THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2020-000938

Katrina Stroman……..……...……Respondent/Appellant,

v.

Samuel Jeffords……..……..……. Appellant/Respondent.

APPELLANT/RESPONDENT'S INITIAL BRIEF

RILEY POPE & LANEY, LLC

DAMON C. WLODARCZYK
S.C. Bar No. 70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone: (803) 799-9993
Facsimile: (803) 239-1414
Attorney for Appellant/Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

STATEMENT OF ISSUES ON APPEAL

I. THE TRIAL COURT ERRED IN DENYING LANDLORD'S MOTIONS FOR DIRECTED VERDICTS, AND, THEREFORE, THE POST-TRIAL MOTION WAS MOOT.

   A. There was no evidence of Landlord's ownership, care, or keeping of Tenant's dog.

   B. There was no evidence of Mr. Brook's ownership, care, or keeping of Tenant's dog.

II. THE TRIAL COURT ERRED IN GRANTING STROMAN'S MOTION TO RECONSIDER ITS *BATSON* RULING AND ORDERING A NEW TRIAL.

   A. Findings unsupported by the record.

   B. Rulings made outside of the grounds set forth in the Rule 59 Motion.

   C. Landlord's strikes were race neutral.

STATEMENT OF THE CASE

On June 29, 2017, the Respondent/Appellant ("Stroman"), who is an African American female, filed a Summons and Complaint seeking damages for personal injuries suffered as a result of a dog bite. The Complaint identified a single cause of action for common law negligence against the dog owner Payten Padgett ("Tenant") and Appellant/Respondent ("Landlord"), a Caucasian male. Tenant and Landlord, through their respective counsel, filed and timely served Answers.

At the conclusion of discovery Landlord moved for summary judgment. Following a hearing a Form 4 Order was filed denying the motion and finding a genuine issue of material fact existed as to whether Landlord was liable for Tenant's dog biting Stroman.

On January 6, 2020, the trial court issued a Consent Order allowing Stroman to amend her pleadings to assert an additional cause of action for strict liability under S.C. Code §§ 47-3-50 and 47-3-110. Landlord filed an Answer to the Amended Complaint on January 10, 2020.

On January 13, 2020, the case was called for trial. Prior to jury selection, Tenant confessed judgment in the amount of $35,000.00, and was dismissed. The jury panel was qualified, and the parties selected a jury comprised of (2) African American females, three (3) African American males, five (5) Caucasian females, and two (2) Caucasian males. The alternate juror, a Caucasian male, was dismissed prior to jury deliberation.

After the jury was selected, Stroman moved to challenge the jury composition under *Batson v. Kentucky*, 476 U.S. 79 (1986). The trial court conducted a *Batson* hearing whereby Stroman presented her arguments that Landlord's preemptory challenges were not race or gender neutral. Landlord then argued the preemptory

challenges were supported by race and gender-neutral grounds. After hearing arguments and meeting in chambers, the trial court denied the *Batson* motion and the trial began.

At the conclusion of Stroman's case, Landlord moved for a directed verdict arguing Landlord was not liable under the common law or the strict liability statute because he was neither an owner, caretaker, or keeper of Tenant's dog. [Landlord Trial Exhibit 1 (Motion/Memo Directed Verdict); Trial Transcript ("TT") p. 156, line 24-p. 174, line 24]. The trial court granted the directed verdict motion on the common law negligence claim and denied the motion as to the strict liability claim. [TT p. 171, line 1-p. 187, line 10].

Landlord presented no witnesses in his case in chief as he was called as a witness by Stroman. After notifying the trial court that Landlord rested his case, Landlord renewed the directed verdict motion as to the remaining claim for strict liability, which was also denied. [Landlord Trial Exhibit 2 (Motion/Memo Directed Verdict); TT p. 199, line 1-p. 201, line 10].

The case was submitted to the jury for consideration and after deliberations, the jury returned a unanimous verdict in favor of Landlord. Stroman was granted ten (10) days to file post-trial motions.

Stroman timely filed a Motion for a New Trial arguing the trial court should reconsider the denied *Batson* motion. The issues were briefed by the parties and proposed orders were submitted by both parties. On May 26, 2020, the trial court filed its Order granting Stroman a new trial finding Stroman had "proved purposeful racial discrimination by Defendant of African American females pursuant to *Batson* . . ."

Landlord filed and timely served his Notice of Appeal. Stroman filed and timely served a Notice of Cross-Appeal.

STATEMENT OF FACTS

A. Facts as to directed verdict motions for strict liability

Landlord is the owner of a house located at 375 Gospel Hill Road in Orangeburg, South Carolina, which is a rental property [the "Property"]. [TT p. 109, lines 17-24]. Landlord had a business relationship with Gregg Brooks–Tenant's father. [TT p. 90, lines 9-22; p. 116, lines 1-14; p. 116, line 25-p. 117, line 8]. The past three tenants of the Property had a personal relationship with Gregg Brooks; Tenant was his daughter and the other two renters were his employees. [TT p. 112, lines 2-5]. However, Landlord never hired Mr. Brooks to solicit or provide renters for the Property. [TT p. 116, lines 15-24].

When Landlord resided out of state for business, Mr. Brooks would monitor the Property, along with Landlord's other rental homes, and notify Landlord if something needed to be done to a property. Once notified, the two would coordinate to get the matter completed. If there was an emergency, Mr. Brooks had the ability to correct what was needed. [TT p. 111, line 18-p. 112, line 9]. Additionally, Landlord would hire and pay Mr. Brooks to make repairs or additions on both his personal and rental properties. [TT p. p. 117, lines 5-8; p. 125, lines 9-19].

Toward the end of 2012, Tenant was going through a separation from her husband and needed to find a place to live. [TT p. 102, line 21-p. 103, line 2]. Tenant's father, Mr. Brooks, assisted her with renting the Property from Landlord. [TT p. 95, line 23-p. 96, line 2; p. 106, lines 17-24]. Tenant paid $450 per month in rent, which she gave to her father, Mr. Brooks, who then deposited the money into Landlord's bank account. [TT p. 96, lines 3-8]. When Tenant moved into the Property, she had the utilities changed

from Landlord's name to her father's name to avoid the deposit requirement. [TT p. 101, line 23-p. 102, line 5].

Tenant and her two small children moved into the property along with Tenant's Pitbull dog. As Tenant was moving from a 2,300 square foot house, and the Property was 800 square feet, Tenant needed to keep the dog outside. Tenant had her father, Mr. Brooks, bring over a doghouse which he personally owned. Additionally, either Tenant or Tenant and her father installed a runner for the dog. Neither the doghouse nor the runner was present when Tenant moved in the Property. [TT p. 97, line 9-24; p. 103, line 3-p. 104, line 15]. No discussions took place between Landlord, Tenant, or Tenant's father concerning the dog. [TT p. 105, lines 23-25].

It is uncontested that the sole owner of the dog was Tenant and that Tenant was the one that was responsible for the dog when it bit Stroman. It is also undisputed that Tenant's father, Mr. Brooks, did not own the dog, did not provide food, water, or vet care for the dog. Mr. Brooks did not keep the dog or visit the Property to care for the dog. Mr. Brooks was not doing any work on the Property, or taking care of the dog, when Stroman was bitten. Finally, Landlord never paid Mr. Brooks to go to the Property to take care of the dog. [TT p. 91, line 8-p. 92, line 21].

It is also uncontested that Landlord did not take care of the dog, provide water or food for the dog, did not come to the property to walk the dog, and did not pay for the dog's vet bills. [TT p. p. 104, line 16-p. 105, line 13]. Landlord expressly denied knowing Tenant had a dog and there is no evidence showing Landlord knew of Tenant's dog. [TT p. 92, lines 22-25; p. 98, lines 7-11; p. 105, lines 23-25; p. 107, lines 13-16; p. 123, lines 16-19].

On December 1, 2014, Stroman was in her back yard which abuts the backyard of the Property. Hedges delineate the property boundary. Tenant was not home at the time but had left her dog outside and not secured to the run. While Stroman was cleaning out her car, the dog charged though the hedges and towards Stroman. As Stroman ran towards her house, the dog bit her on the right arm. Stroman got away from the dog after the bite and ran inside her house. [TT p. 134, line 1-p. 136, line 21].

Prior to the bite, there were no complaints about the dog and no prior incidents involving the dog. [TT p. 102, lines 6-12; p. 127, lines 9-13; p. 153, line 24-p. 154, line 7].

B. Facts as to jury selection and *Batson* motion

The venire for the consisted of six (6) African American females, three (3) African American males, eight (8) Caucasian females, and three (3) Caucasian males for the jury. The venire for the alternate juror was comprise of two (2) African American females and one (1) Caucasian male. The jury that deliberated this case consisted of (2) African American females, five (5) Caucasian females, and two (2) Caucasian males.

Stroman struck three (3) Caucasian females and one (1) Caucasian male from the main panel and an African America female from alternate panel. Landlord struck four (4) African American females from the main panel and an African American female from the alternate panel.

After the jury was selected, Stroman moved to challenge the jury selected under *Batson*. After the jurors were excused, the trial court held a *Batson* hearing. Stroman challenged the strikes because Landlord struck "all black females." [TT p. 49, lines 12-14].

The trial court then requested race neutral reasons from Landlord. The following was offered to the trial court:

> MR. WLODARCZYK: Number 2 was struck because she was disabled, unemployed. Most likely to give a more favorable plaintiff verdict because of that, those backgrounds.
>
> Number 4, I couldn't understand her when she gave her information from the back, so I struck her because I couldn't understand her.
>
> Number 6 was the bad landlord case. That she said that she had a bad experience with the last five years. Struck her on that ground.
>
> And number 5 is a PCA caregiver. I treat those almost like school teachers and nurses. They have a giving heart, more likely to give when faced with a verdict. So that's why she was struck.
>
> THE COURT: Okay. So let me just -- I'm just – so number 2 was juror number 97?
>
> MR. WLODARCZYK: Correct, Your Honor.
>
> THE COURT: Okay. And you said she was disabled?
>
> MR. WLODARCZYK: Disabled. Not working. So given this is a personal injury case, my concern that she may be more inclined to give a larger verdict if there is a verdict.
>
> THE COURT: All right. And Ms. Blanding -- I mean, number 4 was number 9. Okay. Well, I had her working at Husqvarna. So, I mean --
>
> MR. WLODARCZYK: Which one, Your Honor?
>
> THE COURT: Number 4 who was juror number 9?
>
> MR. WLODARCZYK: Yes, sir. I said I couldn't understand -- I did not hear what she said, so that's --
>
> THE COURT: And I'm sorry you didn't just speak up and say --
>
> MR. WLODARCZYK: And based on the other people that I had, I mean, they're just in my opinion better jurors. But it wasn't based on race or gender.
>
> THE COURT: All right. Ms. Williams, do you want to--
>
> MS. WILLIAMS: Your Honor, we haven't had a reason for number 22.

MR. WLODARCZYK: She was a sales associate. And the second one I would have struck would probably been the nurse. Again, nurse/care giver. I did have nurse marked as an alternative had one of these people been

struck by the Plaintiff's, but they weren't. So it's just how it came out, Your Honor.

THE COURT: Okay.

MR. WLODARCZYK: I would assume it's a more lower wage, lower education status. Not that we have that information, but just taken the fact that that's what her position was that's what I took into account.

[TT p. 49, line 12-p. 51, line 17].

After offering race and gender-neutral reasons to the trial court, the following exchange took place:

THE COURT: Okay. All right. All right.

Ms. Williams?

MS. WILLIAMS: Your Honor, I have concerns with explanation of "can't understand someone." I'm not sure that's race-neutral. Likewise, the lower education and lower income. I have concerns with that explanation as well.

THE COURT: Was anybody picked on the jury that was also working as a salesperson? Have y'all had a chance to look over that? I didn't --

MR. WILLIAMS: I'm trying to look at it right now, Your Honor.

MS. WILLIAMS: Anybody picked or anybody struck?

THE COURT: No. Anybody picked?

MR. WLODARCZYK: The first one was RMC, Your Honor. I put them as a hospital. Second was disabled. Third was the pit bull owner that was struck. Fourth, I couldn't understand and if you can't communicate openly, I have concerns about communicating back in the jury room. Sixth was a bad landlord. Nine was a nurse. Eleven was a pharm tech. Twelve was the owner of a pit bull. Thirteen was an engineer. Fourteen was a hairstylist. Seventeen was a baker. Machine operator. And 21 was the nurse. And the other ones I do have the information, but I don't believe anybody with sales associates other than the one I struck.

THE COURT: Okay.

MR. WLODARCZYK: We had bookkeepers and an engineer was struck by the Plaintiff's. I don't even have one for 191 who's a black male. I just thought he was a good juror.

MS. WILLIAMS: Your Honor, I believe his explanation was not just a sales associate, but it was the low income.

THE COURT: Ma'am?

MS. WILLIAMS: Low income. It seems to be the explanation to me. I mean, how does he know what a hairstylist makes, that's number 152.

THE COURT: Okay.

MR. WLODARCZYK: I know what my wife pays for her hairstylist, Judge.

THE COURT: No, I'm aware of that also. But I --

MR. WLODARCZYK: And income is race-neutral. I mean--

THE COURT: Go ahead, Ms. Williams.

MS. WILLIAMS: I don't see these as race-neutral issues. It's obvious that African Americans usually have lower income.

THE COURT: Okay. Can y'all step back into my office for just one second.

MR. WILLIAMS: Sure.

(Chambers conference)

MR. WILLIAMS: And just briefly for the record, he did see the sales person, Your Honor. Not that I'm looking for that to change your --

THE CLERK: Which one was the sales person?

MR. WILLIAMS: Number 140; 16, I believe.

(Verbatim)

THE COURT: Okay.

MR. WILLIAMS: If I'm wrong, it's Mr. Marshall's fault in the back.

MR. WLODARCZYK: I have CSR.

THE COURT: I had CSR. So, I'm blaming him. I will blame Mr. Marshall for it.

> MR. WLODARCZYK: I don't know what CSR -- I didn't take that as a sales associate position or something.

[TT p. 51, line 18-p. 54, line 8].

The trial court then issued the following order:

> THE COURT: All right. What I'm going to do is, I'm going to deny the Batson Motion. I think he did give some race-neutral reasons. I am -- I will note on the record, I am concerned about the "could not understand" explanation. Even with that, I'm not going to re-pick the jury on this.

[TT p. 54, lines 9-14].

STANDARD OF REVIEW

A. Directed Verdict

"The trial court must deny a motion for a directed verdict . . . if the evidence yields more than one reasonable inference or its inference is in doubt." *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012). "An appellate court will reverse the trial court's ruling only if no evidence supports the ruling below." *Id.*

B. *Batson* Motion

"Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record. . . . Appellate courts give the trial judge's finding great deference on appeal and review the trial judge's ruling with a clearly erroneous standard." *State v. Dyar*, 317 S.C. 77, 79, 452 S.E.2d 603, 604 (1994).

ARGUMENTS

I. THE TRIAL COURT ERRED IN DENYING LANDLORD'S MOTIONS FOR DIRECTED VERDICTS, AND, THEREFORE, THE POST-TRIAL MOTION WAS MOOT.

A. There was no evidence of Landlord's ownership, care, or keeping of Tenant's dog.

Landlord argues that based upon the evidence presented at trial, there was no liability against Landlord under South Carolina's strict liability dog bite statute, and the trial court erred in denying Landlord's Motions for Directed Verdict at the conclusion of Stroman's case in chief and Landlord's case in chief. Due to the trial court's error, the case should not have been submitted to the jury for consideration. As such, the jury's verdict for Landlord, Stroman's subsequent Rule 59, SCRCP, motion, and the resulting Order granting a new trial were moot.

"If a person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the dog owner or person having the dog in the person's care or keeping, *the dog owner or person having the dog in the person's care or keeping* is liable for the damages suffered by the person bitten or otherwise attacked. S.C. Code § 47-3-110.

"The Legislature's use of the phrase 'care or keeping' clearly requires that the 'other person' act in a manner which manifests an acceptance of responsibility for the care or keeping of the dog." *Clea v. Odom*, 394 S.C. 175, 180, 714 S.E.2d 542, 545 (2011) *citing Harris v. Anderson County Sheriff's Office*, 381 S.C. 357, 364, 673 S.E.2d 423, 427 (2009).

> There are three scenarios under § 47–3–110 when the attack is unprovoked and the injured party is lawfully on the premises: First, the dog owner is strictly liable and common law principles are not implicated. Second, a property owner is liable when he exercises control over, *and assumes responsibility for, the care and keeping of the dog*. Third, a property owner is not liable under the statute when he has no control of the premises and provides no care or keeping of the dog.

Clea, 394 S.C. at 180, 714 S.E.2d at 545 (emphasis added).

In *Nesbitt v. Lewis*, plaintiff brought an action against mother, son, and daughter who were property owners. *Nesbitt v. Lewis*, 335 S.C. 441, 517 S.E.2d 11 (Ct. App.

1999). Mother and son resided on the property and the dogs at issue were owned by mother and lived on the property. Daughter did not live on the property. *Id.* A jury returned a verdict against the mother, son, and daughter and awarded damages.

On appeal, this Court reversed the jury verdict as to daughter finding the evidence failed to show the dogs were in her care and keeping because she had not resided on the property for five (5) years, did not take care of the dogs, and did not own the dogs. The Court held daughter could not be liable as she lacked both possession and control over the property *and* the dogs, which precluded a finding that daughter owned the dogs or had them in her care and keeping. *Id*., S.C. 335 S.C. at 446, 517 S.E.2d 14.

In *Bruce v. Durney*, a plaintiff brought an action against the owners (tenants at will) of a dog that bit his minor child and against the record owner of the property (landlord) where the dog was kept. It was alleged the property owner knew, or should reasonably have known, of the dangerous condition created by the dog owners in that they allowed to dog to be unrestrained and failed to act as the property owner to remedy the condition. The plaintiff alleged the property owner had the right to control the property and was negligent in failing to do so. *Bruce v. Durney*, 341 S.C. 563, 565, 534 S.E.2d 720, 722 (Ct. App. 2000).

In affirming the trial court's grant of summary judgment in favor of property owner on the plaintiff's strict liability claim, this Court found, (1) property owner did allow the dog to be kept on the property where property owner did not live; and (2) property owner did exercise some measure of control in that he visited the property on average once a week. However, the court found that no evidence existed showing property owner provided any care or support for the dog and property owner could not be found to be the dog's keeper as it was obvious dog owner was the owner and keeper

of the dog. As such, this Court affirmed the trial court's holding that property owner was not liable under S.C. Code § 47-3-110. *Id.*, 563 S.C. at 573-74, 534 S.E.2d at 725.

In the present case, there was no evidence at trial that Landlord knew about Tenant's dog. It was uncontested Landlord did not own the dog. There was no evidence Landlord ever provided any care for the dog or kept the dog. There was no evidence Landlord ever exercised any control over the dog. There was no evidence Landlord ever assumed any responsibility for the care or keeping of the dog. [TT p. 91, line 8-p. 92, lines 21-25; p. 98, lines 7-11; p. 104, line 16-p. 105, line 13; p. 105, lines 23-25; p. 107, lines 13-16; p. 123, lines 16-19]. Accordingly, there was no evidence in which the jury could have found Landlord liable under the strict liability statute because Landlord never had the dog in his care and keeping at any point in time and, therefore, is was clearly erroneous for the trial court to deny Landlord's Motions for Directed Verdict.

B. There was no evidence of Mr. Brook's ownership, care, or keeping of Tenant's dog.

At trial, Stroman also attempted to establish strict liability against Landlord arguing he was liable for the actions of his agent, Mr. Brooks.

"The principal is responsible for the acts of the agent within the scope of his apparent authority, although he may act contrary to the directions of the principal." *Williams v. Tolbert*, 76 S.C. 211, 56 S.E. 908, 910 (1907). Under the evidence presented at trial, regardless of whether Mr. Brooks was acting in his role as Landlord's agent, there was no evidence of any wrongdoing by Mr. Brooks that would make him strictly liable for the dog bite. As such, there were no grounds to impute liability under an agency relationship.

As stated, it is undisputed that Mr. Brooks did not own the dog, did not provide food, water, or vet care for the dog. Mr. Brooks did not keep the dog or visit the property to care for the dog. Mr. Brooks was not doing any work on the Property on December 1, 2014, when Stroman was bitten. Mr. Brooks was not taking care of the dog in December 2014, when Stroman was bitten. Finally, Landlord never paid Mr. Brooks to go to the Property to take care of the dog. [TT p. 91, line 8-p. 92, line 21]. Accordingly, there was no evidence which the jury could have found Mr. Brooks liable under the strict liability statute as having the dog in his care and keeping at any point in time. If Mr. Brooks could not be found strictly liable, then to the extent there was any principal-agent relationship, Landlord could not be found vicariously liable. Therefore, is was clearly erroneous for the trial court to deny Landlord's Motions for Directed Verdict. [TT p. 159, line 12-p. 165, line 14; p. 165, lines 12-24].

II. THE TRIAL COURT ERRED IN GRANTING STROMAN'S MOTION TO RECONSIDER ITS *BATSON* RULING AND ORDERING A NEW TRIAL.

The Equal Protection Clause of the Fourteenth Amendment prohibits the striking of a venire person on the basis of race or gender. *McCrea v. Gheraibeh*, 380 S.C. 183, 669 S.E.2d 333 (2008). A *Batson* hearing must be held when members of a cognizable racial group or gender are struck, and the opposing party requests a hearing. *State v. Adams*, 322 S.C. 114, 124, 470 S.E.2d 366, 372 (1996). At the hearing, the proponent of the strike must offer a facially race-neutral explanation for the strike. Once the proponent states a race-neutral reason, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment. An

explanation for a jury strike will be deemed race-neutral unless a discriminatory intent is inherent. *Robinson v. Bon Secours St. Francis Health Sys., Inc.*, 382 S.C. 224, 227, 675 S.E.2d 744, 746 (2009).

"[A] 'legitimate reason' is not a reason that makes sense, but a reason that does not deny equal protection." *State v. Palmer*, 415 S.C. 502, 512–13, 783 S.E.2d 823, 828 (Ct. App. 2016). The explanation "need not be persuasive, or even plausible, but it must be clear and reasonably specific such that the opponent of the challenge has a full and fair opportunity to demonstrate pretext in the reason given and the trial court to fulfill its duty to assess the plausibility of the reason in light of all the evidence with a bearing on it." *Id.* "The opponent of the strike is required show the race-neutral or gender-neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly-situated member of another race or gender." *Id.*

A. Findings unsupported by the record.

As an initial matter, the trial court's Order granting a new trial contains findings that are erroneous based upon the record. First, the trial court's Order sets forth the incorrect order of Landlord's jury strikes from the main panel.[1] [Order, pp. 3-4]. Landlord struck jurors from the randomly assigned strike sheet in the following order: 4 (juror #9), 6 (juror #193), 2 (juror #97) , 5 (juror #19). [TT p. 44, lines 13-18; p. 50, lines 8-10, 16-22].

[1] The trial court states the order of Landlord strikes was jurors 97 (actual 3rd strike), 9 (actual 1st strike), 19 (actual 5th strike), and 193 (actual 2nd strike). [TT p. 47, line 11-p. 48, line 6].

Second, the trial court's Order also finds that both the trial court and Stroman's counsel stated on the record that they heard juror #9's place of employment. [Order, p. 4]. The following exchange took place during the *Batson* hearing:

> THE COURT: All right. And Ms. Blanding -- I mean, number 4 was number 9. Okay. Well, I had her working at Husqvarna. So, I mean --
>
> MR. WLODARCZYK: Which one, Your Honor?
>
> THE COURT: Number 4 who was juror number 9?
>
> MR. WLODARCZYK: Yes, sir. I said I couldn't understand -- I did not hear what she said, so that's --

[TT p. 50, lines 16-22].

A review of the record of the *Batson* motion will show that neither of Stroman's two (2) attorneys represented to the trial court that they heard the juror's place of employment, nor did they confirm the trial court's statement as part of their argument. [TT p. 49, line 3-p. 54, line 17].

Third, the trial court Order makes findings as to whether a similarly situated Caucasian female juror was seated. The trial court's Order states that Landlord did not hear the full information conveyed from juror #140, a female Caucasian. The Order states juror #140 stated her occupation was a "CSR employed by Sunset." [Order, p. 5]. The trial court concluded that because Landlord did not hear the complete response and elected to seat the juror but struck juror #9 for not understanding her, the reason was not race neutral. [*Id.*].

The trial court also determined that because alternative juror 70, an African American, was struck due to her employment as a sales associate when juror #140 held a similar position as a "CSR" which is "an abbreviation commonly known in the

employment world as a customer service representative[,]" the reason was not race neutral. [Order, pp. 5-6].

At no time during the *Batson* hearing was there mention that juror #140 was employed as a "CSR at Sunset" as evidenced by the following exchange:

> MR. WILLIAMS: And just briefly for the record, he did see the sales person, Your Honor. Not that I'm looking for that to change your --
>
> THE CLERK: Which one was the sales person?
>
> MR. WILLIAMS: Number 140; 16, I believe.
>
> (Verbatim)
>
> THE COURT: Okay.
>
> MR. WILLIAMS: If I'm wrong, it's Mr. Marshall's fault in the back.
>
> MR. WLODARCZYK: I have CSR.
>
> THE COURT: I had CSR. So, I'm blaming him. I will blame Mr. Marshall for it.
>
> MR. WLODARCZYK: I don't know what CSR -- I didn't take that as a sales associate position or something .

[TT p. 53, line 20-p. 54, line 8].

No argument was raised in Stroman's Rule 59 motion stating that juror #140 was employed as a "CSR at Sunset" and Landlord seated her without understanding her. [Rule 59 Motion].

Finally, not only did Landlord not know what "CSR" stood for, it does not appear the trial court or Stroman's counsel recognized at the time "CSR" as being an abbreviation for customer sales representative, as the matter was brought to the attention of counsel and the court by David Marshall, an attorney who represented Tenant and was present to select the second jury referenced in the trial court Order. [TT p. 51, line 25-p. 54, line 8; Order, p. 4].

As the Order is based on findings unsupported by the record on appeal, the holdings are clearly erroneous and Order granting a new trial should be reversed.

B. Rulings made outside of the grounds set forth in the Rule 59 Motion.

"After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion." Rule 59(d), SCRCP.

Stroman's Rule 59 motion made three arguments as to why she thought the reasons for striking juror #9, #97, and alternative juror #70 were not race neutral. [Pl. Motion, pp. 1-2].

Stroman's arguments as to each struck juror follow:

> - Plaintiff,[2] nor the court, had difficulty understanding Juror No. 9. Juror No. 9 also submitted a jury card which confirmed her place of employment. Furthermore, Defendant did not ask for Juror No. 9 to clarify her response in effort to better understand her response.
>
> - Plaintiff is further troubled by the basis for Defendant's striking of Juror No. 70. Despite this explanation, Defendant sat a white female, Juror No. 140, who identified herself as a customer service representative, which is a similar if not the same position as a sales associate.
>
> - Finally, Plaintiff is troubled by the basis for Defendant's striking of Juror No. 97. Despite this explanation, Defendant sat a white female, Juror No. 35, who stated she was unemployed.

[Pl. Motion, p. 2].

There is no argument raised in the motion alleging Landlord did not hear a complete response of juror #140, which was the basis in part of the trial court's Order. There were no arguments showing the reason proffered for striking juror #19 were not

[2] As previously discussed, there is no record of Stroman making this statement or argument at trial.

race neutral. Additionally, there were no arguments that any of the jurors were struck based on their gender. In fact, Stroman specifically argues that several female Caucasian jurors were seated who allegedly were similarly situated as female African American jurors who were stuck. [*Id*.].

Despite the lack of arguments raised in the motion, the trial court's Order determined that juror #19, who was struck because she was a caregiver, was improperly struck because juror #137, a black male who was a nurse, was seated. The trial court concluded that both were caregivers and striking juror #19 was evidence of an improper strike based upon gender. [Order, p. 5].

As the trial court determined that juror #19 was improperly struck based on grounds not raised in Stroman's motion, it was clear error to make this ruling without notice and an opportunity to be heard as required by Rule 59(d), SCRCP.

The trial court also determined that alternative juror #70 was improperly struck because Landlord argued she was a sales associate, probably has low income, and thus would likely award Stroman money out of sympathy. [Order, pp. 5-6]. The trial court found Landlord sat two Caucasian females with similar low-income positions: a hairstylist, Juror No. 152 and, as previously explained, Juror No. 140, a customer service representative, which is a position like a sales associate. The argument as to the hairstylist was not raised in the motion.

As the trial court determined that juror #70 was improperly struck based on grounds not raised in Stroman's motion, it was clear error to make this ruling without notice and an opportunity to be heard as required by Rule 59(d), SCRCP.

C. Landlord's strikes were race neutral.

As an initial matter, the jury that deliberated this case was racially balanced in that it consisted of five (5) African American jurors and seven (7) Caucasian jurors. *State v. Cochran,* 369 S.C. 308, 315, 631 S.E.2d 294, 298 (Ct. App. 2006) *citing 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.").

The trial court determined the reasons for striking juror #9, #19, and alternative juror #70 were not racially neutral. [Order]. Landlord argues the trial court's ruling was clearly erroneous based upon the record.

Juror 9 – As discussed above, during the *Batson* hearing, Landlord struck juror 9 because counsel did not understand what the juror was saying regarding her employment.

Contrary to the Order, while the trial court indicated it understood what juror #9 said, there is nothing in the record by Stroman's two (2) attorneys confirming that they understood juror #9 or concurred with the trial court's statement as to what was heard.

Regardless, the crux of the trial court's determination that the reason offered to strike juror #9 was not race neutral, was its determination that Landlord could have obtained the juror's place of employment prior to or at jury selection. Specifically, the trial court opined that "juror cards are available to counsel prior to trial through the clerk's office. [Landlord] had the opportunity to obtain this information just as [Stroman] did, yet [Landlord] chose not to." [Order, p. 4]. Additionally, the trial court determined Landlord "could have asked for clarification of Juror No. 9's response during the jury selection." [*Id.*].

Landlord argued he did not receive any juror cards in this matter but only received the jury attorney list provided at jury qualification which did not include employment information and this information has not been disputed by counsel or the trial court. [Landlord Motion Response, p. 3].

Landlord argued the basis of the strike was not because he did not know where the person was employed (although that information could have been used as an additional ground if known), but that the information the juror was conveying was not understood. As argued by Landlord, for the most part, the only opportunity to observe a potential juror is when the juror stands up in open court and gives their name, employment, spouse (if married) and spouse's employment. Landlord contends if a potential juror does not speak with clarity, appears quiet, intimidated, or nervous, counsel would strike the potential juror if possible as counsel does not want one of only twelve people deciding a case to simply go along with the majority for fear of not speak up during deliberations. Landlord argued juror #9 fell into this category based on counsel's inability to understand her and this was the basis of the strike. [TT p. 49, lines 23-25; p. 52, lines 9-12; Landlord Motion Response, p. 3].

Additionally, the trial court's determination that another similarly situated Caucasian was seated is not supported by the record. The trial court found juror #140 stated she was employed as a "CSR at Sunset" and Landlord seated her without understanding her complete response as Landlord only heard "CSR." [Order, pp. 4].

As stated above, Landlord did not understand juror #9's response. Landlord did understand juror #140's response as evidenced by the discussion above. The fact that the first mention of juror #140's response appears in the Order cannot be a ground to support

the Rule 59 Order without notice and the opportunity to be heard. *See* Rule 59(d), SCRCP.

Neither Stroman nor the trial court allege, contend, argue, find, or conclude that Landlord did not understand juror #9 as argued during the *Batson* hearing and subsequent briefs. Moreover, the trial court had the benefit of evaluating the demeanor and credibility of counsel during hearing arguments and meeting in chambers with counsel. With the benefit of evaluating counsel, the trial court denied the *Batson* motion at the conclusion of the hearing. [TT p. 51, line 18-p. 54, line 14; Pl. Motion; Order]. *See State v. Tucker,* 334 S.C. 1, 8, 512 S.E.2d 99, 102 (1999) ("The trial judge's findings of purposeful discrimination rest largely on his evaluation of demeanor and credibility, and the reviewing court should give the findings great deference on appeal."); *State v. Evins,* 373 S.C. 404, 416, 645 S.E.2d 904, 909-10 (2007) (The trial court's findings regarding purposeful discrimination necessarily will rest largely on the evaluation of demeanor and credibility of counsel. Therefore, those findings are given great deference and will not be set aside unless clearly erroneous.).

This Court should give great deference to the trial court's initial findings and ruling denying the *Batson* motion based upon the arguments presented at that time. The trial court's Order issued four and one-half months after the trial in this case, which relies on information not presented at the *Batson* hearing, is clearly erroneous as it is not supported by the record.

Juror 19 – The trial court stated that Stroman, in her post-trial motion, stated that juror #19 was struck because she was a caregiver. [Order, p. 4]. The trial court further stated Landlord offered no response in his memorandum in opposition. [*Id.*]. As discussed above, no response was provided in response to the motion because Stroman

made no argument that the juror was struck based on race or gender. Stroman set forth the reasons for all five (5) of Landlord's jury strikes, but only argued that three (3) of the strikes allegedly violated *Batson*. [Pl. Motion, pp. 1-2]. Accordingly, the trial court erred in ruling the juror was improperly struct pursuant to Rule 59(d), SCRCP, as argued above.

Regardless, the trial court does not contend the reason offered by Landlord, that the juror was a caregiver and likely to be more sympathetic, was not race-neutral. Instead, the trial court found Landlord sat a similarly situated African American male nurse, who was also a caregiver.

As discussed above, Stroman did not raise gender in her motion and, therefore, the trial court erred in ruling on this issue without notice and an opportunity to be heard. Rule 59(d), SCRCP.

Alternate Juror #70 – Landlord struck juror #70 based on the following exchange at the *Batson* hearing:

> MR. WLODARCZYK: She was a sales associate. And the second one I would have struck would probably been the nurse. Again, nurse/care giver. I did have nurse marked as an alternative had one of these people been struck by the Plaintiff's, but they weren't. So it's just how it came out, Your Honor.
>
> THE COURT: Okay.
>
> MR. WLODARCZYK: I would assume it's a more lower wage, lower education status. Not that we have that information, but just taken the fact that that's what her position was that's what I took into account.

[TT p. 51, lines 7-17].

The trial concluded this was not a race neutral reason because Landlord sat two Caucasian females, in the main panel, with similar low-income positions: a hairstylist,

juror #152 and, juror #140, a customer service representative, which is a position like a sales associate. [Order, pp. 5-6].

First, the trial court completely disregarded the fact that juror #70 was struct from the alternate panel, which after Stroman's strike, consisted of two potential jurors. Landlord was faced with the choice of a juror #70, the sales associate with likely lower skill set and income, or juror #131 who worked at International Paper, a large corporation and who likely had a higher skill set and income. Landlord elected to strike the sales associate and neither Stroman nor the trial court raised any issue as to the selected between the two available choices. Accordingly, the reason offered by Landlord was race neutral, and no similarly situated juror from a different race was seated from the alternate pool.

Second, the alternate juror was dismissed prior to deliberation. [TT p. 255, lines 15-19]. Landlord argues because the alternate juror did not participate in deliberations, any error in denying the *Batson* motion prior to trial was harmless. *See State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009) (stating "if a trial court improperly grants the State's *Batson* motion, but none of the disputed jurors serve on the jury, any error in improperly quashing the jury is harmless because a defendant is not entitled to the jury of her choice").

For the reasons set forth, the trial judge's ruling was clearly erroneous and the Order granting a new trial should be reversed.

CONCLUSION

For the reasons set forth, Appellant/Respondent respectfully requests that the trial court's Order granting a new trial be reversed and that the jury verdict be affirmed. In the alternative, Appellant/Respondent respectfully requests that the Court determine the trial

court erred in denying the Motions for Directed Verdict, find that Appellant/Respondent is entitled to a directed verdict in his favor, and dismiss the remaining issues as moot.

RILEY POPE & LANEY, LLC

Damon C. Wlodarczyk
S.C. Bar No. 70460
Post Office Box 11412
Columbia, South Carolina 29211
Telephone: (803) 799-9993
Facsimile: (803) 239-1414
Attorney for Appellant/Respondent

Columbia, South Carolina

November 16, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
Nov 16 2020
SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Edgar W. Dickson, Circuit Court Judge

Appellate Case No.: 2020-000938

Katrina Stroman……..……....……Respondent/Appellant,

v.

Samuel Jeffords……..……..……. Appellant/Respondent.

CERTIFICATE OF SERVICE

As allowed by Supreme Court Amended Order 2020-05-29-02, this is to certify that I have this day caused to be served upon the person named below a copy of the **Appellant/Respondent's Initial Brief, Initial Response Brief, and Designations of Matter to be Included in the Record on Appeal** via electronic mail to counsel's AIS E-mail address as follows:

Virginia W. Williams, Esquire
Williams & Williams
ginny@williamsattys.com

RILEY, POPE & LANEY, LLC

s/Damon C. Wlodarczyk
DAMON C. WLODARCZYK
SC Bar No. 70460
P.O. Box 11412
Columbia, South Carolina 29211
(803) 799-9993 – Office
(803) 239-1414 – Facsimile
damonw@rplfirm.com

Columbia, SC
November 16, 2020

South Carolina
Riley Pope & Laney, LLC
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, SC 29205
Phone: 803.799.9993
Fax: 803.239.1414

RILEY POPE & LANEY LAW

North Carolina
Riley Pope & Laney, PLLC
4822 Albemarle Road
Suite 248
Charlotte, NC 28205
Phone: 980.201.3888
Fax: 704.625.9430

November 16, 2020

(Via E-mail only: ctappfilings@sccourts.org)
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Katrina Stroman, Respondent/Appellant v. v. Samuel Jeffords, Appellant/Respondent
Appellate Case No.: 2020-000938
Our File No.: 5167.02117

Dear Clerk:

As allowed by Supreme Court Administrative Order 2020-05-29-02, please find attached for filing Appellant/Respondent's Initial Brief, Initial Response Brief, and Designations of Matter to be Included in the Record on Appeal.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

s/Damon C. Wlodarczyk
S.C. Bar No. 70460

DCW/

cc: Virginia W. Williams, Esquire