the trial, Singleton no longer claimed alibi as his defense but self-defense. Singleton testified that he fired on Williams after Williams "rushed him." (Tr. Vol. 4, p. 52, l. 4 – p. 53, l. 1). Singleton testified that prior to Williams rushing him, Williams tried to give him less marijuana than what was bargained for, and as a result of Williams' miserliness the situation began to get heated. (Tr. Vol. 4, p. 45, ll. 3-4). Singleton testified that after he [Singleton] demanded his money back, Williams pulled out a gun and set it on the counter next to him. (Tr. Vol. 4, p. 48, ll. 11-20). Singleton claimed that he quickly grabbed the gun on the counter at which point he looked at Kenny who had a gun pointed at him. (Tr. Vol. 4, p. 49, ll. 16-17). Singleton testified that when he glanced back at Williams, he [Williams] rushed him [Singleton], and Singleton just reacted by pulling the trigger. (Tr. Vol. 4, p. 52, ll. 4-6). He did not admit to firing any other shots.

Based on these statements, Singleton requested the trial judge charge self-defense. Judge Harrington agreed and composed an appropriate self-defense charge for the jury. However, Singleton requested that the trial judge use the following specific language:

> In this case, Kadrin Singleton has offered evidence that he believed he was in imminent danger of death or of receiving serious bodily harm. If Kadrin

> Singleton's belief was reasonable, he does not have to wait until he is actually attacked or injured or until force is used by the aggressor before he exercises his right to use deadly force in self-defense. In other words, Kadrin Singleton does not have to wait until the assailant "**gets the drop on him**" in order to be entitled to use force in self-defense.

(Court's Ex. 1, Tr. Vol. 6 (Defendant's Requests to Charge)(emphasis added)). The trial judge refused [Tr. Vol. 4, p. 152, ll. 17-20] charging instead that:

> The defendant does not have to show that he was actually in danger . . . The defendant has the **right to act on appearances**, even though the defendant's belief may have been mistaken. It is for you to determine whether the defendant's fear of imminent danger of death or serious bodily injury was reasonable and would have been felt by an ordinary person in the same situation. Words accompanied by hostile acts may, depending on the circumstances, establish self-defense.

(Tr. Vol. 5, p. 152, ll. 2-13). Singleton now alleges Judge Harrington committed reversible error by not charging the specific "gets the drop on him" language. This contention is without merit. State v. Harris, 382 S.C. 107, 113, 674 S.E.2d 532, 535 (Ct. App. 2009).

Judge Harrington's Charge Was Sufficient

When read as a whole, Judge Harrington's charge to the jury was sufficient as given as it adequately covered the issues raised by the evidence. (Tr. Vol. 5, pp. 8-21).

"The law to be charged to the jury must be determined by the evidence presented at trial." State v. Harris, 382 S.C. 107, 113, 674 S.E.2d 532, 535 (Ct. App. 2009); *citing* State v. Patterson, 367 S.C. 219, 231-32, 625 S.E.2d 239, 245-46 (Ct. App. 2006). Generally, a trial court is required to charge only the current and correct law of South Carolina. Id; State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006); Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004); State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005); State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004).

A jury charge is correct if it contains the correct definition of the law when read as a whole. Harris, at 113, 674 S.E.2d at 535; Rayfield, 369 S.C. at 1119, 631 S.E.2d at 251; Sheppard, at 665, 594 S.E.2d at 473; State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003); *see also* State v. Rye, 375 S.C. 119, 651 S.E.2d 321 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."); *citing* State v. Burkhart, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002).

A trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. White, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004); State v. Burris, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Harrison, 343 S.C. 165, 539 S.E.2d 71, 74 (2000). On review of a jury charge, an appellate court considers the charge as a whole in view of the evidence and issues presented at trial. Harris, *supra*; Welch v. Epstein, 342 S.C. 279, 311, 536 S.E.2d 408, 425 (Ct. App. 2000). "We have often held that the charge of the judge must be considered in its entirety." State v. Chaffee, 285 S.C. 21, 328 S.E.2d 464 (1984), *citing* State v. Vaughn, 268 S.C. 119, 232 S.E.2d 328 (1977); *see also* State v. Marin, 404 S.C. 615, 620, 745 S.E.2d 148, 151 (Ct. App. 2013) ("[A]n appellate court must consider the charge as a whole in evaluating whether the trial court charged the correct law applicable to the case.") *citing* State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011); Barber v. State, 393 S.C. 232, 236, 712 S.E.2d 436, 438 (2011), *affirmed as modified* State v. Marin, Shearhouse Advance Sheets, Opinion No. 27613 (Filed March 23, 2016).

A charge which is substantially correct and covers the law does not require reversal. State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996); State v. Hoffman, 312 S.C. 386, 440 S.E.2d 869 (1994). To warrant reversal, a trial judge's refusal to give a requested jury charge must be

both erroneous and prejudicial to the defendant. Harris, *supra*; State v. Hughey, 339 S.C. 439, 529 S.E.2d 721 (2000); Adkins, *supra.*

In charging self-defense, the trial judge must consider the facts and circumstances of the case and fashion an appropriate charge. Harris, *supra*; *citing* State v. Starnes, 340 S.C. 312, 531 S.E.2d 907, 913 (2000); *see also* State v. Fuller, 297 S.C. 440, 377 S.E.2d 328, 330 (1989) (holding common-law instruction on self-defense in State v. Davis, 282 S.C. 45, 317 S.E.2d 452 (1984) was not intended to be exclusive charge for self-defense). However, **the substance of the law** is what must be charged, **not any particular verbiage.** Brandt, at 549, 713 S.E.2d at 603; State v. Mattison, 388 S.C. 469, 479, 697 S.E.2d 578, 583 (2010); State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994); Davis, *supra;* Marin, at 620, 745 S.E.2d at 151; Harris, *supra*; Burkhart, *supra.*

The failure to provide specific jury instructions is not reversible error if the general instructions are sufficiently broad to enable the jury to understand the law and the issues involved. Hughey, *supra*; *citing* Cohens v. Atkins, 333 S.C. 345, 509 S.E.2d 286, 289 (Ct. App. 1998). The failure to provide specific jury instructions is not error when the given instructions use the proper test for determining the issues before the jury. Harris, *supra*; Hughey, *supra*; *citing* Miller v. City of West Columbia, 322 S.C. 224, 471 S.E.2d 683 (1996); *see also* State v. Barwick, 280 S.C. 45, 310 S.E.2d 428 (1983). A jury charge which is substantially correct and covers the law does not require reversal. Harris, *supra*; State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (2002). "Therefore, there is no error of law in refusing to give a specific request to charge where . . . the trial court used language different from that requested, but considering the charge as a whole, the charge as given stated the requested principle of law correctly." Marin, at 620, 745 S.E.2d at 151.

The resolution of this appellate issue is controlled by **State v. Harris, 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009).** In Harris, this Court held the trial court's refusal to use the language "'[gets] the drop on him' did not render the charge improper." Harris, at 115, 674 S.E.2d at 536. The defendant in Harris claimed that as the victim was coming down the stairs of his ex-girlfriend's house to talk to the defendant, he saw something "'flicker from the back where [victim] had his hand,' and [victim] lunged at him as [victim] made his way down the stairs." Id, at 112, 674 S.E.2d at 535. At trial, the defendant claimed self-defense and requested that the trial judge charge:

> If a defendant is in imminent danger or if defendant's belief that he is in imminent danger of death or receiving bodily harm is reasonable, he need not wait until actual attack or injury or until force is used by the aggressor before exercising the right to use deadly force in self-defense. In other words, defendant need not wait until the assailant "**gets the drop on him**" in order to be entitled to use force in self-defense.

Id, at 114, 674 S.E.2d at 536 (emphasis added). The trial judge refused to charge the "gets the drop on him" language. Id. Instead, the trial court charged:

> You may consider the deceased's conduct[,] actions and general demeanor immediately before the incident as bearing on the deceased's temper and state of mind at the time of the fatal encounter[,] and **the defendant does not have to show that he was actually in danger.** It is enough if the defendant believed he was in imminent danger and a reasonably prudent person of ordinary firmness and courage would have had the same belief. **The defendant has the right to act on appearances even though the defendant's beliefs may have been mistaken.**

Id, at 115, 674 S.E.2d at 536 (emphasis in original).

On appeal, Harris argued the trial judge's refusal to charge "gets the drop on him" constituted reversible error. This Court noted the first use of this language in State v. Rash, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936) "('[The defendant] doesn't have to wait until his assailant gets the drop on him, he has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking

steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him.')", and its later interpretation in State v. Nichols, 325 S.C. 111, 117-18, 481 S.E.2d 118, 121-22 (1997) and State v. Starnes, 340 S.C. 340, 322, 531 S.E.2d 907, 913 (2000)—finding that it means "a defendant does not have to wait until actually fired upon to use force to defend his life." Id, at 114, 674 S.E.2d at 536.

This Court, in affirming Harris' conviction, held "[t]he trial court's instructions made it clear that Harris did not have to wait until he was actually under attack in order to employ force to defend his life." Id, at 115, 674 S.E.2d at 536. This Court made special note the trial court informed the jury that Harris had a right to *act on appearances*, even if those appearances were later found to be incorrect. Id. Essentially, this Court found the trial court's charge adequately covered the essence of the appellant's requested "get the drop on him" charge—noting that it is "'[t]he substance of the law [that] must be charged to the jury, not particular verbiage.'" Id; Burkhart, at 261, 565 S.E.2d at 303; *see also*, Brandt, at 549, 713 S.E.2d at 603; Mattison, at 479, 697 S.E.2d at 583; Smith, *supra*; Davis, *supra*; Marin, at 620, 745 S.E.2d at 151.

The facts of Harris are completely analogous to the present case. Like the appellant in Harris, Singleton here argues it was error for the trial court to refuse his requested "gets the drop on him" language. Also, like the trial judge in Harris, the trial judge here [Judge Harrington] properly instructed the jury on Singleton's right to act on appearances (**Compare**: the Harris instruction—"The defendant does not have to show that he was actually in danger . . . The defendant has the right to act on appearances even though the defendant's beliefs may have been mistaken," and the present instruction—"The defendant does not have to show that he was actually in danger . . . The defendant has the right to act on appearances, even though the defendant's belief may have been mistaken."). Harris, at 115, 674 S.E.2d at 536; (Tr. Vol. 5, p.

18, ll. 2–8).

Like the instruction in Harris, Judge Harrington's charge made it clear that Singleton "did not have to wait until he was actually under attack in order to employ force to defend his life." Harris, at 115, 674 S.E.2d at 536. (Tr. Vol. 5, pp. 16-19). Also alike is the fact that both trial judges "informed the jury that [the appellant] had a right to act on appearances." Id. (Tr. Vol. 5, pp. 16-19). Therefore, just as in Harris, "[t]he simple fact that the trial court refused to use the '[gets] the drop on him' language does not render the charge improper." Id; *see also* Marin, at 625, 745 S.E.2d at 153 (affirming trial court's charge "because the trial court here covered in its charge the substantive principle of law [Appellant] requested."). (Tr. Vol. 5, pp. 8-21). Singleton fails to mention State v. Harris anywhere in his brief.

An ancillary point, which further justifies Judge Harrington's refusal to charge "gets the drop on him," is that the whole notion that Singleton had the right to defend himself before actually being attacked runs counter to Singleton's stated theory of the case. As counsel for Singleton makes clear in his brief, with confirmation from the trial transcript, and according to the sworn testimony of Singleton himself, Singleton *did not* fire upon the victim *before* being attacked—rather, Singleton testified that victim "rushed [him]" before he "just reacted and pulled the trigger." (IBOA, p. 6; Tr. Vol. 4, p. 52, l. 4 – p. 53, l. 1). This testimony completely undermines the need for a self-defense charge containing the language "gets the drop on him" since Singleton himself argues he was actually under attack at the time he fired. With this context in mind, the addition by Judge Harrington of the "gets the drop on him" language to her self-defense charge would have been superfluous at best (considering the fact that she sufficiently charged the jury with Singleton's "right to act on appearances") and confusing and contradictory to Singleton's *stated* defense at worst.

Therefore, based on the great weight of the relevant case law, as well as Singleton's own assertions, Judge Harrington's ruling to exclude Singleton's requested "gets the drop on him" language in her self-defense charge to the jury was clearly not erroneous and Singleton's conviction should be affirmed. Harris; Marin.

ARGUMENT II

Judge Harrington properly granted the State's Batson motion, and Singleton cannot show prejudice.

The Issue

On appeal, Singleton argues Judge Harrington erred in granting the State's motion pursuant to Batson v. Kentucky, 476 U.S. 79 (1986), because he *alleges* he gave race-neutral explanations for his strikes and the State failed to prove pretext. Singleton is wrong.

What Occurred Below

During the first (1st) jury strike, Singleton proceeded to strike thirteen (13) white venire members—constituting all of Singleton's strikes. (Tr. Vol. 1, p. 66, l. 1 – p. 85, l. 25). The State made a Batson challenge to Singleton's strikes. (Tr. Vol. 1, p. 87, l. 1 – p. 101, l. 5). The State argued based on the totality of the strikes, all made against white jurors, a *prima facie* showing of racial discrimination had been shown. (Tr. Vol. 1, p. 87, ll. 6-21). Judge Harrington agreed and instructed defense counsel to go down the list of its strikes, stating the reason for each of them. (Tr. Vol. 1, p. 87, l. 25 – p. 88, l. 5).

Defense counsel explained that it struck:

- Juror number 193, white male, for military service in the Air Force Reserve as well for requesting to be excused
- Juror number 210, white male, for being a retired Army Colonel
- Juror number 213, white female, for requesting to be excused and for acting "cavalier"
- Juror number 344, white female, for not making eye contact with the defense and seeming disinterested

- Juror number 21, white female, for having ties to a victim of a robbery
- Juror number 312, white male, for being a real estate appraiser who wouldn't be able to relate to the "poverty of this case"

(Tr. Vol. 1, p. 88, l. 7 – p. 90, l. 1). Judge Harrington then interrupted to ask defense counsel why it struck those with military ties. (Tr. Vol. 1, p. 90, ll. 2-7). Defense counsel responded that it was because of their association with State institutions. (Tr. Vol. 1, p. 90, ll. 8-11). Defense counsel then stated that he struck Juror number 312 because his level of affluence would affect his ability to connect with the facts of this case. (Tr. Vol. 1, p. 90, ll. 22-24). Defense counsel then explained that it struck:

- Juror number 369, white female, for having victim ties and for her husband being an attorney[4]
- *Juror number 261, white female, for having prior jury service on a murder case*
- *Juror number 127, white female, for having some type of jury service, criminal or civil, but not specifying which*
- Juror number 97, white female, because her uncle was murdered
- *Juror number 191, white male, for jury service in an armed robbery case*
- *Juror number 353, white female, for working for the Department of State*
- Juror number 188, white female, for making Singleton feel uncomfortable

(Tr. Vol. 1, p. 90, l. 25 – p. 93, l. 10).

The State then argued that Jurors number 261, 127, and 191, were struck ostensibly for prior jury service, while Jurors number 333 and 321, who also had prior jury service, were allowed to sit. (Tr. Vol. 1, p. 93, ll. 20–23). Defense counsel argued that one (1) of these jurors, Juror number 333, had done jury service in a small claims court unconnected with a criminal matter, and that's why the defense had allowed her to sit. (Tr. Vol. 1, p. 93, l. 24 – p. 94, l. 7). The State responded that Juror number 321, a black female, was allowed to sit even though she had prior jury service for a criminal matter, an assault case, and furthermore, was employed with

[4] Part of this reason is not true. Juror 369 did not indicate she had any victim ties. (Tr. Vol. 1, pp. 62-65).

the Department of the Navy—debunking both the defense's prior jury service purported reason and ties to State institutions through military or government contacts purported reason. (Tr. Vol. 1, p. 94, ll. 17-25).

The State further argued that an alternate sat, Juror number 154, an African-American, worked for the Department of Social Services, a State institution, showing further discriminatory striking of similarly-situated white jurors. (Tr. Vol. 1, p. 95, ll. 5-10). Based on this evidence of discriminatory intent and pretext in Singleton's striking of similarly-situated jurors, the State requested that the court re-draw the jury. (Tr. Vol. 1, p. 95, ll. 12-19).

Defense counsel then argued that it had provided race-neutral reasons for making its strikes. (Tr. Vol. 1, p. 95, l. 21 – p. 96, l. 3). Judge Harrington then expressed concern over two (2) black jurors being sat by the defense while white jurors with "basically the same position" were struck. (Tr. Vol. 1, p. 96, ll. 4-20). Judge Harrington ruled the State had met its burden, and she therefore, was granting the Batson motion. (Tr. Vol. 1, p. 98, ll. 1-2).

After an in chambers conference, Judge Harrington then allowed defense counsel to put additional arguments on the record. Defense counsel used this opportunity to argue that Juror number 321's prior jury service was distinguishable from the jury service of the struck white jurors since 321's service had been on an assault case a "very long time ago." (Tr. Vol. 1, p. 98, ll. 7-12). Part of this response was simply not true. This Juror did not state her prior jury service had been a "very long time ago." In fact, she did not state when her prior jury service was. **(Tr. Vol. 1, p. 53, ll. 11-21).** Defense counsel also argued that Juror number 321's employment with the military was civilian in nature, which distinguished it from the greater connection to the military of the struck retired Colonel. (Tr. Vol. 1, p. 98, ll. 15-18). Also, according to defense counsel, sat Juror number 108's employment with the Department of Social Services as a social

worker meant that she would be well-connected to low income families. The State then argued that Juror number 328 **was seated** though he had jury service **of some undisclosed kind** while the defense purportedly struck another juror because she had jury service of an unarticulated or un-disclosed kind, which the Solicitor argued was further evidence of pretext. (Tr. Vol. 1, p. 99, l. 21 – p. 100, l. 4).

Judge Harrington ruled that based on the totality of the circumstances she found the defense's striking was pretextual. (Tr. Vol. 1, p. 100, l. 24 – p. 101, l. 5). Judge Harrington ordered the jury re-struck. According to the record, Judge Harrington did not order that defense counsel could not re-strike any of the disputed jurors. On re-strike, Singleton struck several jurors he struck during the first (1st) jury strike, and seated two (2) jurors he initially struck in the first (1st) jury strike. Singleton had several strikes remaining when the second (2nd) jury selection was completed.

Upon re-strike, the following jurors were seated on the jury which tried Singleton and found him guilty:

1. James Whitlaw #386;
2. Phillip Dizon, #106;
3. Ralph Piening #289;
4. Heather Hord, #188;
5. Nicholas Latto, #221;
6. Terry Renz, #300;
7. *Ann Thompson, #353*;
8. Kevin Merit, #248;
9. Kendra Drayton, #108;

10. Kevin Flyn, #131;

11. Deane Vane, #368;

12. Mary K. Skinner, #333;

Alternates:

1. Mark Serniak, #323;

2. Ryan McAvoy, #109.

The only disputed juror who was seated on the 2nd jury was Juror #353, Ann Thompson. Juror Thompson was allegedly struck by Singleton because she worked for a State or government agency, the Department of State, while Singleton seated a black juror who worked for a State agency, the Department of Social Services, and Singleton seated another black juror who was a civilian employee for a federal government agency, the Department of Navy. Juror #188, Heather Hord, was seated on the 2nd jury, but she was not a disputed juror and appellant was not prevented from re-striking her.[5] Singleton now claims Judge Harrington committed reversible error by granting the Batson motion. This contention is without merit.

Standard of Review

"[O]n review, the court is limited to determining whether the trial court abused its discretion." State v. Stewart, 413 S.C. 308, 313, 775 S.E.2d 416, 418-19 (Ct. App. 2015); *citing* State v. Edwards, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011); *citing* Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). The "Court

[5] During the Batson hearing, Judge Harrington specifically stated on the record that she found Singleton's strike of Heather Hord and other jurors *based on demeanor to be credible and was not pretextual.* **(Tr. Vol. 1, p. 100, ll. 11-18).**

does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." Stewart at 313, 775 S.E.2d at 419; *citing* Edwards, at 508, 682 S.E.2d at 822.

"The trial judge's findings of purposeful discrimination rest largely on his [or her] evaluation of demeanor and credibility." Edwards, at 509, 682 S.E.2d at 823; *citing* Sumpter v. State, 312 S.C. 221, 224, 439 S.E.2d 842, 844 (1994). Because the trial judge's findings regarding purposeful discrimination rest largely upon his or her evaluation of credibility, those findings will be given great deference by the appellate court. State v. Tucker, 334 S.C. 1, 512 S.E.2d 99 (1998); Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842. An "evaluation of an attorney's mind" based on demeanor and credibility lies "peculiarly within a trial judge's province." Hernandez v. New York, 500 U.S. 352 (1991); State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007). "The trial court's findings regarding purposeful discrimination are given great deference and will not be set aside by this court unless clearly erroneous." State v. Garris, 394 S.C. 336, 714 S.E.2d 888 (Ct. App. 2011), *citing* Evins, 373 S.C. at 416, 645 S.E.2d at 909-10; Toal, C.J. et. al, *Appellate Practice in South Carolina 2nd Ed.*, p. 201. *See also* State v. Edwards, 384 S.C. 504, 509, 682 S.E.2d 820, 822 (2009)(same). "It is within the discretion of the trial judge to determine purposeful discrimination based on the '**totality of relevant facts**[,]" including the credibility of the attorney. State v. Garris, 394 S.C. 336, 353, 714 S.E.2d 888, 897 (Ct. App. 2011): *citing* State v. Wilder, 306 S.C. 535, 539, 413 S.E.2d 323, 325 (1991) (emphasis added); *see also*, Edwards, at 509, 682 S.E.2d at 823 (stating "[w]hether a Batson violation has occurred must be determined by examining the **totality of the facts** and circumstances in the record.") (emphasis added). Furthermore, a strike must be examined in light of the circumstances under which it is exercised, including an examination of the

explanations offered for other strikes. Id.; State v. Oglesby, 298 S.C.279, 280 379 S.E.2d 891, 892 (1989). "Therefore, those findings are given great deference and will not be set aside [on appeal] unless clearly erroneous." Evins, *supra*; State v. Haigler, 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999); *citing*, State v. Ford, 334 S.C. 59, 512 S.E.2d 500 (1999); State v. Dyar, 317 S.C. 77, 452 S.E.2d 603 (1994); *see also*, State v. Inman, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); State v. Guess, 318 S.C. 269, 272-73, 457 S.E.2d 6, 8 (Ct. App. 1995)(Typically, the decisive question becomes whether counsel's neutral explanation for a peremptory challenge should be believed. There is seldom much evidence in the record bearing on that issue, and the trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous.), *citations omitted.*

The Law

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a [juror] on the basis of race or gender." McCrea v. Gheraibeh, 380 S.C. 183, 186, 669 S.E.2d 333, 334 (2008) (*citing* State v. Shuler, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001); *see* Batson v. Kentucky, 476 U.S. 79 (1986). A criminal defendant may not engage in racial discrimination in exercising peremptory strikes. Georgia v. McCollum, 505 U.S. 42, 59 (1992). The prohibition against engaging in purposeful discrimination on the grounds of race extends to an African-American defendant who engages in purposeful discrimination by striking white jurors. State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Govan, 312 S.C. 71, 439 S.E.2d 263 (1993).

The procedure for finding whether jurors have been discriminatorily struck based on raise or gender is as follows:

> **First**, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the **second** step in the process, which requires the proponent of the challenge to provide a race 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 opponent of the challenge has proved purposeful discrimination.

Stewart, at 314, 775 S.E.2d at 419; *citing* State v. Giles, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014).

A legally sufficient explanation for the strike—tendered by the strike's proponent, pursuant to the second step of the Batson test—is one that need not be "persuasive, or even plausible," but that, nevertheless, "must be clear and reasonably specific." Giles, at 21-22, 754 S.E.2d at 265.

If the trial judge finds the proponent of the strike has made a threshold showing of non-discriminatory reasoning for the strike, the burden is then on the opponent of the strike to show that the race/gender-neutral reason given in step two was mere pretext—"generally established by showing the party did not strike a similarly-situated member of another race or gender." Stewart, at 314, 775 S.E.2d at 419; *citing* Haigler, at 629, 515 S.E.2d at 91.

The two (2) methods of attacking a pretextual strike are (1) to establish the alleged reason or criteria for the exercise of any peremptory strike was not consistently applied to every juror; and (2) the explanation is so implausible or fantastic that it lacks any credibility. Evins, *supra*; Adams, *supra*. *See* Haigler, 334 S.C. at 629, 515 S.E.2d at 91 ("Pretext generally will be established by showing that similarly situated members of another race were seated on the jury). Under some circumstances, the race-neutral explanation given by the proponent may be so fundamentally implausible the judge may determine, at the third step of the analysis, that the explanation was mere pretext even without a showing of disparate treatment"), *quoted in* State v.

Williams, 379 S.C. 399, 665 S.E.2d 228, n. 2 (Ct. App. 2008). Although a party does not have a duty to state whether the same standards are applied to jurors that are seated, as are to jurors that are excused, a party must be prepared to show that the reason or criteria for the exercise of any peremptory strike was consistently applied to every juror, and was not merely pretextual. Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842 (1994); State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990); Guess, *supra*.

Whether a party has engaged in any purposeful discrimination will largely depend on the trial judge's evaluation of the credibility of the party's explanation. In the typical peremptory challenge inquiry, the decisive question will be whether counsel's neutral explanation for a peremptory challenge should be accepted by the trial judge as being non-discriminatory. There will seldom be much evidence bearing on that issue, and the best evidence will often be the demeanor of the attorney who exercises the challenge. Shuler, *supra*. As with the state of mind of a juror, evaluation of an attorney's state of mind based on demeanor and credibility lies "peculiarly within a trial judge's province." Hernandez; Evins; Shuler; State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (2006); Guess. Because the trial judge's findings regarding purposeful discrimination rest largely upon his evaluation of credibility, those findings will be given great deference by the appellate court. Tucker, *supra*; State v. Casey, 325 S.C. 447, 481 S.E.2d 169 (Ct. App. 1997). It is within the discretion of the trial judge to determine purposeful discrimination based on the totality of relevant facts, including the credibility of the party making the strike. Garris, *supra*; Wilder, *supra*.

The failure of a party to consistently apply a proffered neutral reason for striking jurors, infers an invidious discriminatory purpose. Oglesby, *supra*. Whether or not jurors are struck for reasons similar to those who are seated, is left to the determination of the trial judge. State v.

McCray, 332 S.C. 536, 506 S.E.2d 301 (1998).

In Oglesby, it was held to be error for the prosecutor to strike 3 black female jurors for the reason they were patients of a doctor who was a witness in the case, when a white female juror was seated who also was a patient of the same doctor. Similarly, in State v. Grate, 310 S.C. 240, 423 S.E.2d 119 (1992), a new trial was granted where the prosecutor struck 2 black male jurors because of their ages (22 and 28), but seated a 21 year old white juror. *See* Miller-El v. Dretke, 545 U.S. 231 (2005)(if prosecutor's proffered reason for striking black panelists applies just as well to an otherwise-similar non-black panelist who is permitted to serve, such evidence tends to prove purposeful discrimination which is to be considered at 3rd step); Snyder (State did not strike similarly situated jurors for same reason).

The Constitution forbids striking even a single prospective juror for a discriminatory purpose. Snyder v. Louisiana, 552 U.S. 472, (2008); United States v. Lane, 866 F.2d 103, 105 (4th Cir. 1989). If the circuit court finds a single juror has been struck in violation of Batson, our appellate Courts have mandated that the circuit court quash the entire selected jury and begin the jury selection process *de novo*. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999); State v. Heyward, 357 S.C. 577, 594 S.E.2d 168 (Ct. App. 2004).

Analysis

Singleton's "totality of the circumstances" argument in his brief overlooks the proper analysis done by Judge Harrington as well as the strength of the pretextual evidence presented by the State. In fact, because the trial judge stated that she was finding certain strikes were pretextual "under the totality of the circumstances" does not render her ruling inappropriate but entirely proper. *See* Ford, at 65, 512 S.E.2d at 504 ("Whether a Batson violation occurred must be determined by examining the **totality of the facts and circumstances** in the record

surrounding the strike."); *citing* State v. Green, 306 S.C. 94, 409 S.E.2d 785 (1991) (emphasis added); Garris, at 353, 714 S.E.2d at 897; *citing* Wilder, at 539, 413 S.E.2d at 325 ("'[i]t is within the discretion of the trial judge to determine purposeful discrimination based on the '**totality of relevant facts.**'")(emphasis added); *see also*, State v. Rayfield, 357 S.C. 497, 502, 593 S.E.2d 486, 489 (Ct. App. 2004) ("Whether a Batson violation has occurred must be determined by examining the **totality of the circumstances.**") (emphasis added); State v. Palmer, 415 S.C. 502, 783 S.E.2d 823 *5 (Ct. App. 2016) ("Whether a Batson violation has occurred must be determined by examining the **totality of the facts and circumstances** in the record.") (emphasis added) (internal citation omitted).

Contrary to Singleton's contention that Judge Harrington relied entirely on some superficial assessment of the "totality of the circumstances" by *allegedly* looking only at the totality of his strikes, Judge Harrington conducted a full and detailed hearing on the matter, which included evidence produced by the State sufficient to rebut Singleton's alleged "race-neutral" reasons. Moreover, Singleton's reliance on Ford to bolster his contention is equally unfounded; the two (2) cases are not analogous. Unlike in Ford, where the State offered no evidence of similarly-situated jurors of another race who were seated rather than struck, the State here provided several examples of similarly-situated black jurors who were seated while their white counterparts were struck. Ford, at 65-66, 512 S.E.2d at 504; *see* Palmer, at *5 (holding: "the State demonstrated the explanations were pretextual by showing Palmer did not strike similarly-situated members of another race."). Furthermore, unlike in Ford, here Singleton struck *only* white venire members [all thirteen (13) of his strikes]. Id.

After Singleton gave purportedly or alleged race-neutral reasons for striking thirteen (13) white veneer members—which constituted all of the defense' strikes—the State responded by

providing evidence that several white jurors, numbers 261, 127, and 191, were all struck for prior jury service, while two (2) jurors, numbers 333 and 321 were allowed to sit. As regards Juror number 333, Singleton countered that she was seated because her jury service had been in small claims court rather than criminal court. However, the State responded that Juror number 321, a black female, was allowed to sit even though she had served on a jury for a criminal case. *See* Miller-El v. Dretke, 545 U.S. 231 (2005)(if proffered reason for striking black panelists applies just as well to an otherwise-similar non-black panelist who is permitted to serve, such evidence tends to prove purposeful discrimination which is to be considered at the 3rd step); Snyder (party did not strike similarly situated jurors for the same reason).

In his brief, Singleton argues that Juror number 321 was not similarly-situated in relation to Juror numbers 261, 127, and 191 because the assault case *was remote* and *not as serious* as the present case. This explanation is not credible. Singleton's claim that the case *was remote* is patently false. Juror 321 never stated her prior jury service was a long time ago or remote. She did not say when it occurred. Further, Singleton's claim the case *was not as serious* is not credible as the prior jury service could have been in a case of assault and battery with intent to kill (ABWIK), assault and battery of a high and aggravated nature (ABHAN) or even criminal sexual assault, Juror 321 did not specify. And, Singleton did not ask for clarification. What is clear is this Juror previously served as a juror in a criminal case.

Singleton's extraordinarily thin parsing of criminal trial jury membership was not persuasive or credible to Judge Harrington, is not supported by the record, or the totality of the circumstances. The key here is whether Judge Harrington's determination of racial bias in jury selection—is "supported by *any* evidence." Stewart at 313, 775 S.E.2d at 419; *citing* Edwards, at 508, 682 S.E.2d at 822 (emphasis added). It is. State v. McCray, 332 S.C. 536, 506 S.E.2d 301

(1998)(whether or not jurors are struck for reasons similar to those who are seated, is left to the determination of the trial court).

The evidence presented in the record indicates Singleton struck Juror numbers 261, 127, and 191, all white, while seating, for all intents and purposes, similarly-situated Juror number 321, who was black. This evidence is bolstered by the fact that Judge Harrington was in the position to best evaluate the "demeanor and credibility" of defense counsel **and** the African-American juror *did not state her jury service was remote or a long time ago*. Edwards, at 509, 682 S.E.2d at 823; *citing* Sumpter, at 224, 439 S.E.2d at 844; *see also* Hernandez, at 365 ("[E]valuation of the [attorney's] mind lies peculiarly within a trial judge's province."). Furthermore, given that Judge Harrington's determination of purposeful discrimination is granted "great deference and will be set aside on appeal only if clearly erroneous," Judge Harrington's determination here passes muster since the record shows she evaluated the credibility of defense counsel based on the evidence in the record—evidence which demonstrated counsel struck similarly-situated jurors based on race. State v. Haigler, 334 S.C. 623, 630, 515 S.E.2d 88, 91 (1999); *citing*, Ford, *supra*; Dyar, *supra*; *see also*, Inman, at 25, 760 S.E.2d at 108.

Furthermore, as the State pointed out, counsel's explanation for striking Juror number 127, specifically because she had prior jury service, criminal or civil, **but did not specify which**, is clearly not credible based on the record. Juror number 328 stated under oath he had previous jury service, **but did not specify whether it was criminal or civil**, and he was seated by appellant Singleton while Singleton had two (2) strikes remaining with which to strike this juror, Juror 328. (Tr. Vol. 1, p. 58, ll. 8-15, p. 79, ll. 11-19). *See* Snyder (Court can consider other strikes in determining whether current strike is discriminatory); Haigler, 334 S.C. at 629, 515

S.E.2d at 91 (same), *and* McCrea, *supra* (Court considered in part vagueness of reason for the strike in finding inherent discriminatory intent). In fact, he was seated immediately before Juror number 127 was seated. It is clear, Singleton's explanation for striking Juror number 127 was not credible and was pretext, i.e. a made up reason after the State forced him to explain his striking of this Juror. Sumpter v. State, 312 S.C. 221, 439 S.E.2d 842 (1994)(Although a party does not have a duty to state whether the same standards are applied to jurors that are seated, as are to jurors that are excused, a party must be prepared to show that the reason or criteria for the exercise of any peremptory strike was consistently applied to every juror, and was not merely pretextual.); State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990); Guess, *supra*. Judge Harrington did not abuse her discretion in finding counsel's purported reasons for his strikes to be not credible.

The State further persuasively pointed out that un-struck Juror number 321 [an African-American female] was employed with the Department of the Navy, which undermined another of defense counsel's purportedly race-neutral reasons for striking white veneer members—prior military service justified striking white jurors because they would have connections to State institutions or agencies. Juror number 321 would have had just as much of a connection to State institutions or agencies as the two (2) white jurors who were struck.

Moreover, the State noted that an additional black veneer member, Juror number 154, was seated although she worked for a State agency, the Department of Social Services, undermining yet another of defense counsel's race-neutral explanations for striking white veneer members—that several of the struck veneer members worked for a government agency or had ties to State institutions. Singleton argues that the struck white jurors were not similarly-situated to the seated black jurors because the white jurors had actual military experience, whereas Juror

number 321 was a civilian employee of the Navy and Juror number 154 was a social worker with the Department of Social Services. However, Singleton admitted Juror 154 was involved in child abuse cases on behalf of the State. Once again, this thin post-hoc parsing of what are essentially similarly-situated jurors was not persuasive or credible to the trial judge—and it is certainly not an abuse of discretion that Judge Harrington ruled it was not persuasive or credible.

Regardless of the above, the fact remains, Singleton struck a white female juror, [Juror #353 Ann Thompson], because she worked for a federal or a state government agency or institution, the Department of State, while he seated a black female juror [Juror # 321] who was as a civilian employee for the Department of Navy [Space and Naval Warfare Systems Command], a federal government agency or institution,[6] and seated a black female juror, Juror 154, who worked for a state government agency or institution [the Department of Social Services], and he admitted this juror was involved in child abuse cases on behalf of the State. This is clear proof of pretext in the striking of Juror #353, Ann Thompson. Oglesby, *supra* (The failure of a party to consistently apply a proffered neutral reason for striking jurors, infers an invidious discriminatory purpose.); Grate, *supra* (a new trial was granted where attorney struck 2 black male jurors because of their ages (22 and 28), but seated a 21 year old white juror. *See* Miller-El v. Dretke, *supra* (if proffered reason for striking black panelists applies just as well to an otherwise-similar non-black panelist who is permitted to serve, such evidence tends to prove purposeful discrimination which is to be considered at 3rd step); Snyder (State did not strike similarly situated jurors for same reason). *See also* Sumpter, *supra*; Johnson, *supra*; Guess, *supra*.

As already noted, the trial judge is in the best position to judge credibility regarding

[6] Further, Juror 321 [a black female seated] had ties to the military, another reason given for striking white male jurors.

purposeful racial discrimination and her determination should not be disturbed unless found to have been made without any evidentiary support whatsoever. *See* Stewart, *supra, et al.* This is simply not the case here; where there was evidence that Juror number 321 and 154 were seated while a fundamentally similarly-situated white juror was not, Juror 353. The mere fact that the trial judge did not find counsel's purportedly race-neutral reason persuasive does not constitute error where the trial judge was best in position to evaluate the credibility of that reason in person, and her determination is fully supported by evidence in the record.

In summation, Judge Harrington's ruling that Singleton struck similarly-situated white jurors based on race was not erroneous based on the totality of the circumstances, and Singleton's verdict and sentence must be affirmed.

Lack of Prejudice

The right to serve on a jury and not be discriminated against because of race or gender belongs to the potential juror, not a litigant. Evins, 373 S.C. at 416, 645 S.E.2d at 910. This is because a defendant has no right to a trial by a particular jury. Evins, *supra*, *citing* Adams, 322 S.C. 126, 470 S.E.2d at 373.

As a result, in order to establish prejudice where the Court has granted a Batson motion and ordered re-striking of a jury, appellant must show he was improperly prohibited from re-striking a juror or jurors that he properly struck for a race or gender neutral reason when the 1st jury was struck. *See* Adams, 322 S.C. at 126, 470 S.E.2d at 373 (even if the trial court commits error in granting the State's Batson motion, the error is reversible only if the 2nd jury is comprised of jurors whom the trial court *erroneously* prohibited the defendant from re-striking); State v. Williams, 379 S.C. 399, 665 S.E.2d 228 (Ct. App. 2008); Rayfield, *supra* (a defendant is not entitled to a particular jury); Cochran, 369 S.C. at 324, 631 S.E.2d 294 ("Our case law

dictates that even if the trial court commits error in granting the State's Batson motion, the error is reversible only if the second jury is comprised of jurors whom the trial court erroneously prohibited the defendant from re-striking based on Batson");[7] Heyward, *supra* (trial court's seating of a juror who has once been improperly struck by a party in violation of Batson is not, an impairment or denial of that party's right to peremptory challenges). Singleton cannot show prejudice for several reasons.

First, as shown above, Singleton was not improperly prohibited from re-striking a juror he properly struck for a race neutral reason. The record shows, as Judge Harrington correctly found, Singleton did not strike the disputed jurors for race neutral reasons. Adams; Williams; Rayfield, Cochran, Heyward.

Second, Singleton cannot show prejudice and his conviction and sentence must be affirmed because there is no evidence in the record Singleton was prohibited from re-striking any specific juror in the 2nd jury strike. During the first (1st) jury strike, Singleton struck the following jurors: #193, #210, #213, #344, #21, #312, #369, #261, #127, #97, #191, #353, & #188. There is no indication in the record Singleton was specifically prohibited from re-striking any of the jurors he struck in the first (1st) jury selection. On re-strike (2nd jury strike), Singleton **re-struck** Juror numbers ***213***, ***21***, ***312***, ***261***, and ***191***.[8] (Tr. Vol I. p. 102, p. 107, pp. 108-09, p. 112, 115). He did not strike Juror numbers *353* and *188* in the 2nd jury strike, and they were seated, but there is no evidence or indication in the record Judge Harrington specifically

[7]Conversely, if a defendant is prohibited from re-striking a juror who the defendant had previously properly struck for a racially or gender neutral reason, he does not have to show prejudice and is entitled to a new trial. State v. Ford, 334 S.C. 59, 63-66, 512 S.E.2d 500, 503-04 (1999); State v. Short, 333 S.C. 473, 476-78, 511 S.E.2d 358, 360-61 (1999).

[8] Jurors #**261** and #**191** had prior jury service in criminal cases. Singleton re-struck them in the 2nd jury strike. Juror #**127**, who had prior jury service of an un-disclosed kind, and was struck by Singleton in the 1st jury strike, was not seated on the 2nd jury. (Tr. Vol. 1, pp. 102-20).

prohibited him from re-striking these jurors. Juror *188* was not even a disputed juror, per Judge Harrington's specific holding. In fact, Singleton had strikes remaining at the end of the 2nd jury strike, but chose not to exercise them, for whatever reason. And, during the 2nd jury strike, Singleton **struck jurors** who **he seated in the original [1st] jury strike.** As a result, Singleton cannot show prejudice from the granting of the Batson motion and ordering of a re-strike. Adams; Williams; Rayfield, Cochran, Heyward.

Finally, Singleton cannot show any prejudice because the only "disputed juror" that was seated on the final [2nd] jury was Juror #353, Ann Thompson. Adams; Williams; Rayfield, Cochran, Heyward. During the 1st jury strike, Juror #353 was *allegedly* struck by Singleton because she worked for a government agency or state institution, the Department of State. However, Singleton seated one (1) black juror who worked for a state government agency, the Department of Social Services, and seated one (1) black juror who worked as a civilian employee for a federal government agency, the Department of Navy [Space and Naval Warfare Systems Command]. Therefore, Singleton did not properly strike Juror #353, Ann Thompson, for a race neutral reason *but for a pre-textual reason*, and even if Judge Harrington prevented Singleton from re-striking Juror #353, Ann Thompson, [which the record does not reflect] that ruling would have been correct.[9] As a result, Singleton cannot show prejudice and his conviction and sentence must be affirmed. Adams; Williams; Rayfield, Cochran, Heyward.

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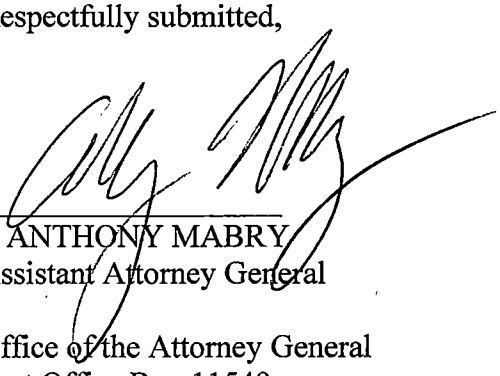
[9] At the Batson hearing's conclusion, Judge Harrington specifically found Singleton's strike of Juror #188, Heather Hord and other jurors *based on demeanor, to be credible and was not pretextual.* **(Tr. Vol. 1, p. 100, ll. 11-18).** As a result, Juror #188, who Singleton struck in the 1st jury selection but seated on the 2nd jury, was not a "disputed juror" according to Judge Harrington's specific finding, and Singleton would not have been prevented from re-striking her. Singleton simply chose not to strike her in the 2nd jury strike. Jurors #193 and #210 struck by Singleton in the 1st jury selection for military ties were not seated on the 2nd jury. (Tr. Vol. 1 pp. 102-20).

CONCLUSION

For the above stated reasons, Singleton's conviction and sentence for the murder of Sherell Williams must be affirmed and this appeal dismissed.

Respectfully submitted,



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