THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Opinion No. 2017-UP-426 (S.C. Ct. App. filed November 15, 2017)

Appellate Case No. 2013-000149

THE STATE, ...RESPONDENT

v.

RAYMOND LEWIS YOUNG, ...APPELLANT.

PETITION FOR REHEARING

On November 15, 2017, this Court issued an unpublished opinion that reversed Appellant Young's convictions for seven counts of attempted murder, one count of second degree assault and battery by mob, and one count of conspiracy, and remanded for a new trial. *State v. Young*, Op. No. 2017-UP-426 (S.C. Ct. App. filed November 15, 2017). Respondent (the State) respectfully petitions the Court for rehearing pursuant to Rule 221(a), SCACR.

The State seeks rehearing on the grounds that this Court may have misapprehended, overlooked, or failed to properly apply the controlling standard of review in reaching its ultimate conclusions that: (1) "the trial court erred in failing to conduct a proper analysis under the third

step of a *Batson* review"; and (2) "Rather than considering the State's failure to articulate a race neutral reason for its disparate treatment of the jurors, the court seemingly found only that the reason given in the first place was race neutral." Specifically, this Court appears to have abandoned the "any evidence" standard by failing to recognize the trial court's proper examination of ALL of the circumstances under which the challenged strikes were exercised, including an examination of the explanations offered for those strikes, before concluding during the third stage of the *Batson* analysis that it "[did not] see any discriminatory intent." Indeed, this Court seems to have failed in this regard as a result of compounding several other analytical errors which are set out in its opinion.

First, this Court may have misapprehended the trial court's reliance on two cases referenced in support of its decision to deny the *Batson* motion where those cases were, contrary to this Court's findings, "instructive" to the trial court's analysis, and should not have been discounted out of hand. Second, and more critically, this Court may have improperly conflated the solicitor's reason for striking Juror 81 [Prancer Avenue] with her reason for striking Juror 215 [Piedmont], thereby confusing its review of the trial court's ultimate decision. Although the solicitor explained she struck the two jurors because they lived in particular geographic locations and was concerned they would know witnesses from those locations, the two geographic locations were NOT the same. Each strike should have been considered on its own merits rather than treated together. Third, and also critically, this Court appears to have completely failed to address the fact that the ONLY strike challenged after the race-neutral explanations were given by the solicitor, and the ONLY strike for which the defendants presented ANY evidence supporting their claim of purposeful discrimination, was the strike of an alternate juror where no alternate was called upon to serve as a member of the jury during deliberations. These three

analytical mistakes appear to have combined to lead this Court to misapply the standard of review by failing to properly analyze the trial court's determination that no *Batson* violation was proven by Young and the evidence supporting that determination.

For these reasons, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an order affirming Young's convictions and sentence. Additionally, if Young's convictions are affirmed, the State respectfully requests that this Court address Young's remaining issues because the *Batson* issue will no longer be dispositive.

Statement of the Case

Appellant, **Raymond Lewis Young (Young) (a/k/a "Lil Ray" & "Randy")**,[1] was indicted at the May 2012 term of the grand jury for Greenville County for one (1) count of second-degree assault and battery by mob (2012-GS-23-3841A), one (1) count of possession of a weapon during the commission of a violent crime, one (1) count of conspiracy, and seven (7) counts of attempted murder (2012-GS-23-7941 to -7947).[2] He was represented by John Abdalla, Esquire, of the Greenville County Bar. The State was represented by Assistant Solicitor Katrina Salisbury of the Thirteenth Circuit Solicitor's Office. On January 7-11, 2013, Young and three of his eight codefendants, **Michael A. Williams (Williams) (a/k/a "Mikey")**, **Esaiveus Frantrez Booker (Booker) (a/k/a "Trez")** and **Kinjta K. Sadler (Sadler) (a/k/a "Ken")**, proceeded to a joint trial by jury pursuant to which all four were found guilty of the seven counts

[1] Nearly all of the codefendants, victims, and other fact witnesses have nicknames that were used throughout the trial. To the extent possible, the State has noted those nicknames in parentheticals when each individual's name is first used.

[2] Five codefendants, Raymond Lewis Young, Michael Antonio Williams, Kinjta Kadeem Sadler, Daquan Bruster, and Tavarus Holmes, were similarly indicted, and two codefendants, Shaquille Hogan and Larry Johnson, were indicted for only second-degree assault and battery by a mob and conspiracy.

of attempted murder and the single count of second-degree assault and battery by mob. Young was also found guilty of conspiracy but was found not guilty of possession of a weapon during the commission of a violent crime. The other four codefendants who were not tried entered pleas to various charges prior to trial. Young was sentenced by the Honorable Edward W. Miller to thirty (30) years' concurrent imprisonment for each count of attempted murder (2011-GS-23-8012 to -8018), five (5) years' concurrent imprisonment for conspiracy (2011-GS-23-8011), and ten (10) years' consecutive imprisonment suspended upon the service of five (5) years' probation for second-degree assault and battery by a mob (2012-GS-23-3838A). (R.p.837-p.865). He timely filed a notice of intent to appeal his convictions and sentences and the parties submitted briefs addressing the five issue raised by Appellant on appeal. On November 15, 2017, this Court issued an unpublished opinion that reversed Appellant's convictions. *State v. Young*, Op. No. 2017-UP-426 (S.C. Ct. App. filed November 15, 2017). This Petition for rehearing follows.

Statement of Facts

As explained in the solicitor's opening statement, in the early morning hours of July 17, 2011, a group of friends were hanging out in the parking lot of the Lil' Cricket (LC) gas station on Whitehorse Road in Greenville County. They gathered at the LC after a trip to the hospital where they had visited a friend who was shot earlier that night during a fight at the nearby Red Planet (RP) nightclub. Unbeknownst to the friends, eight young men had devised a plan to retaliate for the fight at the RP. Booker, his three codefendants at trial and four other codefendants parked behind the LC, approached the gas station on foot, and opened fire. Seven people were hit as the victims ducked and ran for cover during the attack. (R.p.105-p.112).

Before the commencement of the trial, four of the eight original codefendants entered guilty pleas to charges associated with the shooting. (R.p.5-p.34). The State asked for deferred sentencing on the four codefendants who pled guilty until after the trial of the four remaining codefendants.

After accepting the pleas, the trial began and the judge conducted jury qualification and selection proceedings. (R.p.35-p.63). As part of jury qualification, the trial court asked if any member of the jury panel was related by blood or marriage, or if they had a business, personal, or social relationship with any of the four co-defendants, the seven shooting victims, or the more than 75 potential witnesses. None of the potential jurors responded in the affirmative. Similarly, there was no response when the judge asked if any juror knew of any reason they should not serve or could not be fair and impartial. (R.p.48-p.52). The trial court then proceeded with jury selection, with the State and counsel for Booker, who was acting on behalf of all four co-defendants, exercising peremptory strikes until twelve jurors and two alternates were seated. (R.p.53-p.62). Juror 106, Cynthia Foxx, a white female, was seated fourth. (R.p.55, line 22-p.56, line 3). Juror 281, Valisa Smith, a black female, was struck by the State after the ninth juror was seated. (R.p.59, lines 3-6). Juror 81, Anatolya Dodd, a black female, was struck by the State after the eleventh juror was seated. (R.p.60, lines 3-6). Juror 215, Lee Montgomery, a black male, was struck by the State after the twelfth juror was seated, during the selection of the two alternates. (R.p.61, lines 15-18). At the conclusion of jury selection, the defendants advised the trial judge they had a matter regarding jury selection they would like to take up outside the presence of the jury. (R.p.62, lines 17-23).

After the jury was excused, the defendants made an objection to the jury selection pursuant to *Batson v. Kentucky*,[3] pointing out that out of its six challenges the State struck three black individuals. The trial court noted three black jurors had been seated on the jury but acknowledged Juror 281 was an African-American struck by the State with its 4th challenge, Juror 81 was an African-American struck by the State with its 5th challenge, and Juror 215 was an African-American struck by the State when selecting the first alternate. The defendants said they were challenging all three strikes in their *Batson* motion. (R.p.63). The solicitor proceeded to give the following explanation for her strikes:

> With respect to Juror 281, Ms. Smith, I noted during jury qualifications that Ms. Smith expressed some concerns regarding her ability to withstand the duration of the trial. She indicated she had a substantial number of health issues and wanted to be excused based on those issues. That's my basis for striking Ms. Smith.
>
> Ms. Dodd, is Juror 81, and my notes indicate that Ms. Dodd lives on Prancer Avenue in Greenville County. It's my understanding that some of the witnesses in this case live in the area of Prancer Avenue and I was quite simply concerned that juror may become family with the witnesses even though she may not recognize their names off hand. That's my basis for striking her. And then Mr. Montgomery lives at Piedmont and I have the same reservations. There are many of these witnesses that live in the Piedmont area and have residences in Piedmont and again just out of an abundance of caution, I was concerned that he may be familiar with some of the witnesses in this case and decided that another alternate may be a better choice.

(R.p.63, line 23-p.64, line 19). The defendants responded that they did not believe these to be satisfactory racially neutral reasons because during voir dire the court had named all potential witnesses and gave the jurors the opportunity to identify any they knew. (R.p.64, line 21-p.65, line 6).

The trial judge disagreed, said the solicitor had given race neutral reasons for her strikes, and said the defendants were going to have to show something more to prove purposeful discrimination. (R.p.65, lines 7-11). Counsel for Sadler then stated: "One thing I would point

[3] 476 U.S. 79 (1986).

out to the Court is Juror 106, No 12 on the list, Ms. Fox. So *the extent that they are striking the jurors in Piedmont*, Juror No. 106, Cynthia Fox, it was a white female and it provides her address as 13 Piedmont Avenue in Piedmont, no less, and yet she was not struck by the State." (R.p.65, line 12-18) (emphasis added). The solicitor replied:

> Your Honor, I just didn't indicate on my list that that was an address that I had some concern about. So[me] I do and some I don't, but that doesn't make it the –
> . . . .
>
> Judge, I'm not sure where I left off. I've offered race neutral reasons. If the Court wants a more specific inquiry. I didn't make that address on Ms. Fox, it is something that I had no concern. I had concerns about the Piedmont address but not this one. I don't know the geography of Greenville County with enough sophistication to appreciate the minor details of the community the basis of my strike, Judge.

(R.p.65, line 19-p.66, line 9). Ultimately, the trial court ruled:

> Okay. Well, Mr. Quinn makes a very valid point. I'm going to rely on State versus Tucker and Peyton versus Kirk Kearse (ph) that I don't see a discriminatory intent inherent in the proponent's explanation and so I believe those cases require me to find the reason offered to be deemed race neutral. So I'm going to deny your motion.

(R.p.66, lines 10-16) (emphasis added).

After addressing other pretrial matters, the jury was sworn and the case proceeded to trial. The State presented testimony from more than twenty-five witnesses including the seven shooting victims, several additional fact witnesses, numerous police investigators and forensic experts, and three of Young's co-defendants. (R.p.80-p.661). A specific summary of this testimony appears in the "Statement of Facts" in the Final Brief of Respondent, which is hereby incorporated by reference. After the State rested, Young and his codefendants all moved for directed verdicts and those motions were denied. Each defendant then advised the trial court that he did not want to testify. Following a brief charge conference, the State and the defendants gave closing arguments. (R.p.661-p.783). Finally, the trial court instructed the jurors on their

roles as the sole judges of the credibility of witnesses, the burden of proof, the presumption of innocence, reasonable doubt, direct and circumstantial evidence, and the elements of the crimes. (R.p.784-p.796). Young was found guilty of the seven counts of attempted murder and the single count of second-degree assault and battery by mob. Young was also found guilty of conspiracy but was found not guilty of possession of a weapon during the commission of a violent crime. He was sentenced to thirty (30) years' concurrent imprisonment for each count of attempted murder (2011-GS-23-8012 to -8018), five (5) years' concurrent imprisonment for conspiracy (2011-GS-23-8011), and ten (10) years' consecutive imprisonment suspended upon the service of five (5) years' probation for second-degree assault and battery by a mob (2012-GS-23-3838A). (R. p.837-865).

Argument

In its unpublished opinion, this Court reversed Young's convictions and remanded for a new trial. *State v. Young*, Op. No. 2017-UP-426 (S.C. Ct. App. filed November 15, 2017). For the reasons noted above and argued in more detail below, the State respectfully requests this Court grant its petition for rehearing, reconsider and rehear this matter, and issue an order affirming Young's convictions and sentence.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Inman*, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); *State v. Palmer*, 415 S.C. 502, 511, 783 S.E.2d 823, 827 (Ct. App. 2016). A court is bound by the trial court's factual findings unless they are clearly erroneous. *Id.* Thus, on review, this Court is limited to determining whether the trial

court abused its discretion. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. *Palmer* at 511, 783 S.E.2d at 827. "Because the trial court's findings regarding purposeful discrimination rest largely upon his evaluation of the solicitor's credibility, we will give those findings great deference." *State v. Tucker*, 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1998); *see also Palmer*, 415 S.C. at 513, 783 S.E.2d at 829 ("The trial [court's] findings of purposeful discrimination rest largely on [its] evaluation of demeanor and credibility. Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the [attorney's] mind [based on demeanor and credibility] lies peculiarly within a trial [court's] province.'") (internal citations omitted).

Batson Framework

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a juror on the basis of race. *Batson,* 476 U.S. at 89; *State v. Inman*, 409 S.C. 19, 25, 760 S.E.2d 105, 108 (2014); *State v. Cochran*, 369 S.C. 308, 313, 631 S.E.2d 294, 297 (Ct. App. 2006). "Once a peremptory challenge is opposed, the trial court must, upon request, conduct a Batson hearing and adhere to the procedures set forth in *Purkett v. Elem,* 514 U.S. 765, 767 (1995), and adopted by our Supreme Court in *State v. Adams,* 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996)." *Cochran*, 369 S.C. at 314, 631 S.E.2d at 297-98. The United States Supreme Court has set forth a three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. *Inman* at 26, 760 S.E.2d at 108; *See Purkett,* 514 U.S. at 767-68. (1995).

First, the [party asserting the *Batson*] challenge must make a prima facie showing that the challenge was based on race. *Inman* at 26, 760 S.E.2d at 108. 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 neutral explanation for the challenge. *Id.* 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. *Id.* The ultimate burden always rests with the [party asserting the *Batson* challenge] to prove purposeful discrimination. *Id.*

Step two of the analysis is perhaps the easiest step to meet as it does not require that the race-neutral explanation be persuasive, or even plausible. *Purkett,* 514 U.S. at 768; *Inman* at 26, 760 S.E.2d at 108. 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 and the trial court to fulfill its duty [in step three] to assess the plausibility of the reason in light of all the evidence with a bearing on it. *Inman* at 26, 760 S.E.2d at 108. In contrast, step three of the above analysis requires the court to carefully evaluate whether the party asserting the *Batson* challenge has *proven* racial discrimination by demonstrating that the proffered race-neutral reasons are mere pretext for a discriminatory intent. *Id.* (emphasis added); *see also* Batson, 476 U.S. at 93-94 (stating that the court must consider "the totality of the relevant facts," including both direct and circumstantial evidence). During step three, the party asserting the *Batson* challenge should point to direct evidence of racial discrimination, such as showing that the opponent struck a juror for a facially neutral reason but did not strike a similarly-situated juror of another race. *Inman* at 26, 760 S.E.2d at 108-09. When the opponent of the strike *proves the proponent of the strike practiced purposeful racial discrimination*, the

trial court must quash the entire jury panel and initiate another jury selection de novo. *Cochran* at 315, 631 S.E.2d at 298 (emphasis added).

Discussion / Analysis

Here, in compliance with *Purkett*, the trial court conducted a *Batson* hearing and adhered to the mandatory three-step procedure for evaluating whether the State executed its peremptory challenges in a manner which violated the Equal Protection Clause. After the defendants made a prima facie showing that the challenges were based on race, the trial judge asked the solicitor to provide race neutral explanations for the three strikes, and the solicitor did so. Juror 281 was struck because she "had a substantial number of health issues and wanted to be excused." Juror 81 was struck because she "lives on **Prancer Avenue**" and "some of the witnesses in this case live in the area of Prancer Avenue and I was quite simply concerned that juror may become family [sic] with the witnesses even though she may not recognize their names off hand." Juror 215 was struck because he "lives at **Piedmont** and I have the same reservations. There are many of these witnesses that live in the Piedmont area." (R.p.63, line 23-p.64, line 19) (emphasis added).

The defendants' response was that they did not believe these to be satisfactory racially neutral reasons because during voir dire the court had named all potential witnesses and gave the jurors the opportunity to identify any they knew. (R.p.64, line 21-p.65, line 6). Consequently, the only question truly before this Court was whether the trial court abused its discretion in regard to step three of the *Purkett* procedure as to the three African-American jurors struck by the State.

Although the trial court invited Young and his codefendants to attempt to make a showing of purposeful discrimination as to each of the three strikes, they chose to focus **solely** on the State's strike of Juror 215, Mr. Montgomery. Counsel for Sadler stated: "One thing I would point out to the Court is Juror 106, No 12 on the list, Ms. Fox. *So the extent that they are striking the jurors in Piedmont*, Juror No. 106, Cynthia Fox, it was a white female and it provides her address as 13 Piedmont Avenue in Piedmont, no less, and yet she was not struck by the State." (R.p.65, line 12-18) (emphasis added). By failing to offer any further showing in regard to Juror 281 or Juror 81, Young failed to carry his burden of proof in the trial court as to those two strikes. He similarly has also waived any right he may have had to challenge those two strikes on appeal. Furthermore, to the extent Young argues his challenge to Juror 215 encompassed a challenge to Juror 81 because the solicitor's race neutral reasons were both based on their home addresses, his argument fails because he never argued to the trial judge that Prancer Avenue is in Piedmont. This is likely because Prancer Avenue is not in Piedmont, and instead is located **ten miles** north, near the Greenville Country Club.

Specifically, as to Juror 215, the solicitor's explanation initially appeared to be pretext because Ms. Foxx, a white woman from Piedmont, was seated on the jury. *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298 ("This burden is generally established by showing similarly situated members of another race were seated on a jury."). The inquiry at Young's trial, however, continued when the trial judge asked the solicitor for further explanation. She replied:

> Your Honor, I just didn't indicate on my list that that was an address that I had some concern about. So[me] I do and some I don't . . . I didn't make that address on Ms. Fox, it is something that I had no concern. **I had concerns about the Piedmont address but not this one**. I don't know the geography of Greenville County with enough sophistication to appreciate the minor details of the community.

(R.p.65, line 19-p.66, line 9) (emphasis added). Upon observing the solicitor's demeanor while she gave this explanation, the trial court found it did not "see a discriminatory intent" in the explanation. (R.p.66, lines 10-16). This credibility finding was the basis upon which the trial court grounded its conclusion that the State's reason given for striking Juror 215 was not pretext. The credibility finding must be given great deference and may not be set aside unless clearly erroneous. *State v. Tucker*, 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1998) ("Because the trial court's findings regarding purposeful discrimination rest largely upon his evaluation of the solicitor's credibility, we will give those findings great deference."). Because the trial court was in the best position to evaluate demeanor and credibility, its finding should control and the denial of Young's *Batson* motion was not error.

This Court should grant Rehearing

In its unpublished opinion, this Court found the trial court erred in denying his *Batson* motion. Specifically, this Court found: "The trial court erred in failing to conduct a proper analysis under the third step of a *Batson* review." Specifically it found: "Rather than considering the State's failure to articulate a race neutral reason for its disparate treatment of the jurors, the court seemingly found only that the reason given in the first place was race neutral." The State hereby seeks rehearing on the grounds that the Court may have misapprehended, overlooked, or failed to properly apply the standard of review in reaching these conclusions. Specifically, this Court appears to have abandoned the "any evidence" standard by failing to recognize the trial court's examination of ALL of the circumstances under which the challenged strikes were exercised, including an examination of the explanations offered for other strikes, before concluding during the third stage of the *Batson* analysis that it "[did not] see any discriminatory

intent." Indeed, this Court seems to have failed in this regard as a result of several other analytical errors which are set out in its opinion.

First, this Court may have misapprehended the trial court's reliance on two cases referenced in support of its decision to deny the *Batson* motion where those cases were, contrary to this Court's findings, nevertheless "instructive" to the trial court's analysis, and should not have been discounted out of hand. In denying Young's motion, the trial court relied on *State v. Tucker*, 334 S.C. 1, 512 S.E.2d 99 (1998) and *Payton v. Kearse*, 329 S.C. 51, 495 S.E.2d 205 (1998). In *Tucker*, our supreme court held no *Batson* violation occurred despite the State using all six of its peremptory strikes against black jurors. In so holding, the *Tucker* Court noted: "Because the trial judge's findings regarding purposeful discrimination rest largely upon his evaluation of the solicitor's credibility, we will give those findings great deference." *Tucker*, 334 S.C. at 9, 512 S.E.2d at 103. Here, the trial court listened to the solicitor's explanations in the context of ALL of the circumstances of the case and concluded: "I don't see a discriminatory intent." Those circumstances included: (1) the solicitor only exercised six of her ten peremptory strikes; (2) out of the six strikes exercised by the solicitor, only three were of African-Americans; and (3) the solicitor chose not strike three African-Americans who were then seated on the jury. As apparently recognized by the trial judge, *Tucker* required that he evaluate the solicitor's credibility as part of step three of his analysis, and he appropriately did so in the context of ALL of the circumstances before concluding there was no purposeful discrimination. In *Payton*, our supreme court rejected the dual motivation analysis, finding that "[o]nce a discriminatory reason has been uncovered . . . this reason taints the entire jury selection procedure." *Payton*, 329 S.C. at 59, 495 S.E.2d at 210. Here, there was no racially derogatory term used in the reasons given for the strikes and therefore no discriminatory intent was uncovered in the second step of the

Batson analysis. As apparently recognized by the trial judge, *Payton* required that he move to the third step of the *Batson* analysis to determine if Young could prove purposeful discrimination. He could not. For these reasons, the trial court's reliance on *Tucker* and *Payton* was entirely appropriate and should have been considered by this Court to be "instructive" to Young's case on appeal.

Second, and more critically, this Court may have improperly conflated the solicitor's reason for striking Juror 81 with her reason for striking Juror 215, thereby confusing its appellate review of the trial court's decision that there was no *Batson* violation. Although the solicitor explained she struck the two jurors in question because they lived in a particular geographic location and was concerned they would know witnesses from that location, the two locations were NOT the same. Counsel for Sadler merely identified a juror of a different race who was seated and who was from one of the two geographic locations named by the solicitor.[4] This information has no relevance to the second geographic location which was given as a reason for the other strike, and did nothing to support or carry the opponent's burden to prove purposeful discrimination as to that second juror. An example illustrates the fallacy of this Court's logic in this regard. Consider a *Batson* challenge where the proponent of the strikes explained it struck one juror because she was from a particular neighborhood in Chicago and might know some witnesses who were also from that neighborhood in Chicago, and it struck a second juror because she was from a particular neighborhood in Los Angeles and might know some witnesses who were also from that neighborhood in Los Angeles. If the opponent of the strike then presents evidence that the striking party seated a juror from the Los Angeles neighborhood in question, it would carry significant weight in the trial court's determination of whether there had been a

[4] Arguably, Young's *Batson* issue is not preserved for Appellate review because the defendants all agreed that counsel for Booker would speak on their behalf, not counsel for Sadler, and then counsel for Young failed to specifically join in the argument advanced by counsel for Sadler at step three of the *Batson* analysis.

Batson violation as to the Los Angeles juror who was struck. However, it would have absolutely no relevance and should be given no weight in regard to the Chicago juror who was struck. It cannot be the rule that simply because both strikes were based on geographic location that both strikes constitute *Batson* violations, unless they were based on the **same** geographic location. Here, the only strike that could have been impacted by the evidence submitted during step three of the analysis was that of Juror 215, and as explained below, even that evidence did not compel a finding of a *Batson* violation.

Third, this Court completely failed to address the fact that the ONLY strike challenged after the race-neutral explanations were given by the solicitor, and the ONLY strike for which the defendants presented ANY evidence supporting their claim of purposeful discrimination was the strike of Juror 215, an alternate juror, where no alternate was called upon to serve as a member of the jury during deliberations. Although the trial court invited Young and his codefendants to attempt to make a showing of purposeful discrimination as to each of the three strikes, they chose to focus **solely** on the State's strike of Juror 215 [Piedmont] by pointing out that Juror 106 was a white female with an address in Piedmont who was seated. (R.p.65, line 12-18). By failing to offer any further showing in regard to Juror 281 or Juror 81 [Prancer Avenue], Young failed to carry his burden of proof in the trial court as to those two strikes. He similarly has also waived any right he may have had to challenge those two strikes on appeal. This limitation is crucial to any analysis on appeal because any error by the trial court in regard to Juror 215 was entirely harmless where the State struck Juror 215 as a potential alternate juror. *See State v. Ford*, 334 S.C. 444, 449, 513 S.E.2d 385, 387 (1999) ("Any *Batson* violation in regards to an alternate is harmless where an alternate was not needed for deliberations."); *see also United States v. Lane*, 866 F.2d 103, 106 n.3 (4th Cir. 1989) (noting a defendant would not

have been prejudiced by the peremptory challenge of an alternate juror regardless of the stated reason where an alternate juror was not called upon to serve as a member of the petit jury).

While each of these errors alone supports rehearing and reconsideration, it is in combination that they demonstrate how this Court may have misapplied the proper standard of review. Even in regard to the strike of Juror 215, this Court seems to have overlooked the proper scope of the analysis on appeal by failing to consider ALL of the relevant circumstances in Young's case, including the actual explanation given by the solicitor for each strike. Relying on our supreme court's opinion in *State v. Oglesby*, 298 S.C. 279, 379 S.E.2d 891 (1989), this Court found the trial court had no choice but to find purposeful discrimination because a white juror from Piedmont was seated on the jury while an African-American juror from Piedmont was struck. However, the decision in *Oglesby* does not appear to be quite so narrow. In *Oglesby*, our supreme court held: "an examination of the circumstances shows that the solicitor's originally neutral reason was proven to be a pretext because it was not applied in a neutral manner." However, those circumstances included the following explanation from the solicitor: "[a]ll knew or had been patients of . . . [the doctor] . . . . This is a very important witness. We feel that any doctor patient relationship to this witness would affect the case. He will be coming as a doctor, and we feel that we are better served to not have *anyone on the jury that knows any of the eyewitnesses, especially one that's so important*;" as well as the solicitor seating a white female juror who was also a patient of the doctor. *Id.* at 281, 379 S.E.2d at 892 (emphasis added). Given the language used in the solicitor's explanation in *Oglesby*, there is no way the seated juror could be distinguished from the struck jurors, except by her race. Here however, at step three of the *Batson* analysis, the solicitor explained the particular Piedmont address for Juror 215 gave her pause, while the particular Piedmont address for Juror 106 did not, even though they

were both in Piedmont. This distinction alone distinguishes the two jurors and provides an evidentiary basis for the trial court's decision. Under the "any evidence" standard of review, this Court should have affirmed.

Furthermore, *Oglesby* stands for the proposition that: "A solicitor's 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. at 280, 379 S.E.2d at 892. This requires an examination of ALL circumstances to determine whether there has been purposeful racial discrimination, not only a bare showing that the striking party failed to strike another juror who appears to be similarly situated. In Young's case, those circumstances included: (1) the solicitor only exercised six of her ten peremptory strikes; (2) out of the six strikes exercised by the solicitor, only three were of African-Americans; and (3) the solicitor chose not strike three African-Americans who were then seated on the jury. When these circumstances are combined with the solicitor's specific explanation for the strikes, there is ample evidence to support the trial court's conclusion that Young failed to prove purposeful racial discrimination as to any strikes.

In conclusion, this Court appears to have abandoned the "any evidence" standard by failing to recognize the trial court's examination of ALL of the circumstances under which the challenged strikes were exercised, including an examination of the explanations offered for other strikes, before concluding during the third stage of the *Batson* analysis that it "[did not] see any discriminatory intent." This Court should grant this petition for rehearing.

The trial court clearly followed the required three-step inquiry for evaluating whether a party executed a peremptory challenge in a manner which violated the Equal Protection Clause. During that inquiry, the solicitor provided racially neutral explanations for striking each of the

three African American jurors in question. Even though the explanation in regard to Juror 215 initially appeared to be pretext because a similarly situated juror of another race, Ms. Foxx, was seated on the jury, the trial judge observed the solicitor's demeanor during her explanation for the strike, made a credibility finding that there was no discriminatory intent in the her explanation, and thereby concluded the reason given was in fact not pretext. That credibility finding must be given great deference and should not have been set aside by this Court unless clearly erroneous. Also, upon close analysis, the solicitor's explanation did distinguish between the two Piedmont jurors based on their particular addresses. There is evidence in the record to support the trial court's determination that Young, as the opponent of the strike, failed to show the reason offered by the officer was actually mere pretext to engage in purposeful racial discrimination. Under this Court's standard of review, that determination should have been affirmed.

Furthermore, even if this Court concluded the State's strike of Juror 215 was improperly exercised on the basis of race, any error was necessarily harmless because Juror 215 could only have been seated as an alternate, and no alternate was called upon to participate in jury deliberations in this case.

Conclusion

WHEREFORE, based on the foregoing argument and the arguments raised in the Final Brief of Respondent, the State respectfully requests that this Court grant this petition for rehearing, reconsider and rehear this matter, and issue an order affirming Young's convictions and sentence. Additionally, if Young's convictions are affirmed, the State respectfully requests

that this Court address Young's remaining issues because the *Batson* issue will no longer be dispositive.

Respectfully submitted,

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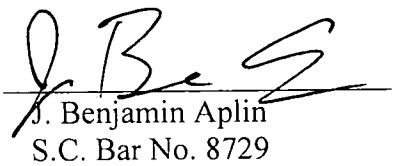
W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY: 
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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina
November 30, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Edward W. Miller, Circuit Court Judge

Opinion No. 2017-UP-426 (S.C. Ct. App. filed November 15, 2017)

Appellate Case No. 2013-000149

THE STATE, ...RESPONDENT

v.

RAYMOND LEWIS YOUNG, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Petition for Rehearing*, dated November 30, 2017, on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to his attorney of record:

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, SC 29601

I further certified that all parties required by Rule to be served have been served. This 30th day of November, 2017.

Angela Bennett
Legal Assistant

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ALAN WILSON
ATTORNEY GENERAL

November 30, 2017

J. Falkner Wilkes, Esquire
114 Whitsett Street
Greenville, SC 29601

State v. Raymond Lewis Young
Appellate Case No. 2013-000149

Dear Mr. Wilkes:

I am enclosing one (1) copy of the Petition for Rehearing in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Advocacy Division