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.

FINAL RESPONSE BRIEF OF RESPONDENT-APPELLANT

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STATEMENT OF THE CASE

This appeal arises out of a personal injury action in which a jury found in favor of Appellant-Respondent Samuel Jeffords ("Jeffords"). Respondent-Appellant Katrina Stroman ("Stroman") filed a complaint seeking damages from Jeffords for a dog bite suffered by Stroman on or about December 1, 2014, by a dog who was placed on Jeffords' rental property. The jury's defense verdict was rendered on January 14, 2020. Stroman filed a motion for JNOV or in the alternative, a motion for a new trial, on or about January 23, 2020, raising numerous issues. A hearing on these motions was set for March 30, 2020, but due to the COVID-19 pandemic the lower court requested proposed orders in effort to resolve the motions without a hearing. The lower court timely received the same from both parties, considered the arguments presented on all the issues, and ultimately granted Stroman's request for a new trial based solely on *Batson* issues on or about May 26, 2020. The lower court did not address the additional grounds Stroman presented for a new trial. Jeffords filed a notice of appeal on June 19, 2020, as to the *Batson* rulings. On June 24, 2020, Stroman filed her cross appeal as to the additional grounds not addressed in her motion to reconsider.

FACTS

A. Directed Verdict

On December 1, 2014, Stroman was in her backyard, which adjoined Jeffords' property, when she was attacked by a pit-bull. (R. p. 15, ¶5). The pit-bull was living at 375 Gospel Hill Road, Orangeburg, South Carolina, property owned by Jeffords. (R. p. 15, ¶¶ 3, 4).

Jeffords owned multiple rental properties. (R. p. 187 line 17 – p. 188 line 25). Greg Brooks helped Jeffords maintain and monitor his properties, including the 375 Gospel Hill Road property, at the time of this incident. (R. pp. 165-174, 189-191, 196-197). He also secured tenants for Jeffords at his various properties, including at 375 Gospel Hill Road. (R. p. 165 , R. p. 195). At the time of the dog-bite, Mr. Brooks' daughter, Payten Padgett, was living at the home with her child. (R. p. 173). Furthermore, Mr. Brooks had keys to Jeffords' properties and was also a signatory on Jeffords' account so that he could freely access money to make modifications to the rental properties. (R. p. 165, r. p. 166, r. pp. 192-193).

Jeffords and Mr. Brooks took several steps to secure and protect 375 Gospel Hill Road while Ms. Padgett lived at the home: permitted a pit-bull to live there (R. pp. 167-168); provided a doghouse and dog runner on the property for the pit-bull (R. p. 171); erected a fence on the property (R. pp. 178-179); and put an ADT security system in the home (R. pp. 198-199).

As to the pit-bull, Mr. Brooks, Jeffords' agent/partner, was aware the dog was living on the property. (R. p. 171). Ms. Padgett also testified Jeffords was aware, or should have been aware, that the pit-bull was on the property because he had been on the property once or twice while Ms. Padgett lived there (R. p. 175, r. p. 197); the dog runner and doghouse were in plain view from the front of the house (R. pp. 175-176); and the pit-bull typically roamed free on the property (R. p.

176). Ms. Padgett placed the pit-bull outside because her small child was living inside of the home. (R. p. 181).

At the close of Stroman's case, Jeffords moved for a directed verdict to strike Stroman's common law negligence cause of action. (R. p. 237). The lower court granted Jeffords' motion. (R. pp. 262-262). Jeffords also moved for a directed verdict to strike Stroman's strict liability cause of action. (R. p. 235 line 13-15). The lower court denied that motion. (R. p. 274 line 21-23). The jury found in Jeffords' favor. (R. pp. 10-11, *see also* R. pp. 255-256).

Stroman filed a new trial motion challenging the court's decision to strike Stroman's common law negligence cause of action, but the lower court declined to make a ruling thereon, instead granting a new trial on the *Batson* issues. (R. pp. 46-50, R. p. 8).

B. *Batson* Motion

The lower court prepared a random list of jurors from the original pool in its random strike sheet. Stroman is an African American female. Jeffords exercised his five strikes (four for first twelve jurors and one for an alternate) to strike all African American females. Stroman moved under *Batson* raising concerns with "both the race and the sex, they're all black females that were struck." (R. p. 127 lines 12-14). Jeffords explained his strikes as follows:

1. Number 2[1]/Juror No. 97 – "Number 2 was struck because she was disabled, unemployed. Most likely to give a more favorable plaintiff verdict because of that, those backgrounds." (R. p. 127 lines 19-22).
2. Number 4[2]/Juror No. 9 – "I couldn't understand her when she gave her information from the back, so I struck her because I couldn't understand her." (R. p. 127 lines 23-25).

[1] Number 2 refers to the number juror on the Random Strike Sheet.
[2] Number 4 refers to the number juror on the Random Strike Sheet.

3. Number 6[3]/Juror No. 19 – "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." (R. p. 128 lines 1-3).
4. Number 5[4]/Juror No. 193 – "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." (R. p. 128 lines 4-7)
5. Alternate, Number 22[5]/Juror No. 70 – "She was a sales associate…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." (R. p. 129 lines 5-17).

Stroman made a *Batson* motion before the jury was sat. The lower court expressed concern over Jeffords' explanations of not understanding Juror No. 9 and Juror No. 70 working in a low-income position. (R. p. 131 line 20 – r. p. 132 line 14). However, the lower court proceeded forward in an effort of judicial efficiency as there was another jury to be picked for a second trial that same week. *Id.*

Post-trial, Stroman moved for a new trial which was granted because of the *Batson* ruling.

STANDARD OF REVIEW

A. Directed Verdict

"When upon a trial the case presents only questions of law the judge may direct a verdict." Rule 50, SCRCP. This rule requires the lower court to determine whether there is any evidence supporting the nonmoving party as well as any reasonable inferences in the light most favorable

[3] Number 6 refers to the number juror on the Random Strike Sheet.
[4] Number 5 refers to the number juror on the Random Strike Sheet.
[5] Number 22 refers to the number juror on the Random Strike Sheet.

to the nonmoving party. *Unlimited Servs., Inc. v. Mackklen Enters., Inc.*, 303 S.C. 384, 401 S.E.2d 153 (1991).

B. New Trial Motion

"The grant or denial of a new trial motion rests within the trial court's discretion, and its decision will not be disturbed on appeal unless the court's findings are wholly unsupported by the evidence or its conclusions are controlled by error of law." *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996).

ARGUMENT

I. THE LOWER COURT PROPERLY PERMITTED STROMAN'S STRICT LIABILITY CLAIM TO PROCEED TO THE JURY

The lower court properly denied Jeffords' motion for directed verdict on Stroman's strict liability claim because there remained a question of fact for the jury to consider. In viewing the facts in a light most favorable to Stroman, there was evidence Jeffords through his agent Brooks kept or cared for the dog.

South Carolina law imposes strict liability on "the dog owner or person having the dog in the person's care or keeping" for damages suffered by a person "bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place." S.C. Code Ann. §47-3-110. The key phrase at issue in this appeal is "in the person's care or keeping" and whether Stroman presented any evidence as well as any reasonable inferences in favor of Stroman that Jeffords cared for or kept the dog that bit her. *See Unlimited Servs., Inc. v. Mackklen Enters., Inc.*, 303 S.C. 384, 401 S.E.2d 153 (1991) (standard on directed verdict).

Stroman presented ample evidence of an agency relationship between Jeffords and Brooks. The jury in this case found that Jeffords, by or through his agent Brooks, had control over the property. Verdict Form. This finding supports the jury determined there was an agency relationship between Jeffords and Brooks: Brooks helped Jeffords maintain and monitor his properties, including the property at issue; Brooks secured tenants for Jeffords; Brooks had keys to Jeffords' properties and was also a signatory on Jeffords' account. (R. pp. 165-174, 189-194, 196-197). The jury agreed as supported in their first finding on the verdict form in favor of strict liability. (R. pp. 10-11). Stroman then presented evidence that Jeffords, individually and through Brooks, was aware the dog was living there, allowed the dog to remain there, and even provided a dog house, runner, and eventually a fenced in area for the dog. (R. pp. 167-168, 171, 178-179).

Knowingly providing the dog a dog house, runner, and fence "manifests an acceptance of responsibility for the care or keeping of the dog" as required in *Clea*. *Clea v. Odom*, 394 S.C. 175, 180, 714 S.E.2d 542, 545 (2011). Likewise, these facts are more substantive evidence of care and keeping than in the *Nesbitt* case where the court threw out the case against the daughter simply because she moved out of the house five years prior to the bite. *Nesbitt v. Lewis*, 335 S.C. 441, 517 S.E.2d 11 (Ct. App. 1999). Its also more evidence than in *Bruce*, where it was only alleged that the property owner visited the property about once a week and allowed the dog to be kept on the property. *Bruce v. Durney*, 341 S.C. 536, 565, 534 S.E.2d 720, 722 (Ct. App. 2000). Considering the standard set forth in South Carolina case law and viewing this evidence in a light most favorable to Stroman, the jury could have reasonably inferred Brooks kept and cared for the dog. This question of fact was for the jury to decide. The trial court made the right decision in allowing it to do so.

II. THE LOWER COURT PROPERLY GRANTED STROMAN'S POST-TRIAL MOTIONS AS TO ITS *BATSON* RULING AT TRIAL

A. JEFFORDS FAILS TO ESTABLISH A RACE-GENDER-NEUTRAL EXPLANATION

Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, a party cannot strike a potential juror based on race or gender. *Batson v. Kentucky*, 476 U.S. 79 (1989); *Georgia v. McCollum*, 505 U.S. 42, 59 (1992). The procedure for analyzing a *Batson* motion is set forth in *Purkett*:

> (1) the opponent of a peremptory challenge must establish a prima facie case of racial discrimination, (2) the proponent of the strike must then offer a race-neutral explanation for the strike, and (3) if a race-neutral explanation is offered, then the court must decide whether the opponent of the strike has proved purposeful racial discrimination.

Purkett v. Elem, 514 U.S. 765, 767 (1995); *see also State v. Giles*, 407 S.C. 14, 754 S.E.2d 261 (2014).

In addressing the second step of the process, the United States Supreme Court has held that general assertions, such as a mere denial of a discriminatory motive or assurance the challenges were exercised in good faith, are not sufficient to rebut a prima facie showing of a race based challenge. *Batson*, 476 U.S. at 97–98. Under *Batson*, the proponent of the peremptory challenge must provide an objectively discernible basis for the challenge that permits the opponent of the challenge and the trial court to evaluate it for pretext. *State v. Giles*, 407 S.C. 14, 22, 754 S.E.2d 261, 265 (2014). The second step is generally established by "showing the party did not strike a similarly-situated member of another race or gender." *State v. Palmer*, 415 S.C. 502, 512-13, 783 S.E.2d 823, 828 (Ct. App. 2016).

The Supreme Court of South Carolina held in *Giles* that the Defendant's proffered reason for exercising peremptory strikes against eight Caucasian male prospective jurors and two Caucasian female prospective jurors, because the defendant "did not feel the jurors were right for the jury," while technically race-neutral, was not a legitimate, race-neutral reason under *Batson*. Id. at 22-23, 754 S.E.2d at 265-66. Thus, the trial court was not required to move to third step of the Batson analysis to consider whether strikes were pre-textual for race discrimination, in a trial for burglary and other crimes, where the defendant did not articulate sufficiently specific reason that enabled trial court to assess plausibility of proffered reason, and therefore, defendant gave essentially no reason at all. *Id.*

Jeffords' initial contention to reverse the lower court's new trial order is that it is based on evidence not in the record. First, Jeffords argues the lower court's order indicates the wrong order of strikes. The order indicated was the order of jurors listed in the court's "Random Strike Sheet." This error is harmless and of no consequence except to underline Jeffords' efforts to strike African American females by jumping around the list, not going down the Random Strike Sheet.

Jeffords then argues the trial court's order was in error because it found that the trial court and Stroman's counsel heard juror #9's place of employment. This is also moot as a review of the transcribed roll call indicates that juror #9 indeed stated her place of employment sufficiently enough for the court reporter to capture it. (R. p. 67 line 5-8) ("THE CLERK: Thank you. Juror Number 9, Geraldine Blanding. MS. BLANDING: I work for Husqvarna. I pick up ports and I'm not married.")). The court heard her place of employment from a position in the courtroom further away from where the jury pool sat and where Jeffords' attorney was positioned.[6] As supported in

[6] The jury pool was in the general public sitting area, separated from counsel table by the bar and then beyond that sat the court reporter and then the judge.

the transcript, where Juror No. 9 worked was so clear to the court and to Stroman counsel that it need not be restated. Regardless, again the matter is moot as evidenced in the transcript. Furthermore, whether anyone heard Juror No. 9 state her place of employment is not the issue, it is rather that this was Jeffords' excuse. "MS. WILLIAMS: Your Honor, I have concerns with explanation of 'can't understand someone.' I'm not sure that's race-neutral." (R. p. 129 lines 20-22). "THE COURT: …I will note on the record, I am concerned about the 'could not understand' explanation…Ms. Williams, I'm going to note your objection to that ruling so y'all will be protected." (R. p. 132 lines 11-16).

Next, Jeffords argues the trial court erroneously concluded that Jeffords sat another juror he did not fully understand despite his explanation that he struck Juror #9 because he couldn't understand her. Jeffords sat Juror #140, a white female. (R. p. 131 line 20- r. p. 54 line 8). The record does not clarify why Jeffords sat her but does indicate he did not understand her either. Again, what is in the transcript resolves the question. "THE CLERK: Thank you. 140, Christin W. Price. MS. PRICE: I'm a CSR at Sunset Finance and my husband works on an oil rig in Alaska." (R. p. 74 lines 12-14). Jeffords argues "I don't know what CSR – I didn't take that as a sales associate position or something." (R. p. 132 lines 7-8).

Also notable about Jeffords' process of seating a jury is Jeffords' argument in his Response in Opposition to Plaintiff's Motion for New Trial justifying why he chose one juror over another: "the choice between the sales associate struck or a juror who worked at International Paper, who happened to be a white male. Given the choice between a skilled factory worker employed by a large corporation and likely to make a higher income than the sales associate, the decision was made to strike the sales associate." (R. p. 55). Following this logic, Jeffords would have picked

Juror #9 because she worked at Husqvarna, a factory and a large corporation, yet Jeffords didn't pick her.

Likewise, incongruently, Jeffords sat Juror #140, who is a CSR/customer service representative (white female) but struck Juror # 70 (an African-American female) because she was a sales associate. *Id*. *See also* (R. p. 70 lines 12-14). Customer service representative and sales associates are not significantly distinguished, particularly in income.

Furthermore, Jeffords sat a nurse, Juror #137 (African-American male), yet told the court he struck Juror #19 (again, an African-American female) because she 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." (R. p. 128 lines 4-7); *See also* (R. p. 67 lines 21-24 ("THE CLERK: Thank you. Juror Number 19, Savanya Burkett. MS. BURKETT: I work at Days Inn in Orangeburg and I also do PCAF care in Orangeburg.")).

Jeffords clearly did *not* strike similarly-situated members of another race or gender. The only distinguishing factor between who he sat and who he didn't is the race and gender. Stroman argued all of these bases in her motion for new trial, the arguments are supported in the trial transcript, and the lower court correctly found Stroman had proved purposeful discrimination under *Batson* and its progeny of case law.

B. JEFFORDS SHOULD HAVE PRESENTED A RULE 59(e) MOTION CONCERNING THE LOWER COURT'S ORDER

Jeffords argues the lower court erroneously granted a new trial on for reasons not previously presented for argument, citing Rule 59(e) of the South Carolina Rules of Civil Procedure. Jeffords remedy was then to file a Rule 59(e) to clarify these grounds and give himself another opportunity to present full argument to the court. *See* SCRCP Rule 59(e) and *Coward*

Hund Construction Co. Inc. v. Ball Corp. 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999) (permitting a second Rule 59(e) motion on new grounds indicated in a post-trial order); *See also Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 60 427 S.E.2d 673, 675 (1993) (holding that to "properly preserve the record for appeal" an appellant must move under Rule 59(e) SCRCP if he learns for the first time in a post-trial order granting additional relief). Jeffords forewent that option and filed this notice of appeal. Thus, he has no standing now to contend he was not given an opportunity to address these matters at the trial court level.

C. JEFFORDS FAILS TO SHOW THE LOWER COURT ABUSED ITS DISCRETION IN GRANTING A NEW TRIAL

The standard of review for the lower court to apply to Stroman's Motion for a New Trial is abuse of discretion. Abuse of discretion must be clear to cause reversal. *See e.g. In re Goodwin*, 279 S.C. 274, 305 S.E.2d 578 (1983); *Mauro v. Clabaugh*, 299 S.C. 184, 383 S.E.2d 244 (Ct. App. 1989). There must also be some showing of prejudice to the appealing party by the judge's order. *See e.g. Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995). Jeffords has not articulated in clear abuse of discretion nor prejudice in the lower court's order for a new trial. This basis must be disregarded, and the new trial be permitted to proceed.

CONCLUSION

For these reasons, the Court should DENY Jeffords' Appeal and GRANT Stroman a new trial.

[*Signature page to follow*]

Respectfully submitted,

April 1, 2021

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