STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Hampton County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN JEROME BLAKE,

APPELLANT

APPELLATE CASE NO 2018-001943

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in allowing the State to question Appellant about an unrelated incident where an investigator allegedly observed Appellant drag a girlfriend out of the woods by her hair?

2. Did the trial judge err in failing to conduct the third step of the Batson procedure and determine if the State's explanations for using four of five peremptory challenges to strike black jurors were mere pretext to engage in purposeful racial discrimination?

STATEMENT OF THE CASE

In December of 2015, the Hampton County Grand Jury[1] indicted Appellant, Benjamin Jerome Blake, for three counts of attempted murder and possession of a weapon during the commission of a violent crime, indictments #2015-GS-25-380 – 383. On October 16, 2018, Blake proceeded to jury trial before the Honorable Kristi F. Curtis. Steve Plexico represented Blake at trial. Hunter Swanson prosecuted the case. The jury found Blake guilty of attempted murder as to Jeantaviene "Chabby" Dobson and guilty of the lesser included offense of assault and battery of a high and aggravated nature [ABHAN] as to Tiffany Lakes and her unborn child. The jury also found Blake guilty of the weapons charge. Judge Curtis sentenced Blake to fifteen (15) years for attempted murder, fifteen (15) years each concurrent for the two counts of ABHAN and five (5) years concurrent for the weapons charge. A timely notice of intent to appeal was served on October 23, 2018. This appeal follows.

[1] It is unclear who testified before the grand jury because only the initials "EPD" appear on the indictment.

STANDARDS OF REVIEW

Propensity Evidence/ Prior Bad Act:

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (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." Whitner, 399 S.C. at 557, 732 S.E.2d at 866.

In order to admit evidence of bad acts not resulting in conviction, the trial court must, "[a]s a threshold matter, ... determine whether the proffered evidence is relevant." Clasby, 385 S.C. at 154, 682 S.E.2d at 895; see State v. Wallace, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). "If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b)" to show, *inter alia,* the existence of a common scheme or plan. Clasby, 385 S.C. at 154, 682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. See State v. Gillian, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); see also Rule 403, SCRE ("[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...").

Batson:

"In the typical appeal from the granting or denial of a Batson motion, the appellate courts give deference to the findings of the trial court and apply a clearly erroneous standard." State v.

Cochran, 369 S.C. 308, 312, 631 S.E.2d 294, 297 (Ct. App. 2006). "This standard of review, however, is premised on the trial court following the mandated procedure for a Batson hearing." Id. "Here, where the assignment of error is the failure to follow the Batson hearing procedure, we must answer a question of law. When a question of law is presented, our standard of review is plenary." Id.

ARGUMENTS

The trial judge erred in allowing the State to question Appellant about an unrelated incident where an investigator allegedly observed Appellant drag a girlfriend out of the woods by her hair.

The jury found Blake guilty of shooting at Jeantaviene "Chabby" Dobson in November of 2015. The bullet missed Dobson and instead struck Tiffany Lakes who was pregnant. The State indicted Blake for attempted murder as to all three but the jury found Blake guilty of the lesser included offense of assault and battery of a high and aggravated nature with regard to Lakes and her baby. Blake and three other witnesses testified that Blake was at his mother's house recovering from a sickle cell episode at the time of the shooting.

Prior to trial Blake asked if the State intended to introduce evidence of prior bad acts. (Tr. p. 31, lines 9-12). The prosecutor stated:

> The only conviction that I see on his record is a 2014 public disorderly conduct which does not fall under the rules to use against him. As far as prior bad acts, I do not intent to get into any, unless he should open the door, I do intent to ask some of the witnesses if they know what the relationship between Mr. Blake and Mr. Dobson is without getting into the details. They had some problems together. They did not get along, not going to go into the details of why they didn't get along. But any prior difficulties are animus between the parties, without getting into the details, are appropriate things to address with witnesses when we have an attempted homicide. It goes to motive and identity. And, again, not going into the details so it is not a 404(b) analysis. It is just a relevance analysis.

(Tr. p. 31, line 14 – p. 32, lines 1-3).

At trial Blake testified that he has a baby with Delisha Dobson, Jeantaviene "Chabby" Dobson's sister. (Tr. p. 199, line 15 – p. 200, lines 1-17). Blake, however, dates Monica Cyclear. (Tr. p. 176, lines 6-24). Blake testified that in April of 2015, "Chabby" Dobson shot the back window out of Blake's car. (Tr. p. 200, line 18 – p. 201, lines 1-12). Blake testified that he reported the shooting incident to the police but did not wish for "Chabby" to be arrested

or prosecuted. (Tr. p. 201, line 13 – p. 202, lines 1-4). Blake said that he and "Chabby" talked and "came to a conclusion to wash off the situation." (Tr. p. 202, lines 7-9). Blake testified that he had no reason to shoot at "Chabby" in November of 2015.

During the re-direct examination of Blake the following took place:

Q. Okay. And the truth is, you've been running around with Delisha for years, right?

A. Yes, sir.

Q. Okay, all right. So and you were running around with her in 2015?

A. Yes, sir.

Q. Okay. And is that what he ["Chabby"] was mad about?

A. Could have been.

Q. Okay. But there shouldn't have been any problems in November?

A. No sir.

(Tr. p. 210, lines 5-17). Then, on re-cross examination of Blake the following took place:

Q. Mr. Plexico asked you if Jeantavienne could have possibly been mad about you running around on his sister, Lisha Dobson, right?

A. Yes ma'am. He did.

Q. Right. And so you said, yeah, that's probably what he was mad about, correct?

A. I said could have been.

Q. Could have been? So it could have been something else, too, right?

A. Like?

Q. I'm glad you asked me. It could have been when Investigator Michael Thomas found you dragging her out of the woods by her hair, correct?

(Tr. p. 212, lines 13-25). Blake objected and the judge excused the jury. (Tr. p. 213, lines 1-13).

Blake continued to object, reminding the judge of the pre-trial conversation about prior bad acts. (Tr. p. 213, lines 14 – 25). The State argued that Blake "opened the door" stating:

> Mr. Plexico opened the door wide open when he asked him what Jeantvienne could have possibly been mad at him about. Okay? I mean, he was getting into, oh well, he doesn't like that he's running around with his sister. And then the Defendant himself asked me like what else is there. He was there. He knows. This is proper cross-examination. This explores the relationship between the parties and the motive that Jeantavienne had and Mr. Blake has in shooting Jeantavienne.

(Tr. p. 214, lines 2-11). The State appears to argue that the question about the alleged incident involving Delisha Dobson goes to motive. If the State's purpose in admitting the evidence of the alleged prior bad act was to show motive, then the Judge needed to make a finding that the evidence was relevant, met the motive exception of Rule 404(b), was proved by clear and convincing evidence and then conduct a Rule 403 analysis. As discussed below, the evidence does not meet the requirements for admissibility.

Counsel for Blake was unaware of the alleged prior incident. (Tr. p. 216, lines 23-24). Blake told the judge, "Why, I was asking him why, Judge. Because this was based on what she had shared with me. She had not shared anything like that with me. So that goes back to misleading of the Court in setting up the Defense and then claiming they opened the door. That's just not fair. If she had that, that's a Rule 5 discovery violation if she intended to use and she should have told me." (Tr. p. 214, line 23 – p. 215, lines 1-5). The prosecutor told the judge that she did not have an incident report about the alleged incident but still argued that it was proper for cross-examination. (Tr. p. 215, lines 10 – 24). The judge allowed the questions stating, "I'm going to allow the question and, but I'm not giving free rein on this. This is for a very narrow purpose." (Tr. p. 216, lines 12-14).

When the jury returned the prosecutor asked, "All right. So Benjamin, the last question to you was that Jeantavienne's problem with you could not have possibly arisen from how you treated his sister and you at one point were pulling her by her hair from the wood line?" (Tr. p. 217, lines 9-13). Blake responded that the brother would have no way of knowing and the State had no proof of the alleged incident. (Tr. p. 217, lines 14-25). The judge erred in allowing the question without a hearing, as requested by Blake at the beginning of the trial.

The question referencing an investigator alleging that he saw Blake drag Delisha Dobson out of the woods by her hair was irrelevant and improperly referenced a prior bad act which did not meet an exception pursuant to Rule 404(b). The prior bad act did not show Blake's motive. The prior bad act could possibly be relevant to "Chabby's" motive to shoot Blake's car window out, if the State could prove the prior alleged act by clear and convincing evidence and show that "Chubby" was aware of the alleged prior bad act. The question about the prior alleged bad act, however, is not relevant to any possible motive Blake is alleged to have had to shoot "Chabby."

Even if the question could somehow be relevant to Blake's motive to shoot "Chabby," as opposed to "Chabby's' motive to shoot Blake, it was still inadmissible as there was not clear and convincing evidence of the alleged act. The State admitted there was not an incident report and the investigator did not testify about the allegation. Finally, the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. In State v. King, 424 S.C. 188, 200, 818 S.E.2d 204, 210 (2018)(n. #6 omitted), the South Carolina Supreme Court wrote:

> Evidence of other bad acts is generally inadmissible to prove a defendant's guilt for the crime charged; however, such evidence may be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Rule 404(b), SCRE. "To be admissible, the bad act must logically relate to the crime with which the defendant has been charged. If the defendant was not convicted of the prior crime, evidence of the prior bad act must be clear and convincing." State v. Fletcher, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008). Nevertheless, this other bad act evidence must be excluded if its

> probative value is substantially outweighed by the danger of unfair prejudice to the defendant. Rule 403, SCRE (providing that although evidence may be relevant, it may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice"). "[T]he determination of prejudice must be based on the entire record, and the result will generally turn on the facts of each case." State v. Stokes, 381 S.C. 390, 404, 673 S.E.2d 434, 441 (2009).

The reference to the alleged prior bad act was inadmissible.

At trial the State argued that Blake "opened the door" to admission of the alleged prior bad act by questioning Blake about why Jeantavienne "Chabby" Dobson may have been angry with Blake. Blake did not open the door as the prosecutor's question did not go to impeachment or Blake's credibility. Blake admitted that at the time "Chabby" shot out the back window of Blake's car, "Chabby" could have been upset about Blake running around with or on his sister, Delisha Dobson. While Rule 404(b), SCRE, does not have a notice requirement as the federal rule, both Blake and the trial judge should have been made aware of the alleged prior bad act at pre-trial, when the prosecutor advised the judge that she only intended to ask Blake general questions about prior difficulties between Blake and "Chabby" Dobson.

The prosecutor's question violated Rule 404(b) and Rule 608(b). In State v. Kelsey, 331 S.C. 50, 75, 502 S.E.2d 63, 75 (1998), the South Carolina Supreme Court wrote:

> Under Rule 608(b), SCRE, specific instances of the conduct of a witness may be inquired into on cross-examination if probative of the witness's character for truthfulness or untruthfulness. South Carolina's Rule is identical to the Federal rule. The inquiry under Rule 608(b) is limited to those specific instances of misconduct which are clearly probative of truthfulness or untruthfulness such as forgery, bribery, false pretenses, and embezzlement. *See* Weinstein's Federal Evidence, Character and Conduct of Witness § 608.12(4)(a-b) (1998).

The question referencing an investigator alleging that he saw Blake drag Delisha Dobson out of the woods by her hair is not probative of Blake's character for truthfulness.

In State v. Hawes, 423 S.C. 118, 135, 813 S.E.2d 513, 522 (Ct. App. 2018), the South Carolina Court of Appeals wrote:

> When an accused takes the stand, he becomes subject to impeachment, like any other witness. Regardless of whether the accused offers evidence of his good character, an accused who takes the stand may be cross-examined about 'past transactions tending to affect his credibility.' " State v. Major, 301 S.C. 181, 183, 391 S.E.2d 235, 237 (1990) (quoting State v. Allen, 266 S.C. 468, 482, 224 S.E.2d 881, 886 (1976)). "First, the accused may be asked about prior bad acts, not the subject of a conviction, which go to his credibility." *Id.* at 184, 391 S.E.2d at 237. However, the cross-examiner must take the accused's answer and may not contradict the accused if he denies them. *Id.*

In Hawes, a murder trial in which the defendant argued that he acted in self-defense in the fatal stabbing of his girlfriend, the Court of Appeals distinguished a prior statement of bad intent from a prior bad act. The prosecutor, on cross-examination, asked Hawes if he remembered making a statement to a female that if she ever called the police, he would make it look like it was her fault. Hawes answered, "No I do not." Id., 423 S.C. at 135, 813 S.E.2d at 522. The prosecutor then called the female as a witness and she testified, without referencing any acts that may have led up to Hawes making the statement, that "He told me that if I were to call law enforcement ... that I would be the one to go to jail." Id. 423 S.C. at135, 813 S.E.2d at 522. The Court found the cross-examination by the prosecutor and testimony from the female was admissible writing, "Female 1's testimony was relevant to Hawes's credibility regarding his claim that Victim was the aggressor, and thus, was significant evidence for the jury's consideration. Contrary to Hawes's testimony that he killed Victim in self-defense, Female 1's statement established that, in the past, Hawes had planned to make a girlfriend appear at fault in the event of a police investigation. Therefore, the testimony was properly admitted." Id., 423 S.C. at 137, 813 S.E.2d at 523.

In the present case the prosecutor did not ask Blake about a prior statement of bad intent. Instead, the prosecutor improperly questioned Blake about a prior bad act that was not probative of truthfulness. The improper questioning requires reversal of the convictions.

2. The trial judge erred in failing to conduct the third step of the Batson procedure and determine if the State's explanations for using four of five peremptory challenges to strike black jurors were mere pretext to engage in purposeful racial discrimination.

During jury selection the State used four of its five peremptory strikes on black jurors. The impaneled jury was composed of six black jurors and six white jurors. (R. p. ** Jury strike sheet). After the selection of the jury Blake made a motion pursuant to Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d (1986), stating, "Yes, Your Honor. I do have a Batson motion, Your Honor. The State struck all black jurors, Your Honor. My client is a black male, I think that is a due process violation, Your Honor, and I would ask that you elicit race neutral reasons for that being done." (Tr. p. 21, lines 15-19).

The State responded:

> The first black juror that I struck number 18, he was a black male. He had a history of traffic charges, i.e., not following the rules and he seemed a little jokey and laughey during qualifications. The second person that I struck was number 73, a black female, college student. I do not have a good experience with college students. Those jurors, I find them a little young and liberal and she was also very attractive, batting her eyelashes. And I thought perhaps she would take pity on the Defendant. Again, the next strike was juror 130, black female, also a college student. Again, I find college students to be liberal, I have not had a good experience with them on jury's. And then finally number 4, number 164, a black female. I was informed that she actually knows a number of people in the Fairwood Apartments which is the incident location. I don't know what she has heard on the street, it has been three years, the streets talk. And that could swing either way but I just, just looking for a fair trial I struck her.

(Tr. p. 22 – p. 22, lines 1-16).

Blake then argued:

> Number 18 is 31-years old, Judge. The fact that he is jokey and laughey, I just don't see that has a race neutral reason. He was no more social or less social. You had a chance to observe the jurors during voir dire as the Defense and the State did. He was no more, the behavior was nothing to be noted. That is obviously a pretextual reason. In regards to number 73, Your Honor, I would like to point out that number 73 is 25-years old, Your Honor. And this batting eye-lashing thing sounds like shucking and jiving which we have already got case law on. So, I mean, that is certainly not a race neutral reason. In regards to number 130, let me turn to that. She is 21-years-old, Judge. And we have other young people that are servers in such that, she readily put on the jury who would not have the maturity of a college student or the intelligence to perhaps get into college. The fact that they put the Wild Wing server on, of course she may not be interested in higher education, I think that belittles the statement that she made to the Court and I believe that was obviously pretextual and they were all emotional motivated, Your Honor. And I would ask that you strike a new jury.

(Tr. p. 22, line 18 – p. 23, lines 1-5).

The judge denied the motion stating:

> I do find that these are race neutral reasons. The history of traffic charges, and two being college students, the Wild Wing server who was seated and is 19-years-old is not a college student. And number 164, I do find that it has a race neutral reason given her potential knowledge of or having heard something about these events from the folks that live in that area. So thank you, your motion is respectfully denied.

(Tr. p. 23, line 19 – p. 24, line 1). The trial judge erred. The judge found the State's explanations were race neutral but failed to complete the analysis and determine if the State's explanations were mere pretext to engage in purposeful discrimination.

"In Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), this Court ruled that a State may not discriminate on the basis of race when exercising peremptory challenges against prospective jurors in a criminal trial." Flowers v. Mississippi, 139 S. Ct. 2228, 2234 (2019). "That blanket discretion to peremptorily strike prospective jurors for any reason can clash with the dictates of the Equal Protection Clause of the Fourteenth Amendment

to the United States Constitution." Id. at 2238. In State v. Giles, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014), the South Carolina Supreme Court wrote:

> In Batson, the United States Supreme Court outlined a three-step process for evaluating claims that peremptory challenges have been exercised in a manner violative of the Equal Protection Clause. First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. 476 U.S. at 97, 106 S.Ct. 1712. 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. 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 opponent of the challenge has proved purposeful discrimination. 476 U.S. at 98, 106 S.Ct. 1712. The ultimate burden always rests with the opponent of the challenge to prove purposeful discrimination.

Blake satisfied the first step of Batson by making a prima facie showing that the State's challenges were based on race. Four of the State's five peremptory challenges were used to strike black jurors and Blake is black. Pursuant to the second step of Batson, the State explained the reasons for each of the four strikes. (Tr. p. 21, line 21 – p. 22, lines 1-16). Blake then argued that the State's explanations for striking jurors number 18, 73 and 130 were pretextual. (Tr. p. 22, line18 – p. 23, lines 1-15). "Once a race-neutral explanation is given, the opponent of the strike must show the explanation was mere pretext to engage in purposeful racial discrimination. State v. Short, 333 S.C. 473, 511 S.E.2d 358 (1999)." State v. Cochran, 369 S.C. 308, 333, 631 S.E.2d 294, 308 (Ct. App. 2006). "Pretext generally will be established by demonstrating that a similarly situated member of another race was seated on the jury." Id. The judge found that the reasons given by the State were race neutral. The judge, however, did not proceed to the third step of Batson to determine if the State's explanations were mere pretext to engage in purposeful discrimination. The judge's failure to follow the Batson procedure requires reversal. Blake established that the reasons for the State's strikes were mere pretext.

As to the State's explanation for striking Juror #18 because he was jokey and laughey, Blake noted that this juror's behavior was no different than the behavior of any of the other jurors. While the judge found that the juror's history of traffic charges was a race neutral reason to strike, the judge made no findings in regard to the demeanor of Juror #18 being jokey and laughey. In State v. Cochran, 369 S.C. 308, 317, 631 S.E.2d 294, 299 (Ct. App. 2006), the South Carolina Court of Appeals wrote:

> The demeanor of a prospective juror is generally a race-neutral reason for employing a peremptory challenge. State v. Tucker, 334 S.C. 1, 8, 512 S.E.2d 99, 102 (1999) (" [C]ounsel may strike venire persons based on their demeanor and disposition."). We hold, however, that where a strike is based solely on a purported specific demeanor and disposition, and the trial judge makes an express and contrary finding, the deferential clearly erroneous standard of review applies. An express finding by the trial court will, unless clearly erroneous, trump counsel's stated perception of a prospective juror's demeanor and disposition.

An express finding by the judge that the demeanor of Juror #18 was no more jokey or laughey than the other jurors, as argued by Blake, could demonstrate pretext, despite the history of traffic charges.

As to the State's explanation for striking Juror #73 because she was a college student, a little young, liberal and attractive, batting her eyelashes, Blake noted that this juror was twenty-five years old. The judge noted that the State claimed to have struck both Juror #73 and Juror #130 because they were both college students but made no specific finding that Juror #73 was an older college student, twenty-five years old, and made no specific finding about demeanor with the batting of eyelashes. As discussed above, an express finding by the judge that Juror #73 did not bat her eyelashes could demonstrate pretext for the college student explanation, especially in light of the fact that she was older.

As to the State's explanation for striking Juror #130 because she was a liberal college student, Blake noted that Juror #130 was twenty-one and the State seated a younger person who was a server at Wild Wing and presumably white. The judge noted that the Wild Wing server was nineteen years old and not a college student. Although the Wild Wing server was not a college student, she and Juror #130 were similarly situated in age. Juror #130, the black juror, was struck and the Wild Wing server, who was presumably white, was seated. Blake demonstrated that the State's explanations for striking four black jurors were mere pretext to engage in purposeful discrimination.

In Miller-El v. Dretke, 545 U.S. 231, 238, 125 S. Ct. 2317, 2323–24, 162 L. Ed. 2d 196 (2005), the United States Supreme Court wrote:

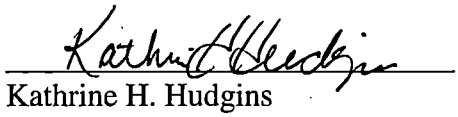
> When the government's choice of jurors is tainted with racial bias, that "overt wrong ... casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial ... ." Powers v. Ohio, 499 U.S. 400, 412, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991). That is, the very integrity of the courts is jeopardized when a prosecutor's discrimination "invites cynicism respecting the jury's neutrality," ibid., and undermines public confidence in adjudication, Georgia v. McCollum, 505 U.S. 42, 49, 112 S.Ct. 2348, 120 L.Ed.2d 33 (1992); Edmonson v. Leesville Concrete Co., 500 U.S. 614, 628, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991); Batson v. Kentucky, supra, at 87, 106 S.Ct. 1712. So, "[f]or more than a century, this Court consistently and repeatedly has reaffirmed that racial discrimination by the State in jury selection offends the Equal Protection Clause." Georgia v. McCollum, supra, at 44, 112 S.Ct. 2348; see Strauder v. West Virginia, supra, at 308, 310; Norris v. Alabama, 294 U.S. 587, 596, 55 S.Ct. 579, 79 L.Ed. 1074 (1935); Swain v. Alabama, supra, at 223–224, 85 S.Ct. 824; Batson v. Kentucky, supra, at 84, 106 S.Ct. 1712; Powers v. Ohio, supra, at 404, 111 S.Ct. 1364.

In Foster v. Chatman, 136 S. Ct. 1737, 1747, 195 L. Ed. 2d 1 (2016), the Court wrote, "The 'Constitution forbids striking even a single prospective juror for a discriminatory purpose.' Snyder v. Louisiana, 552 U.S. 472, 478, 128 S.Ct. 1203, 170 L.Ed.2d 175 (2008) (internal quotation marks omitted)." Blake demonstrated that the State's explanations for striking three

of the four black jurors were mere pretext to engage in purposeful racial discrimination. The trial judge erred in refusing to grant Blake's Batson motion. The error requires reversal.

CONCLUSION

Based on the above arguments, this Court should reverse the convictions and sentences and remand the case for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of August, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Hampton County

Honorable Kristi F. Curtis, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN JEROME BLAKE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Benjamin Jerome Blake, #378007, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 22nd day of August, 2019.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of August, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: October 26, 2019