STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Hampton County
The Honorable Kristi F. Curtis, Circuit Court Judge

Appellate Case No. 2018-001943

THE STATE,

RESPONDENT,

V.

BENJAMIN JEROME BLAKE,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial judge properly admitted evidence of Appellant's assault on one of the victim's sister because it was used to impeach Appellant and challenge his false testimony contradict the evidence of good character he presented. Further, Appellant opened the door to such evidence during his testimony.

II. The trial judge properly analyzed the State's juror strikes pursuant to Batson and ended its analysis when Appellant was unable to prove the State sat jurors similarly situated to those it struck and wholly ignored several of the justifications presented by the State.

STATEMENT OF THE CASE

In December of 2015, a Hampton County grand jury indicted Appellant for three counts of attempted murder and possession of a weapon during the commission of a violent crime. On October 16, 2018, Appellant proceeded to a jury trial before the Honorable Kristi F. Curtis. Steve Plexico, Esquire, represented Appellant; Assistant Solicitor Hunter Swanson, Esquire, represented the State. The jury found Appellant guilty of attempted murder as to victim Jeantavienne 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 then-unborn child. Additionally, the jury found Appellant guilty of the weapons charge. The trial judge sentenced Appellant to terms of fifteen years' incarceration for attempted murder, the ABHAN of Lakes, and the ABHAN of the child, with all sentences to be served concurrently. Additionally, a concurrent sentence of five years' imprisonment was ordered for the possession of a weapon charge.

Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

Prior to trial, the parties utilized their strikes to sift through the jury pool. Trial counsel utilized all five of his strikes on the pool; the State utilized only four strikes. After all jurors and alternates were selected, trial counsel made a Batson[1] motion, noting all four of the State's strikes were utilized on black jurors and requested the trial judge elicit race-neutral reasons for the State's strikes. (Tr.p.15, line 21–Tr.p.21, line 19).

The State initially noted that it did sit a number of black jurors, both male and female. Then it explained its first strike against Juror 18, a black male, was because he had a history of traffic offenses, indicating he had a disregard for the law. The State also noted Juror 18 did not appear to appreciate the importance of such a role because he appeared "jokey and laugh[]y" during the qualification hearing. As to its second and third strikes, Jurors 73 and 130, the State explained both black females were college students, who in his experience were too liberal and overly favorited defendants, making them not ideal selections for juries. Further, he noted Juror 73 was "attractive" and "batt[ed] her eyelashes" during the selection process. Finally, the State struck juror 164, another black female, because she knew a number of people who lived at the location of the shooting. (Tr.p.21, line 21–Tr.p.22, line 16).

In response, trial counsel argued someone being "jokey and laugh[y]," and Juror 18's behavior was "nothing to be noted." As to the two college students, trial counsel claimed the State's decision to sit a Wild Wings server, who would have, at least, the same maturity as the two college students. (Tr.p.22, line 17–Tr.p.23, line 15).

The trial judge denied trial counsel's motion, finding the reasons given by the State were race-neutral reasons. The trial judge took specific notice of the fact that Jury 18 had a history of

[1] Batson v. Kentucky, 476 U.S. 79 (1986)

traffic offenses, a waitress is not the same as a college student, and Juror 164's connection to the scene of the crime was a valid reason for striking her. (Tr.p.23, line 18–Tr.p.24, line 2).

Prior to trial, trial counsel asked the State whether it intended to impeach Appellant's testimony with any prior bad acts of his. The State explained it did not plan to go into any of Appellant's previous bad acts unless trial counsel or a defense witness opened the door to such. However, the State did plan to ask witnesses about the relationship between Appellant and Victim Dobson without getting into the details of such, just to generally establish they did not get along and Appellant had motive for attempting to shoot him and establishing identity. The trial judge and trial counsel both accepted this explanation by the State. (Tr.p.31, line 1–Tr.p.32, line 10).

On November 7, 2015, paramedic Wesley Driggers was dispatched to deal with a gunshot wound. The dispatch operator received the emergency call at 11:05 p.m., and he immediately responded to the incident location at the Fairfield Apartments. Driggers discovered pregnant 25-year-old Tiffany Lakes had been shot under her left breasts. (Tr.p.55, line 10–Tr.p.62, line 24).

Officers Rufus Bailey and Perry Bennett also arrived to the scene fairly quickly, before even EMS arrived. The Officers also spoke with Jeantavienne Dobson, who identified Appellant as the shooter. Officer Bailey also noticed that officers were dealing with two separate crime scenes: one within the vicinity of Lakes, and the other being a nearby church where six shell casings were recovered. Notably, the shell casings were quickly found because Dobson showed officers where Appellant was standing when he was firing his gun. (Tr.p.123, line 18–Tr.p.131, line 16; Tr.p.132, line 11–Tr.p.134, line 19; Tr.p.136, lines 2–22).

Jeantavienne Dobson testified about his relationship with Appellant and Lakes; Lakes is Dobson's sister and Appellant fathered a child with his other sister. On the day of the shooting, Dobson lived in the area near Fairfield Apartments. When he passed Appellant, the latter pulled out a gun and fired several shots at Dobson as he fled towards Lakes's home. En route, he found Lakes injured and remained with her until police and medical help arrived at the scene. Dobson testified that prior to the incident, he and Appellant had previously quarreled, including at least one situation in which Appellant pulled out a gun and threatened Dobson. (Tr.p.71, line 14–Tr.p.87, line 117).

Nate Fuller, Lakes's then-boyfriend, was sitting in his car on the street outside Lakes's home in the Fairfield Apartments and speaking with her as she stood outside the car but leaning into his passenger-side window. He observed three people walk by the vehicle; two of which were women he did not recognize, but the third person was Appellant. After a short conversation among the five, Appellant and the women continued down the street towards a nearby church. Shortly thereafter, Fuller heard arguing down the road. Moments after, he heard gunshots and noticed Lakes had been struck by a bullet. As Fuller attended to Lakes, he noticed Dobson approached, startled. The men waited with Lakes until medical help and police arrived. (Tr.p.91, line 19–Tr.p.100, line 9).

Lakes, similar to Fuller, testified the two of them were engaged in a discussion at the latter's car when Appellant and two females walked by. Shortly after, she heard Dobson and Appellant arguing and exchanging expletives. She observed a "red beam light" from a weapon and Dobson running towards her and away from the church, around which time she was struck by a bullet. She specifically identified Appellant as the person shooting the gun that night. (Tr.p.101, line 4–Tr.p.120, line 18).

Officer Michael Thomas obtained the bullet recovered from Lakes and shell casings found near the church and took them to SLED. Suzanne Cromer, a firearms examiner for SLED, analyzed a fired bullet and six fired .380 caliber cartridge casings recovered from the church area. The cartridge casings, the only ones found by officers, were all fired by the same weapon. Cromer also found the bullet was a .380 caliber bullet and was consistent with the casings recovered. (Tr.p.137, line 12–Tr.p.141, line 3; Tr.p.151, line 1–Tr.p.159, line 23).

Appellant testified in his own defense at trial. He claimed that on the morning of the shooting, he was experiencing pain from a sickle cell crisis. Following his hospital visit, his girlfriend dropped him off at his father's house, near the crime scene. Appellant claimed that around 10:00 p.m., approximately an hour before the shooting, he and his girlfriend went to "his" house which he shared with his mother, and were in his room for the rest of the night. (Tr.p.194, line 14–Tr.p.199, line 14).

Appellant also testified about his connection with Dobson; he admitted to knowing his sister, Delisha, and fathering her child but refusing to marry her. According to Appellant, this was the source of the conflict between the men. He claimed that in April of 2015, an incident occurred with Dobson in which he saw Dobson on a corner, and immediately thereafter a bullet was fired into his car. He claimed he reported the incident to police, but refused to cooperate with the investigation because Dobson was family, the uncle of his child. He testified he worked out his issues with Dobson, resolving all conflict and eliminating any reason to shoot him that night. (Tr.p.199, line 15–Tr.p.202, line 20).

On cross-examination, Appellant's testimony unraveled. Appellant's child with Dobson's sister, the purported reason for their reconciliation, was not borne until 2017, approximately two years after the shooting. Moreover, Appellant could not recall the date on

which Dobson shot at him. Appellant also claimed he had medical records proving he was at the hospital the morning of November 7, 2015, but did not at any point submit them to his attorney because he was unaware he needed them. Further, Appellant was provided with documentation showing he listed his official residence as his father's, not his mother's. (Tr.p.204, line 4–Tr.p.208, line 19).

Appellant's redirect testimony did not aid his defense. He conceded that his father's address was the one listed on his driver's license and that he had been "running around" with Dobson's sister for several years, and such behavior was the reason Dobson "could have been" angry with him. On recross-examination, the State asked Appellant to clarify what he believed Dobson was upset about when he allegedly shot at the vehicle. Appellant again stated it was a possible explanation. The State followed by asking whether Appellant was aware of any other explanations, to which Appellant responded by asking the State for an example. The Solicitor responded by asking, "It could have been when investigator Michael Thomas found you dragging [Dobson's sister] out of the woods by her hair, correct?" (Tr.p.209, line 18–Tr.p.212, line 25).

Trial counsel objected, and the jury was sent out of the courtroom to discuss the matter and there was not evidence of which he was aware which supported the allegation. The State responded by arguing trial counsel opened the door to the question by asking Appellant why Dobson could have been angry with him, and Dobson's incomplete and misleading responses merited the question. Further, such a question was also proper because it explored the relationship between Appellant and one of his victims and established a motive for Appellant's actions that day. The trial judge asked trial counsel to explain how his earlier questions did not open the door to the contested question. Trial counsel's only response was that his questions

were based upon what information had been shared with him. The trial judge determined the State could question Appellant about the incident, but such questioning must be restricted to "a very narrow purpose." (Tr.p.213, line 1–Tr.p.216, line 14).

When the jury returned, the State again asked Appellant the question, to which Appellant responded by asking how Dobson would have any knowledge about what was going on between Appellant and Dobson's sister, and whether any proof of the incident existed. The State asked Appellant whether it was his position that siblings do not discuss their romantic relationships, to which Appellant replied, "Pretty much." (Tr.p.217, lines 9–24).

On reply, Officer Thomas noted that he was also the officer who investigated the incident in which an individual fired a bullet into Appellant's car. He explained that when he asked Appellant whether he intended to press charges, the latter noted he did not want to pursue legal action and would instead "take care of it himself." (Tr.p.229, line 15–Tr.p.230, line 23).

STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). "The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. Id. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id.

ARGUMENT
I.

The trial judge properly admitted evidence of Appellant's assault on one of the victim's sister because it was used to impeach Appellant and challenge his false testimony contradict the evidence of good character he presented. Further, Appellant opened the door to such evidence during his testimony.

Appellant argues the trial judge erred in allowing the State to question Appellant about an incident in which Appellant was observed dragging the victim's sister out of the woods by her hair. The State disagrees with this allegation of error for many reasons. First, the State properly introduced the evidence to impeach Appellant's false testimony and impugn the evidence of good character he presented. Second, the challenged evidence was only introduced because Appellant opened the door to it during his testimony. Third, and finally, the evidence was independently admissible as critical res gestae evidence to explain the ongoing conflict between Appellant and Dobson.

"'The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling [on such] will be disturbed only upon a showing of an abuse of discretion.'" State v. Washington, 424 S.C. 374, 818 S.E.2d 459, 475 (Ct. App. 2018). (quoting State v. Shuler, 353 S.C. 176, 577 S.E.2d 438, 442 [2003]); see also State v. Winkler, 388 S.C. 574, 698 S.E.2d 596, 601 (2010) (same). Likewise, the scope of cross-examination is largely within the trial court's discretion, and the appellate court "'will not disturb a trial court's ruling concerning the scope of cross-examination of a witness to test his or her credibility, or to show possible bias or self-interest in testifying, absent a manifest abuse of discretion.'" In re Matter of Campbell, 427 S.C. 183, 830 S.E.2d 14, 18 (2019) (quoting Yoho v. Thompson, 345 S.C. 361, 548 S.E.2d 584, 585 [2001]); Bunch v. Charleston & W.C. Ry. Co., 91 S.C. 139, 74

S.E. 363, (1912). An abuse of discretion occurs when the trial court's conclusions either lack evidentiary support or they are controlled by an error of law. Washington, 818 S.E.2d at 469.

"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 accept the accused's answer and may not challenge the accused if he denies the bad act. Id.

Additionally, when a defendant offers evidence of his good character traits relevant to the crime charged, the solicitor has the right to cross-examine him as to particular bad acts or conduct. State v. Young, 378 S.C. 101, 106, 661 S.E.2d 387, 389 (2008) (citing State v. Major, 301 S.C. 181, 391 S.E.2d 235 [1990]). The State may show bad character only for the traits initially focused on by the accused, and impeachment may be done by introducing prior convictions with extrinsic evidence. Id.

Finally, otherwise inadmissible evidence may be properly admitted when the defendant opens the door to that evidence. State v. Page, 378 S.C. 476, 483, 663 S.E.2d 357, 360 (Ct. App. 2008); see also State v. Stroman, 281 S.C. 508, 513, 316 S.E.2d 395, 399 (1984) (when one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce otherwise incompetent or irrelevant evidence in explanation or rebuttal thereof). "[A] defendant may open the door to what would otherwise be improper evidence through his own introduction of evidence or witness examination." State v. Culbreath, 377 S.C. 326, 333, 659 S.E.2d 268,

272 (Ct. App. 2008). "A party cannot complain of prejudice from evidence to which he opened the door." Id. (citing State v. Robinson, 305 S.C. 469, 474, 409 S.E.2d 404, 408 (1991)). The question of whether a party opens the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the trial judge. Page, 663 S.E.2d at 360.

In State v. Dennis, 402 S.C. 627, 742 S.E.2d 21 (2013), the defendant was convicted of ABWIK and possession of a firearm during the commission of a violent crime. During the trial, the State introduced testimony from a witness describing the defendant's actions that day, including an incident earlier in the day in which defendant surprised witnesses when he produced a stolen gun and offered to sell it to them for fifty dollars which he would use to purchase crack cocaine and soon after suggested robbing the victim. Id. at 632, 742 S.E.2d at 24. The defendant objected to the evidence, arguing the evidence was not relevant to his case because: (1) motive was not an element of the crimes charged, (2) he was not charged with possession of a stolen gun; and (3) no other evidence suggested he was under the influence of drugs at the time of the crime. Id. at 632–33, 742 S.E.2d at 24. The trial court admitted the challenged testimony, finding it rebutted defendant's "very different account" of the day's event and that it established the motive for Appellant's actions. Id. Ultimately, this Court upheld the admission of the challenged evidence under the res gestae theory, noting the "why" of the defendant's actions was important for the jury in understanding his actions and provided context for his actions. Id. at 635–37, 742 S.E.2d at 25–26.

In State v. Hawes, 423 S.C. 118, 813 S.E.2d 513 (2018), the defendant, on trial for murder, testified that he killed his victim in self-defense and the victim was the aggressor. Id. at 133, 813 S.E.2d at 521. The State claimed Hawes's testimony "opened the door" to introducing

into evidence his prior acts of domestic violence. Id. For impeachment purposes, the State asked Hawes whether he ever told a previous girlfriend that if she ever called law enforcement he would make the altercation look like her fault. Id. at 134–35, 813 S.E.2d at 521–22. Hawes claimed he never said such a thing, so the State called that previous girlfriend to testify, at which time she confirmed Hawes had told her as much, and that she would be the one to go to jail. Id. at 135, 813 S.E.2d at 522.

On appeal, this Court noted the State's question regarding Hawes's statement to the previous girlfriend involved impeachment, not a Rule 404(b) prior bad act issue. Id. at 136–37, 813 S.E.2d at 523. Further, if Hawes had admitted to making the statement, the State would not have been able to call the previous girlfriend to offer extrinsic evidence of it. Id. at 137, 813 S.E.2d at 523. The ex-girlfriend's testimony was relevant to Hawes's credibility regarding the claim that his victim was the aggressor. Id. Hawes, like every other witness, was subject to impeachment for false or inaccurate testimony and challenges to his credibility. Id. at 135, 813 S.E.2d at 522 (citing State v. Major, 301 S.C. 181, 183, 391 S.E.2d 235, 237 (1990) (internal citations omitted)).

In the instant case, the State's questioning of Appellant regarding his prior assault against Dobson's sister was proper for several reasons. First, Appellant opened the door to such evidence. When a defendant introduces evidence of a particular fact or transaction, the State has every right to introduce "otherwise incompetent or irrelevant" evidence to explain or rebut the defendant's testimony. See Stroman, 281 S.C. at 513, 316 S.E.2d at 399. Here, Appellant—not the State—introduce evidence of Dobson shooting at Appellant in his vehicle. Accordingly, the State was permitted to respond to this half-explanation of the conflict between the men by introducing evidence that it did not begin with Dobson shooting at Appellant, but was one

incident in an ongoing conflict with Appellant, going at least as far back as when Appellant assaulted Dobson's sister. Appellant's testimony made it necessary to provide the full history and context of the interactions between the two men so that the jury would be fully apprised of the history of the two men. See Dennis, 402 S.C. at 632–33, 742 S.E.2d at 24. Accordingly, Appellant may not now complain about the introduction of this evidence when his testimony necessitated the State's response, which gave context to that incident and the conflict between the men. See Culbreath, 377 S.C. at 333, 659 S.E.2d at 272.

The challenged questions were also appropriate because Appellant, similar to the defendant in Hawes, gave false testimony and opened himself up to impeachment. Appellant, like any other witness, is subject to impeachment. See Major, 301 S.C. 183, 391 S.E.2d 237. Appellant made two notably false claims during his testimony: (1) Appellant's fathering a child with Dobson's older sister and refusal to marry her was the source of conflict between the men; and (2) Appellant eliminated any conflict between the men, and any reason to harm Dobson, prior to the shooting in dispute because he desired a positive relationship with the uncle of his child. However, both of these claims were demonstrably false because Dobson's sister was not pregnant with Appellant's child at the time of the shooting; Appellant admitted his child was born approximately two years after the shooting, rendering any motivations for either men based on the non-existent pregnancy as impossibilities. At this point, the State was permitted to impeach Appellant's false testimony with evidence pertaining to the real source of conflict between the men; Appellant's physical assault on Dobson's sister. Bad acts such as these have been accepted by South Carolina courts as proper for impeachment when used to impeach a testifying defendant's testimony, provided the cross-examiner accepts the defendant's answer and does not introduce extrinsic evidence of the bad act. Major, 301 S.C. at 184, 391 S.E.2d at

237. The State accepted Appellant's answer and did not use extrinsic evidence to prove the bad act.

Discussion of Appellant's assault on Dobson's sister was also appropriate because Appellant's testimony about resolving his conflict with Dobson was his attempt to introduce evidence of his good character; Appellant claimed he was the victim of an attack by Dobson but, rather than take revenge or aid in his arrest, he made peace with him. Notably, this testimony is an attempt to show the jury Appellant is both peaceful and family-oriented. Because Appellant offered evidence of these good character traits, the State was permitted to cross-examine Appellant as to particular bad acts or conduct which contradicted these assertions. See Young, 378 S.C. at 106, 661 S.E.2d at 389. Notably, when introducing evidence in this context, the State may utilize extrinsic evidence to prove the bad acts occurred. Id.

Accordingly, due to Appellant's actions, the trial judge properly allowed the State to cross-examine Appellant on his prior incident with Dobson's older sister.

II.

The trial judge properly analyzed the State's juror strikes pursuant to Batson and ended its analysis when Appellant was unable to prove the State sat jurors similarly situated to those it struck and wholly ignored several of the justifications presented by the State.

Appellant argues the trial judge erred in failing to perform the third step of the Batson procedure and determine if the State's explanations for its allocation of its peremptory challenges were "mere pretext" to strike black jurors. The State disagrees with this allegation of error. Notably, no further analysis was required because the State provided race-neutral reasons for all of its strikes, none of which applied to similarly situated jurors of other races and some of which were wholly unaddressed by trial counsel.

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).

Jurors may be struck for a multitude of reasons. For example, a juror may be struck based on his demeanor and disposition. State v. Wilder, 306 S.C. 535, 538, 413 S.E.2d 323, 325 (1991). For a Batson challenge to succeed, 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 performing this part of the analysis, the trial judge should look at all the evidence before him, including the composition of the jury panel. State v. Shuler, 344 S.C. 604, 621, 545 S.E.2d 805, 813 (2001) ("[T]he composition of the jury panel is a factor that may be considered when determining whether a party engaged in purposeful discrimination pursuant to a Batson challenge."). Use of strikes against jurors of the alleged discriminated group and those outside of said group is evidence factoring against a finding of purposeful discrimination. See Cochran, 369 S.C. at 315–16, 631 S.E.2d at 298. Further, the failure to exercise all peremptory challenges and allowing members of the disputed group on the jury may be further evidence contradicting a claim of discrimination. See id. at 316, 631 S.E.2d at 299 ("[Defendants] used only ten of their twenty allotted peremptory challenges. If they intended to discriminate against white jurors, they certainly would have exercised their peremptory challenges more liberally. Instead, [Defendants] seated five white jurors."). 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.

"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).

In the instant case, the trial judge properly ended his Batson analysis of the case after Appellant failed to demonstrate the State's proffered race-neutral were pretext; notably Appellant failed to provide any examples of jurors sat on the jury who were similarly situated to those struck by the State. Initially, the State notes Appellant made no attempt to argue against the State's reasoning for striking Juror 164, who knew several people in the apartment complex at which the shooting was located. Appellant's silence in this regard must be deemed as Appellant's acceptance for the State's justification. Furhter, Appellant did not in any way challenge the first reason for the State striking Juror 18, his criminal record. Appellant did argue the "jokey and laugh[y]" behavior was not a proper basis for a strike. However, South Carolina courts have found just the opposite of Appellant's assertion, noting a juror's demeanor is a perfectly acceptable basis for disqualification. See Wilder, 306 S.C. at 538, 413 S.E.2d at 325. Additionally, Appellant was unable to point to a similar juror to Juror 18 who was actually sat on the jury.

Appellant's most "complete" challenged to the State's strikes were to Jurors 73 and 130, black female college students who the State struck because he had negative experiences with "liberal" college students. However, even in this regard Appellant's challenge failed to hit the mark. Appellant only argued that a Wild Wings server, with no college experience, was similarly situated to Jurors 73 and 130; an argument without any stated reasoning and contradictory to the entire concept of collegiate education.

Further, in addition to the State's specific justifications for the strikes, all of which were accepted by the trial judge, several other facts in the record support the finding that the State did not have racial bias in its striking. First, the record confirms black jurors were sat by the State, and that the State did not utilize all of its strikes. See Shuler, 344 S.C. at 316, 631 S.E.2d at 299 ("[Defendants] used only ten of their twenty allotted peremptory challenges. If they intended to discriminate against white jurors, they certainly would have exercised their peremptory challenges more liberally. Instead, [Defendants] seated five white jurors.")

In the instant case, the State provided race-neutral justifications for its strikes, none of which were meritoriously challenged by Appellant, whose burden it was to prove racial discrimination. The trial judge questioned the parties pursuant to Batson and, in a proper exercise of his discretion, found the State credible. Accordingly, the trial judge did not err in finding no Batson violation occurred.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed

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December 9, 2019

STATE OF SOUTH CAROLINA
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The Honorable Kristi F. Curtis, Circuit Court Judge

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THE STATE,

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APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

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I further certify that all parties required by Rule to be served have been served this 9th day of December, 2019.

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ATTORNEY GENERAL

December 9, 2019

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

RE: State v. Benjamin Jerome Blake – Appellate Case No. 2018-001943

Dear Ms. Hudgins:

I am enclosing two copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

William F. Schumacher
Assistant Attorney General
Bar Number 100231

WFS/ssm
Enclosures

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