STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON JERMAINE BENSON,

APPELLANT

APPELLATE CASE NO 2015-002483

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying Appellant's *Batson* motion where the State struck the only black juror, Juror #153, in Appellant's entire jury pool and the State's reason for striking Juror #153, a black female, was clearly pretextual in light of the State's own *Batson* motion challenging everyone of Appellant's strikes of white female jurors.

STATEMENT OF THE CASE

Appellant Brandon Benson was indicted by the Pickens County Grand Jury for criminal sexual conduct first degree. R. 438 – 439. On November 16-18, 202015, Appellant proceeded to trial before the Honorable Perry H. Gravely and a jury. R. 1. John DeJong represented Appellant. Assistant Solicitor Shannon Odom represented the State. *Id.* The jury found Appellant guilty as charged. R. 431, ll. 14-25. The trial court sentenced Appellant to twelve years imprisonment. R. 436, ll. 12-21.

STATEMENT OF THE FACTS

Appellant, a black man who was twenty eight years old at the time of this incident, was indicted for participating in the rape of Tasha Medlin, a married white woman. Sometime between 7:00 and 9:00 p.m. on September 27 2012, Medlin and her husband, Robert, had a heated fight at their rural Pickens County home off of State Road 39 outside of Liberty. R. 46, l. 7- 49, l. 8; *see also* R. 166, l. 9 - 174, l. 10. Medlin was heavily intoxicated. That day, she had already consumed a pint of vodka and was working on a pint of Wild Turkey 101 proof whisky. *Id.*

In addition to being intoxicated, Medlin was also taking Zoloft and Klonopin. R. 48, ll. 2-24. Robert was angry with Medlin for being drunk and high on anti-depressants while driving their children to and from school. *Id.* He also suspected her of having a sexual affair with a local drug dealer named "Eric" who lived in Liberty. R. 172, ll. 3-19.

Both Medlin and Robert recalled at trial believing at the time that their marriage was over. R. 168, ll. 4-22. The fight on the night of September 27th became so heated that Robert called law enforcement to have them remove Medlin from their residence so that he could safely take their children to his parents' house. R. 166, l. 9 – 168, l. 20.

Unlike her husband, whose parents live nearby, Medlin had no local family she could stay with if kicked out the house. Nevertheless, once a Pickens County deputy arrived, Medlin decided to leave the house on foot. She grabbed the unfinished pint of Wild Turkey and started walking towards Liberty. R. 48, l. 18 - 49, l. 24. At trial, she claimed that she was walking to her father-in-law's tire and car repair shop in Easley where she was hoping her father-in-law would call her family in North Carolina.

The auto shop was eleven miles from their house. *Id.* She also testified at trial that she had her cell phone on her at the time that she left the house. R. 49, l. 25 - 50, l. 13. Medlin never explained why she did not simply call her family using her cell phone before she left the house.

She would claim that, as she was getting close to a rock quarry located on the far side of Liberty from her house, a white sedan stopped and the three men inside offered to take her home. R. 50, l. 18 - 51, l. 19. The rock quarry is roughly seven miles from Medlin's home.[1] At trial, she did not know what time she accepted a ride, only that she had been walking for a long time by this point. R. 76, l. 14 – 78, l. 24.

Medlin sat in the back passenger side seat. Once inside the car, she claimed that a black man in the front seat turned around, crawled over his seat, and "pinned my arms to the back of the seat." *Id.* Then a second black male seated in the back on the driver's side of the car, whom she would identify as Appellant almost a year later when DNA test results from the SLED kit were returned, pulled down her pants and raped her. *Id.*

At trial, Medlin had a hard time consistently explaining how the rape occurred. First, she stated that the front seat passenger had held her shoulders down. Later, when attempting to explain the bruising around her knees, Medlin stated that the front seat passenger had actually held her legs down with his arms while using his knees to hold her shoulder down. R. 67, l. 11 – 134, l. 18.

However, only one of her shoulders was bruised. Curiously, despite not remembering many details from that night, Medlin was adamant that she never fell or tripped while she drunkenly walked almost seven miles down a dark country road with no sidewalk. R. 76, l. 2 – 141, l. 22.

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[1] This Court may take judicial notice of the distances between locations. All distances are measured using Google Maps. At Appellant's trial there was extensive testimony on the distances between various locations. R. 48, l. 7 – 58, l. 24.

At trial, Medlin testified that the sedan had been traveling towards Liberty, and away from Easley. At some point during the incident, the car changed directions and headed away from Liberty, towards Easley. R. 52, ll. 2-13. Medlin stated at trial that the stretch of road they were on was dark and that she did not get a good look at any of her assailants. R. 52, ll. 2-5.

She described the front seat passenger as a big and tall black male in his thirties and the back seat passenger as a tall, skinny black male around twenty years old. R. 95, l. 22 - 96, l. 11. The driver was a white male. R. 97, ll. 10-24. She was never able to identify the driver or the front seat passenger. *Id.* She was able to identify Appellant as the back seat passenger from a six photo lineup presented to her a year after the incident. R. 253, l. 21 – 362, l. 8.

After raping her, Medlin claimed that the three men kicked her out of the car in front of the Westgate Apartments in Easley. R. 55, l. 3 – 57, l. 21. Coincidentally, the Westgate apartments are less than a half-mile away from her father-in-law's repair shop, her initial objective when leaving her home. The Westgate apartments were also where Appellant lived with his girlfriend and their two children. R. 284, l. 3 – 286, l. 22.

Medlin's Arrest for Public Intoxication and Subsequent Reporting of Rape

At 2:00 a.m. on September 28th, the Easley police department received a phone call from a concerned resident of the Westgate apartments that there was a drunk woman causing a disturbance. R. 181, l. 5 – 183, l. 19. Officer Bob Felton responded to the call and found a highly intoxicated Medlin. "[S]he was being loud, boisterous. . . . Her speech was very slurred. She was unsteady on her feet." R. 182, l. 11 – 183, l. 5.

Medlin told Officer Felton that she was trying to get a ride home and that two men, one white and one black, had attempted to rape her. R. 183, ll. 7-24. Medlin refused any assistance. She

did not want to file a police report and did not want Felton to call a Pickens County deputy who would have had jurisdiction over where the reported attempted rape occurred. *Id.*

Felton then decided to arrest Medlin for, "[h]er safety at that point, and due to her high level of intoxication, I placed her under arrest for . . . public intoxication. R. 184, ll. 9-19. When Felton asked her how much she had to drink, Medlin claimed that she had "a few beers when the sun was still up. . . . She then told [me] . . . the two guys were riding around drinking beers." *Id.*

When Felton noted that it was two in the morning and had been dark for hours, Medlin admitted that she drank a bottle of liquor while she was "hanging out" at the Westgate apartments with the two men she accused of raping her. *Id.* Melton was released on a personal recognizance bond at around 9:00 a.m. on September 28th. When personnel at the Easley jail refused to take her to the hospital to have a rape kit done, Medlin claimed she walked to Baptist Easley.

Emergency room nurse Kim Fogarty administered the SLED kit and examined Medlin. Medlin had bruising to one shoulder, her knees, and her arm. R. 159, ll. 5-14. Bruises on her upper arm appeared to Forgarty to be in varying stages of healing. R. 119, l. 3 – 194, l. 19. She also had a bruised lip.

Medlin did not have any bruising of her pubic bone and there was no tearing in her vaginal area. R. 153, l. 9. Fogarty also removed a tampon from Medlin that she had apparently forgotten about having used. R. 125, l. 22 – 126, l. 11. Fogarty collected Medlin's clothing, the tampon, a vaginal swab, and blood and urine samples for testing by SLED. Medlin was then interviewed by Detective Art Taylor of the Pickens County Sherriff's department. R. 236, l. 3 - 238, l. 24.

At trial, Medlin stated that after she finished at the hospital, she called her husband asking for a ride home. R. 61, l. 15 – 62, l. 21. He refused, but his brother agreed to take Medlin home. After she got home, she admitted herself into a drug and alcohol rehabilitation clinic. *Id.* As the

State would stress at trial, since this incident, Medlin and her husband had reconciled and Medlin had been sober following her release from treatment. R. 399, l. 12 – 408, l. 15; R. 408, l. 12 – 409, l. 11.

Law Enforcement's Investigation and SLED Test Results

In October of 2013, Pickens County Investigator Art Taylor received notice from SLED that Appellant's DNA had been found on the tampon and fingernail scrapings collected from Medlin. R. 243, l. 24 – 245, l. 3. Prior to the DNA results, Taylor's investigation had stalled. In the weeks following the alleged rape, Taylor had struggled to develop any leads.

He would claim at trial that an unnamed resident of Westgate Apartments, identified two men as having been potentially involved: Corey Flower and Joey Ligon. R. 240, l. 5 – 241, l. 21. Fowler, who was white, owned a white Ford Crown Victoria. When shown a picture of the car, Medlin believed it was similar to that picked her up. *Id.* Fowler refused to speak with Taylor. Ligon denied being involved, but – according to Investigator Taylor – identified Appellant as possibly being involved. R. 242, l. 7 – 243, l. 20. At trial, Taylor did not elaborate on why Ligon suggested that Appellant may have been involved.

By this time, Appellant had moved to neighboring Greenville County with his girlfriend and their children. Taylor was initially unable to locate him. After the SLED test results were received, Taylor was able to locate Appellant and interrogated him. R. 252, l. 4 – 253, l. 25.

Taylor also had Medlin identify Appellant on a six photo lineup. R. 254, l. 21 – 255, l. 22. Medlin identified Appellant in the lineup despite the incident occurring over a year earlier in a car traveling down a dark country road and her having been highly intoxicated at the time.

Appellant's Version of Events

When accused by Investigator Taylor of having raped Medlin, Appellant initially denied knowing her. R. 255, l. 24 – 258, l. 10. Eventually, Appellant admitted that he knew Medlin and that she had traded sex for crack cocaine on the night of incident. *Id.*; *see also* R. 311, l. 3 – 314, l. 10. Appellant recalled at trial that Cory Fowler and Appellant had called him asking to buy crack cocaine from him. *Id.* Medlin arrived with Fowler in Fowler's white Ford Crown Victoria. Appellant snuck out of the apartment that he shared with his girlfriend and the three drove just outside of Easley. *Id.*

Fowler pulled his car off to the side of the road and Appellant had rushed sex with Medlin. R. 313, ll. 9-24. Appellant then gave Fowler and Medlin crack cocaine to split. R. 314, l. 1 – 433, l. 16. Fowler then attempted to have sex with Medlin, but was unable to. *Id.* Fowler and Medlin then took Appellant back to the Westgate Apartments. *Id.* Appellant did not know what Fowler and Medlin did after they dropped him back at his home.

Appellant further testified that Medlin and her husband regularly bought drugs from him. R. 308, ll. 3-19. He denied raping Medlin and maintained, both when interrogated police and at trial, that the sex had been a consensual transaction.

ARGUMENT

The trial judge erred in denying Appellant's *Batson* motion where the State struck the only black juror, Juror #153, in Appellant's entire jury pool and the State's reason for striking Juror #153, a black female, was clearly pretextual in light of the State's own *Batson* motion challenging everyone of Appellant's strikes of white female jurors.

Relevant Facts

Appellant's entire jury pool had only one black person, Juror #153, an elderly black woman. R. 5, l. 18 – 6, l. 3. Appellant, a thirty-one year old black man, had no black men in his jury pool. Juror #153 was the first juror drawn. *Id.* The State struck her. *Id.* She was one of only three strikes used by the State during jury selection. The other two were used on white men. R. 10, l. 4 - 11, ll. 10-17. The State also struck a white female who was selected to serve as an alternate. R. 19, ll. 10-18.

At the end of juror selection, the State launched a *Batson* challenge to the defense's striking of multiple potential white women jurors. R. 21, l. 5 - 28, l. 23. After hearing the defense's explanation, the trial court denied the State's motion. *Id.*

The defense then countered with a *Batson* motion challenging the State's strike of the only black person in Appellant's jury panel. R. 28, l. 24 – 32, l. 25. The State posited that they had struck Juror #153 because of her criminal record. The solicitor averred that Juror #153 had twenty-eight charges for "financial fraud, less than five hundred dollars in a sixth month period". *Id.*

However when pressed, the solicitor conceded that she did not know the disposition of any of Juror #153's charges. R. 32, l. 6-10. The solicitor did not mention whether any of the State's other strikes were exercised because of a juror's criminal record.

Despite the solicitor not knowing the disposition of the twenty-eight counts of financial fraud, less than $500 in a six month period, the trial court speculated that "if she were convicted" then the State had provided an adequate race neutral reason for striking her. *Id.* at ll. 18-25.

Based on that assumption, the trial court denied the defense's *Batson* motion. *Id.* Accordingly, Appellant proceeded to trial accused of raping a married white woman in front of an all-white, predominately female jury. *Id.*

Discussion

The United States Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment prohibits the prosecution from striking potential jurors on the basis of race. *Batson v. Kentucky*, 476 U.S. 79, 89 (1986).[2] Eight years after *Batson*, the United States Supreme Court recognized that the Fourteenth Amendment also prohibits the striking of a juror on the basis of gender. *J.E.B. v. Alabama*, 511 U.S. 127, 146 (1994).

In *Purkett v. Elem*, 514 U.S. 765, 767 (1995), the United States Supreme Court set out the procedures for a trial court to follow when a party challenges a peremptory strike. The South Carolina Supreme Court adopted that procedure in *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996) and reaffirmed the procedure in *State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014). The first step requires the moving party to make out a prima facie case of racial or gender discrimination.

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[2] South Carolinians are afforded additional equal protection defenses under our State Constitution. Specifically, the State Constitution guarantees that, "[t]he privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the law." S.C. Const. Art. 1, § 3.

Additionally, "[t]he right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury." S.C. Const. Art. 1, § 14.

In the second step, the burden of production shifts to the proponent of the strike to present a race or gender neutral explanation for the challenged strike. *Giles*, 407 S.C. at 18-19, 754 S.E.2d at 263. If a race or gender neutral explanation is provided then a third step is taken requiring the trial judge to decide whether the moving party has proven purposeful racial or gender discrimination. *Id; see also Purkett*, 514 U.S. at 767.

The South Carolina Supreme Court has held that the proponent of the strike must give "a clear and reasonably specific explanation of his legitimate reasons for exercising the challenge." *Giles*, 407 S.C. at 20, 754 S.E.2d at 264 *citing Miller–El v. Dretke,* 545 U.S. 231, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) (*internal quotations omitted*). The explanation provided by the proponent of the strike must provide a factual basis that the trial court can review for legitimacy. Unless discriminatory intent is inherent in the explanation, the explanation will be deemed race neutral at step two. *Id.*; *see also Purkett*, 514 U.S. at 768.

During the third step, the moving party "must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination." *State v. Cochran*, 369 S.C. 308, 315, 631 S.E.2d 294, 298 (Ct. App. 2006). "If the trial judge determines the race and gender neutral explanations were mere pretext, then the trial court must quash the jury panel and select a new jury. *Id.* The objective of *Batson* challenges is to ensure that no citizen is disqualified from jury service on account of his or her race or gender. *Giles*, 407 S.C. at 21, 754 S.E.2d at 265.

Appellant was denied a jury of his peers in a credibility case with obvious racial overtones. Appellant, a black man, was accused of raping a married white woman. The State struck the only black juror in Appellant's jury pool. R. 5, l. 18 – 6, l. 3.

The State's reasons for striking Juror #153, that she had a criminal record, was pretextual. Critically, the solicitor did not know the disposition of any of Juror #153's charges. R. 30, l. 4 –

32, l.25. Nor did the State identify another juror that they struck because of his or her criminal record.

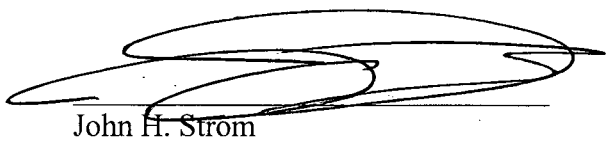
Most tellingly, the State challenged the defense's striking of several white females. R. 21, l. 13 – 28, l. 23. The trial court erroneously ruled the State's reason for striking Juror #153 was race neutral "if" the juror had been convicted of the twenty-eight minor financial fraud charges. R. 34, ll. 11-21. However, the State offered no proof that she had been convicted, despite purportedly striking Juror #153 because of her criminal history. R. 30, ll. 4-16; R. 32, ll. 6-10

Accordingly, the trial court erred in accepting the State's reason for striking Juror #153 where she was the only black juror in Appellant's entire jury pool and the State's reason for striking her was clearly pretextual in light of the State's own *Batson* motion challenging everyone of Appellant's strikes of white female jurors.

CONCLUSION

Based on the foregoing arguments Appellant respectfully request that this Court reverse his conviction and remand the matter for a new trial.

Respectfully Submitted,



John H. Strom
Appellate Defender

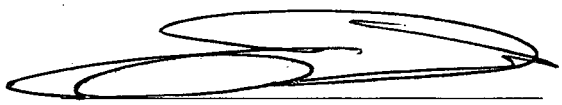
ATTORNEY FOR APPELLANT

This 11th day of April, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 11, 2017



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