STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Edward W. Miller

Appellate Case No. 2020-000133

THE STATE, ...RESPONDENT,

v.

SAMUEL LAMAR BURNSIDE,.....APPELLANT.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by failing to quash the jury panel where the State used a peremptory strike in a racially discriminatory manner by striking a black juror due to the juror's age, but did not strike white jurors in the same age bracket, in violation of the Equal Protection Clause of the United States Constitution?

RESPONDENT'S COUNTERSTATEMENT OF ISSUE ON APPEAL

Whether the trial judge correctly denied Appellant's *Batson* motion because he found no inherent discriminatory intent in the fact that the solicitor struck the venireperson for his unfocused demeanor and facial expressions, his young age of nineteen, and his lack of employment when no other seated juror was so similarly situated.

STATEMENT OF THE CASE

Appellant's indictment for Murder and Possession of a Weapon during the Commission of a Violent Crime – 2019-GS-23-8759 counts I and II – was true billed at the November 2019 term of the Grand Jury for Greenville County. R. 1. The case was prosecuted by Assistant Solicitors Brian J. Moroney, Jr., Esquire, and Anthony J. McCollum, Jr., Esquire. R. 1. The Appellant was represented by Kenneth Gibson, Esquire. R. 1. Appellant proceeded to trial by jury on January 6, 2020, pursuant to which he was found guilty of the murder of Catherine Clark and Possession of a Weapon during the Commission of a Violent Crime. R. 333, L. 17–23. He was sentenced by the Honorable Edward W. Miller to 45 years and 5 years' imprisonment, respectively, on January 8, 2020. R. 336, L. 5–6. Appellant timely filed a notice of intent to appeal his convictions and sentence and subsequently submitted a Brief in support of his Appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Catherine Clark ("the victim") died from three gunshot wounds at 8:40 p.m. on August 5, 2017. R. 4, L. 18, R. 55, L. 22–24, R. 56, L. 14, R. 226, L. 21–23. She was found lying "smack dab" in the middle of a desolate roadway without shoes, with a puddle of blood around her head. R. 222, L. 9–20. She was a mother of five. R. 335, L. 10–13. An investigation revealed the Appellant had assaulted her at a storage center and then had driven her to an isolated part of Greenville where he threw her out of a vehicle, kicked her in the side repeatedly, and shot her. R. 39, L. 12–21, R. 42, L. 6–7, R. 175, L. 9–25, R. 178, L. 12–21. Forensic evidence indicated one bullet had gone through her chest, but that after the Appellant saw the round did not kill her, fired another into her cheek, and finally executed her at point-blank range with one more through her skull. R. 57, L. 11–14. Four nine-millimeter shell casings were found at the scene with Federal and Remington Peters headstamps. R. 222, L. 22–23, R. 223, L. 2–12. All four shell casings had been fired from the same firearm. *See generally* R. 206–11.

Investigator David Picone testified, "Sam Burnside – he was refer[ed to] as a pimp. And that he was, basically, using women, pimping them out to other people for sex. And this argument stemmed from her being on her period and not being able to perform those sexual acts. And we did confirm that [.]" R. 252, L. 1–7. The Investigator and other witnesses testified at trial that the victim had rented a hotel room at the Southern Suites in Greenville County while she was moving her mother to Simpsonville. R. 163, L. 12–25. Collective testimony showed victim knew the Appellant and that she had picked that hotel because the Appellant lived in a room with his girlfriend six doors down from the one the victim had rented. T. 67, L. 11–12, R. 74, L. 3–7, R. 240, L. 19–25. Even though the Appellant claimed he did not know the victim, the hotel's manager testified that the Appellant had called and asked if a person by the name of Catherine Clark had moved into the hotel just prior to August 5, 2017. R. 75, L. 13–18. The Appellant's

DNA and fingerprints were found in the victim's room on a water bottle and an envelope that had his name on it. R. 110, L. 14–20, R. 126, L. 16–18, R. 230, L. 6–23. Nine-millimeter bullets with identical headstamps as those found at the crime scene were located inside a desk drawer. R. 127, L. 15 to R. 128, L. 1, R. 241, L. 19–25. The evidence supported that Catherine Clark had been "working" for the Appellant.

On the evening of August 5, 2017, witnesses for the State testified that the Appellant and the victim left the hotel in a silver Buick between 5:30 and 6:00 p.m. R. 67, L. 20–24, R. 76, L. 13–16. She had asked the Appellant for a ride, and he took her to a Dollar General where they were seen on a surveillance video buying maxi pads at 6:20 p.m. R. 134, L. 10 to R. 135, L. 25, R. 165, L. 4–7, R. 231, L. 12–25, R. 239, L. 1–8.[1] They were then captured on a BI-LO surveillance camera together, R. 136, L. 13 to R. 138, L. 20, and were finally spotted on a McDonald's surveillance camera at 7:40 p.m. where they picked up the Appellant's friend Rovillie Williams. R. 139, L. 5 to R. 140, L. 21, R. 170, L. 21–25, R. 233, L. 24–25, R. 235, L. 2–10.[2] Williams testified that the Appellant and victim were arguing in the vehicle "because he wanted her to have sex with other people but she couldn't because she was on her 'menstrual.'" R. 173, L. 18–25 to R. 180, L. 13. After the three stopped at the storage unit, Williams testified the Appellant then drove them to a desolate area, forced the victim out of the car, drove past her, stopped the car, got out, kicked her, and then fired at her four times with a black nine-millimeter automatic revolver. R. 180, L. 12–14, R. 183, L. 8 to R. 184, L. 4. Three of the shots hit and killed her. R. 180, L. 12–14, R. 226, L. 21–23.

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[1] The Appellant's fingerprints were found on that Dollar General receipt. R. 238, L. 19–21. He was also seen on camera carrying the pads through the store for her. R. 239, L. 1–8.

[2] Investigators saw a man of "smaller stature" in the driver's seat. The Appellant was described by eyewitnesses as being a man of smaller stature, while Rovillie Williams was described as a man who was much larger by comparison.

Williams testified the Appellant ran back to the Buick and said, "Fuck her. Man, fuck her. I ain't fucking with her. Fuck that bitch, whatever." R. 185, L. 1–2, R. 188, L. 13–16. An eyewitness at the scene of the shooting testified to seeing a man of "smaller stature" assault the victim and reported that she yelled, "Call the police." R. 37, L. 22–24, R. 39, L. 12–21. That eyewitness identified Appellant in a lineup and at trial as the man he saw. R. 68, L. 24–25.

The evidence against the Appellant at trial was overwhelming. The Appellant's fingerprints were found in the silver Buick (found parked back in front of the Southern Suites) along with an unfired nine-millimeter cartridge left on the console near his high school diploma. R. 109, L. 21 to R. 110, L. 4, R. 122, L. 8–13, R. 123, L. 1–6, R. 240, L. 10–18. His fingerprints were found on a McDonald's receipt located inside the victim's purse (found at the scene) with a timestamp of 7:40 p.m.; one hour before her body was found. R. 109, L. 8–12. Phone records showed the Appellant had called her several times prior to the homicide. R. 60, L. 24–25, R. 145, L. 10 to R. 146, L. 17, R. 163, L. 21–22.

There was a Facebook post that named him as the killer. R. 187, L. 16–25. The Appellant told his mother on a recorded jail call, "Take notes. This is what I need you to tell them because our alibis are not going to match up. Tell Tina[3] to tell Rovillie to tell law enforcement so our alibis can match up." R. 254, L. 1–4, L. 22–25. Investigator Picone said: "Everything pointed toward Sam Burnside as being the trigger man. You're – you're talking about communication and cell phones, staying at the same hotel, him having the car, the witness seeing the smaller man being the – the more aggressive person . . . Rovillie Williams' statement, the nine-millimeter rounds being found with the same head stamp in his hotel room. There's a list of things. And when you take everything and put it together – Rovillie Williams had never met this female in

[3] Rovillie Williams' girlfriend. R. 74, L. 3–7, R. 240, L. 19–21.

her life up to this point. He had no – there's no history of any kind of communication with each other. There's no reason for Rovillie Williams to kill this – this female. He doesn't have a motive like Sam Burnside does." R. 251, L. 7–2.

STANDARD OF REVIEW

In criminal cases, appellate courts are bound by the trial court's factual findings unless they are clearly erroneous; the court only reviews errors of law. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). "On review, [appellate courts are] limited to determining whether the trial court abused its discretion." *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). "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. Ford*, 334 S.C. 59, 65, 512 S.E.2d 500, 503 (1999).

ARGUMENT

The trial judge correctly denied Appellant's *Batson* motion because he found no inherent discriminatory intent in the solicitor's challenged peremptory strike. The venireperson's demeanor and facial expressions made him appear unfocused, his young age of nineteen and his lack of employment made it unlikely he had the necessary life experience to appreciate the gravity of the testimony, and the record does not indicate any seated jurors were so similarly situated. This Court should affirm the trial court.

Appellant argues the trial judge erred by failing to quash the jury after the solicitor struck a 19-year-old unemployed black juror from the panel. The State disagrees with this allegation of error. A discriminatory intent is neither inherent nor obvious. The trial judge examined the totality of all of the facts and circumstances surrounding the strike and correctly concluded the State had not violated *Batson v. Kentucky*[4] as the solicitor provided multiple race-neutral explanations for his strike. The solicitor gave three: (1) the juror was very young (born after their 2000 cut off date), and as such likely lacked the life experience necessary to appreciate the gravity of the testimony to be presented; (2) the juror was unemployed; and (3) the juror appeared unfocused by way of his demeanor and facial expressions while the jury was being qualified. This Court has separately found all three reasons to be race-neutral reasons for a peremptory strike. This Court should affirm.

Relevant Facts

Jury qualification and selection began on January 6, 2017. R. 1. According to the Greenville County Clerk of Court, 238 jurors were noticed, 76 appeared and were qualified, and 40 were placed on the panel for selection. R. 2, L. 4. The first venireperson presented was # 22, a white female (born in 1989), but she was excused by the defense. R. 10, L. 23 to, R. 11, L. 3. The second was # 237, a black male (born in 2001), but he was excused by the prosecution. R. 11, L. 5–10. The next two called forward, respectively, were # 61, a black female (born in 1974),

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

and # 20, a white male (born in 1975). Both were selected for the jury. R. 11, L. 11–25. # 116 was up next, a white female (born in 1975), but she was excused by the defense. R. 12, L. 1–8. # 6, also a white female (born in 1973), was then selected as the third member of the jury. R. 12, L. 9–15. # 139, a black male (born in 1993), was excused by the State, followed by # 191, a white female (born in 1976), and # 236, a white male (born in 1971), who were both excused by the defense. R. 12, L. 16–21, R. 13, L. 1–10. The fourth and fifth members selected for the jury were the next two presented, # 163 and # 110, a white female (born in 1976) and a white male (born in 1996). R. 13, L. 11–23. The defense excused the next two potential jurors, # 23, and # 135, both white females (born in 1958 and 1965). R. 13, L. 24 to R. 14, L. 12.

101, a white male (born in 1986), was selected as the sixth member of the jury, but # 138, also a white male (born in 1992), was excused by the defense. R. 14, L. 13–25. The seventh, eighth, and ninth members of the jury were selected next in succession: # 75, a Hispanic female (born in 1994), # 34, a white female (born in 1961), and # 154, a white female (born in 1964). R. 15, L. 2–20. The defense excused the white male (born in 1970) who was presented next: # 67. R. 15, L. 21 to R. 16, L. 2. The tenth, eleventh, and twelfth members chosen to complete the jury, respectively, were # 29, a black female (born in 1995), # 90, a white female (born in 1998), and # 197, a white male (born in 1980). R. 16, L. 3–22. The first venireperson presented by the State as a potential alternate, # 60, a white male (born in 1973), was excused by the defense. After this, the next two in line were selected as alternates for the jury: # 38, a white female (born in 1997), and # 117, a black female (born in 1986). R. 16, L. 23 to R. 17, L. 21.

In all, the jury was composed of five white females (born in 1973, 1976, 1961, 1965, and 1998), two black females (born in 1974 and 1995), four white males (born in 1975, 1996, 1986, and 1980), and one Hispanic female (born in 1994), with a white female (born in 1997) and a

black female (born in 1986) serving as alternates. *See generally* R. 1–32. In all, the solicitor only exercised two of his ten strikes and the defense only exercised eight of his ten. R. 2, L. 24–25.

Once the jury was selected, the defense made a *Batson* motion:[5]

> My client is a black male that the Prosecutor in this case – excuse me, there were two black males in the panel that were presented. The State in this case struck both of those two black males. We believe that those – those strikes were in violation of *Batson*. I believe, at this point, I've made a prima facie case and it switches over to Mr. Moroney.

R. 25, L. 6–14.

The State responded, saying:

> First, with respect to Juror # 139, the criminal history check prior to the trial revealed that in 2012, Juror # 139 had a possession of marijuana in Alabama and carrying a concealed weapon in Alabama, as well as a possession of drug paraphernalia in Alabama. It's showing no disposition for those. And in 2019, a possession for marijuana that's currently pending here in magistrate's court in Greenville County, as well as an unlawful carrying of a pistol that's pending with the Thirteenth Circuit Solicitor's Office and has not yet been assigned. Exclusively based on that reason, the juror we did not feel would be qualified. And that would be the reason for the strike.

R. 26, L. 6–19.

The Court found the State's reason for striking Juror # 139 to be race-neutral. R. 26, L. 22–23. The State continued, addressing their reasons for striking Juror # 237:

> And, your Honor, finally, with respect to Juror # 237, the Defendant's [sic] age being born after 2000 – and I can get the specific date of birth for you. Born April 20, 2001. That in addition – first, let me address the age. I belief that age, and the gravity of this case, and the many nuances that we'll get into over the next several days, I just had concerns that with his young age, he would not be able to appreciate those – the detailed nature of this case that's to be presented.
>
> And I point you to *State v. Easler*, 322 S.C. 333, that a strike explanation need not be clear, reasonably specific, or legitimate. It only needs to be race or gender neutral. And, furthermore, *State v. Green*, 306 S.C. 94, references a lack of life experience being a credible reason for that same reason that unemployment is a sufficient reason for a strike under *State v. Ford*, 334 S.C. 59, which coincidentally this Defendant – this juror was, also, unemployed. So for the reasons of age, and unemployment, and having nothing to do, of course, with race or gender, we believe the strike, certainly, was proper.

[5] Pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986).

R. 26, L. 24 to R. 27, L. 20.

> The defense responded with:
>
> > Your Honor, I believe that both of those reasons are pretextual. Specifically, as to # 139, the State is saying that they kicked him from the panel because of a prior criminal history. While doing that, they, also, let another juror, a white juror, a white female juror, Juror # 34, who, also, has a prior criminal history on to the jury. As to the age of the other Defendant [sic], I have never heard of that being a legitimate reason to – to kick a juror off. Now, at the bench, the State said that he was not attentive.
> >
> > I sat through the – the general juror qualification that happened downstairs. I watched the juror as he came into the room. He was extremely attentive through most of the – the stage that went on downstairs. He was, actually, at the edge of his seat leaning forward listening to what Judge Stilwell was saying. It just seems – seems very pretextual that the two members of these – these things supposedly are so important that the State can't let them on only apply to the two black males that were in the jury panel.

R. 27, L. 22 to R. 28, L. 1–17.

The State: "Your Honor, we have seated one juror who has a prior conviction for a fraud[ulent] check from 1990 – excuse me, '84, from 1984." R. 28, L. 18–20. "However, with respect to Juror # 139, there's pending charges in the Thirteenth Circuit Solicitor's Office currently. And that's the primary reason." R. 28, L. 21–25. "And I'd just like to mention that currently seated in the jury box, we have three African-American jurors, jurors # 117, # 61, and # 29." R. 29, L. 1–3. The defense: "Your Honor, I just point out that none of these three African-American jurors are black males, which is the demographic from which the Defendant is a member of." R. 29, L. 5–8. The State: "Your Honor, just for the record, our reason for excluding the juror was neither race nor gender related." R. 29, L. 9–11. The defense: "But it was pretextual." R. 29, L. 12. The State: "Specifically, with the – the text that I have quoted that the explanation need not be clear, reasonably specific, or legitimate. It only needs to be race or gender neutral." R. 29, L. 15–18.

The Court concluded:

> Well, if I'm reading correctly, the trial judge did not err in finding appellant was unable to articulate a racially-neutral explanation for [the] preemptory challenge. The defense counsel asserted that he struck this juror because of age.
>
> However, age cannot be considered a racially neutral explanation since the opposing party failed to strike – or the appellant – excuse me – failed to strike several white venire persons in the same age bracket. So you're going to have to get a little more – and at the bench conference, Mr. Gibson did question the – another white male juror who appeared of a youthful age. So how can you distinguish that?

R. 29, L. 19 to R. 30, L. 6.

The State:

> Your Honor, that juror that we spoke at the bench about was born in 1995. This juror was born in 2001. We're, you know, talking about a six-year age difference, which is meaningful. And the juror that's in question is, essentially, a teenager, almost 20 years old. And the juror that Mr. Gibson was referencing that's already been seated was significantly older. The – we mentioned at the bench conference – and to put on the record here, there were, also, concerns, although I understand that Mr. Gibson disputes that, of this juror – and this goes hand in hand with his age and the concerns we had.
>
> I'm not saying that he was twiddling his thumbs looking at the ceiling, but he did not appear to me, in my opinion, to have – be as focused and appreciate the gravity of the situation that he was about to undertake potentially, if selected. And it's worth – worth noting that the Defendant [sic] is unemployed. And that is, per the case law, another valid reason.

R. 30, L. 7 to R. 31, L. 1.

The Court: "So you're considering his demeanor and facial expressions when you were making this decision?" R. 31, L. 2–3. The State: "To be blunt, Your Honor, this is simply about whether he would appreciate and have the life experiences necessary for the – deciding the case." R. 31, L. 4–6, 8. The Defense: "And, Your Honor, I'd just point out that there is another juror who is on the panel as an alternate, Ashley Carlson, her birth date was 1997. So she's in that same time frame as well." R. 31, L. 9–12. The State: "It's, I think, a similar argument that we just had, your Honor – that's past that 2000 cutoff." R, 31, L. 13–14, 16. The Court: "All right. Well, I'm going to – I'm going to deny the motion on the challenge." R. 31, L. 17–18.

Analysis

The United States Supreme Court found in *Batson v. Kentucky* that the Equal Protection Clause forbids any party from peremptorily striking a potential juror because of their race alone. U.S. Const. amend. 14; *Batson v. Kentucky*, 476 U.S. 79 (1986) (holding modified by *Powers v. Ohio*, 499 U.S. 400 (1991) (a defendant's race is irrelevant to *Batson* inquiries)). The opponent of the strike must challenge it by making a showing of purposeful racial discrimination, which must be followed up by a proffer of a facially valid, race-neutral explanation for the strike by the proponent. *State v. Elmore*, 300 S.C. 130, 132, 386 S.E.2d 769, 770 (1989). "The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike." *State v. Evins*, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007).

"The opponent of the strike must show the race 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." *State v. Shands*, 424 S.C. 106, 117, 817 S.E.2d 524, 530 (Ct. App. 2018). "In determining whether potential jurors are similarly situated, our courts have focused their inquiry on whether there are meaningful distinctions between the individuals compared." *State v. Scott*, 406 S.C. 108, 115, 749 S.E.2d 160, 164 (Ct. App. 2013). "[T]he opponent of the strike must make a bona fide showing that the proponent . . . seated a juror *who shared nearly every quality* with the struck juror other than race to establish pretext." *State v. Cochran*, 369 S.C. 308, 315, 631 S.E.2d 294, 298 (Ct. App. 2006) (emphasis added). A showing of pretext does not automatically allow the trial court to excuse the jury; the defendant must show "through all relevant circumstances, that the prosecutor intentionally exercised his strike because of racial concerns." *United States v. McMillon*, 14 F.3d 948, 952, n.3 (4th Cir. 1994).

If a discriminatory intent is not inherent in the proponent's explanation, the reason offered will be deemed race [or gender] neutral. *State v. Cochran*, 369 S.C. 308, 314–15, 631 S.E.2d 294, 298 (Ct. App. 2006). The trial court looks at the totality of the relevant facts in making his determination, including the solicitor's credibility. *State v. Tucker*, 334 S.C. 1, 9, 512 S.E.2d 99, 103 (1999). "Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an 'evaluation of the attorney's mind lies peculiarly within a trial court's province.'" *State v. Taylor*, 399 S.C. 51, 57, 731 S.E.2d 596, 599–600 (Ct. App. 2012). "Typically, the decisive question becomes whether [counsel's] race-neutral explanation for a peremptory challenge should be believed . . . . [T]here is seldom much evidence in the record bearing on that issue, and 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." *State v. Guess*, 318 S.C. 269, 272–73, 457 S.E.2d 6, 8 (Ct. App. 1995). "[I]n the absence of exceptional circumstances, we will defer to the trial court . . . Appellate judges cannot on the basis of a cold record easily second-guess a trial judge's decisions about likely motivation." *Davis v. Ayala*, 576 U.S. 257, 274 (2015) (internal citations removed).[6]

"In deciding if the defendant has carried his burden of persuasion, a court must undertake a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Batson*, 476 U.S. at 93. A solicitor's strike must be examined in light of the circumstances under which it is exercised, including an examination of the explanations offered for other strikes. *State v. Oglesby*, 298 S.C. 279, 280, 379 S.E.2d 891, 892 (1989). If the trial

[6] "Even if reasonable minds reviewing the record might disagree about the prosecutor's credibility . . . that does not suffice to supersede the trial court's credibility determination." *Davis v. Ayala*, 576 U.S. at 274 (quoting *Rice v. Collins*, 546 U.S. 333, 341–42 (2016)).

court finds the proponent violated *Batson*, the court must disqualify the jury and begin the selection process again. *State v. Wright*, 304 S.C. 529, 533, 405 S.E.2d 825, 828 (1991).

"The demeanor of a prospective juror is generally a race-neutral reason for employing a peremptory challenge." *Cochran*, 369 S.C. at 317, 631 S.E.2d at 299; *Tucker*, 334 S.C. at 8, 512 S.E.2d at 102 ("Counsel may strike venire persons based on their demeanor and disposition.") "The employment status of a prospective juror is a race-neutral reason for using a peremptory challenge." *Cochran*, 369 S.C. at 318, 631 S.E.2d at 300; *State v. Haigler*, 334 S.C. 623, 632, 515 S.E.2d 88, 92 (1999) (unemployment is a race-neutral reason for strike); *Ford*, 334 S.C. at 65, 512 S.E.2d at 504. "The composition of the jury panel is a factor that may be considered when determining whether a party engaged in purposeful discrimination." *Ford*, 334 S.C. at 65, 512 S.E.2d at 503.

In this case, the trial court looked at the totality of all of the facts and circumstances, including all circumstantial and direct evidence of the solicitor's intent, and concluded no discriminatory intent was inherent in the solicitor's three provided explanations for his strike: (1) the potential juror's state of unemployment; (2) his young age; and (3) his demeanor. The judge spent a considerable amount of time on the record questioning the solicitor on the reasons for his strike and a considerable amount of time discussing relevant case law with counsel. He also spent time discussing the issue at an off-the-record bench conference with the State and the defense just before the hearing. The record demonstrates the judge understood the intricacies of *Batson* case law and properly analyzed the solicitor's reasons for his peremptory strikes accordingly. The trial court rightly and fully investigated the defense's allegations.

In making his decision, the judge also looked at the composition of the jury: the seated jurors were five white females, two black females, four white males, and one Hispanic female

with a white and a black female selected as alternates. He considered the length of the solicitor's explanations as well as the solicitor's demeanor and credibility. The trial court followed the proper procedure for a *Batson* hearing. As such, as the judge was in the best position to evaluate the demeanor and credibility of the solicitor, and subsequently found no inherent discriminatory intent, this Court should show the trial court the great deference owed it and affirm.

Regarding age as a stand-alone reason for a strike: in *Sumpter v. State*, our Supreme Court found the solicitor had not used his peremptory strikes in a racially discriminatory manner as the juror's young age and prior DUI "involvement" were race-neutral reasons for exercising a peremptory strike. *Sumpter v. State*, 312 S.C. 221, 439 S.E.2d 842 (1994). The record did not indicate the struck juror's age, just that he was "quite young." *Id.* at 223, 439 S.E.2d at 843–44. Even though two young white jurors, ages 26 and 31, were seated, the court found the strike to be race-neutral as the defense had failed to provide enough evidence to prove the strike was mere pretext for discrimination. *Id.* at 224, 439 S.E.2d at 844.

Regarding the composition of the jury as a factor: in *State v. Ford*, the appellant exercised most of his strikes against white jurors, but our Supreme Court found that fact alone was not enough to establish purposeful discrimination because he did not strike *every* white juror. *Ford*, 334 S.C. at 66, 512 S.E.2d at 504 (emphasis added). In *State v. Cochran*, this Court held that the defense's reasons for striking five white women were not pretextual because the appellants, who were black, only exercised ten of their twenty peremptory challenges and also struck two black women and three white men. *Cochran*, 369 S.C. at 314, 631 S.E.2d at 297. The final jury in *Cochran* was diverse, and included one white woman, three black men, four white men, and four black women, so this Court concluded purposeful racial discrimination was not engaged in. *Id.* at 315, 631 S.E.2d at 298. This Court also concluded no discrimination was

inherent as the demeanor of some struck prospective jurors (the given reason) was generally a race-neutral reason for employing a strike. *Id.* at 317, 631 S.E.2d at 299. For purposes of this case, it is of importance to note this Court also found that any *Batson* violation regarding a possible alternative juror was harmless where the alternate was not needed for deliberations.

Here, the record does not indicate the trial court's decision was clearly erroneous. As the solicitor stated during the *Batson* hearing, either party's reasons for exercising a peremptory strike are not required to be reasonably specific or even legitimate. They must only be race-neutral. The solicitor here provided not one but three race-neutral reasons for his strike of Juror # 237. Further, the solicitor did not use all of the peremptory strikes available to him. He only used two of his ten and he did not strike *every* black potential juror. Appellate defense is not challenging the solicitor's strike of the other black male juror, which means there is no pattern from which discrimination can be concluded. Finally, while the defense brought up the ages of other seated jury members at the hearing,[7] the defense did not place on the record the demeanor of those jurors or their employment statuses. Therefore, the defense did not and has not shown the struck juror *shared nearly every quality* with a seated juror and as such have not successfully set forth that any were so similarly situated.

Unemployment and demeanor aside, the solicitor did provide a window into his thought process: he told the court they were striking jurors if they were born after 2000. The potential juror was born in 2001 and was struck according to plan. The record does not show an inherent discriminatory intent as unemployment, demeanor, and age are all race-neutral reasons this Court has found to be valid reasons for exercising a peremptory strike. This Court should affirm.

[7] The alternate was not needed for deliberations, so any alleged *Batson* violation connected to her is harmless pursuant to *Cochran*. R. 326, L. 11 to R. 327, L. 9.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
August 16, 2021

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Edward W. Miller

Appellate Case No. 2020-000133

THE STATE, ...RESPONDENT,

v.

SAMUEL LAMAR BURNSIDE,.....APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 16th day of August, 2021.

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