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S.C. Supreme Court

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Unpublished Opinion No. 2012-UP-647 (S.C.Ct.App. filed December 5, 2012)

The State, Respondent,

vs.

Danny Ryant, Petitioner.

Appellate Case No.: 2013-000400

RETURN TO PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S QUESTION PRESENTED

> Did the Court of Appeals err in affirming the trial judge's finding that rap sheets for the jury venire, run by the State, constituted attorney work product to which defense counsel was not entitled?

(Cert Petition, p. 3).

RESPONDENT'S COUNTER STATEMENT OF QUESTION PRESENTED

> Whether the Court of Appeals erred in finding no abuse of discretion in the trial judge's ruling that the State's jury book, which included rap sheets run by the prosecution in anticipation of jury selection, was not subject to disclosure.

RESPONDENT'S STATEMENT OF THE CASE

An Orangeburg County Grand Jury indicted Petitioner, Danny Ryant, in May 2010, for murder, armed robbery, burglary first degree, kidnapping, and possession of a weapon during the commission of a violent crime. (R. pp. 1294-1299). Petitioner, along with four co-defendants, Christian Coleman, Ralph Coleman, Walter Lee Harris, and Mario Shivers, stood trial on the charges of murder, burglary first degree, and armed robbery on December 13-17, 2010, before a jury.[1] (See R. p. 247, lines 12-19). The Honorable Edgar W. Dickson presided. The jury convicted Petitioner as charged. (R. p. 1254, line 23 - p. 1255, line 5). Judge Dickson sentenced Petitioner to thirty (30) years imprisonment for armed robbery and concurrent terms of forty (40) years imprisonment on both the murder conviction and the burglary conviction. (R. p. 1285, lines 5-14). Petitioner appealed.

Appellate Defender Kathrine H. Hudgins of the South Carolina Office of Indigent Defense, Division of Appellate Defense, represented Petitioner on appeal. Appellate counsel filed a final brief of appellant in the South Carolina Court of Appeals on May 3, 2012, and raised the following issues:

1. Did the trial judge err in refusing to grant the motion to sever and allow a separate trial for appellant on the murder, armed robbery and burglary first degree charges when the trial of all five co-defendants charged with the same offenses violated appellant's due process rights by limiting the ability to cross examine, losing the right to present closing argument last beause one of the co-defendants introduced evidence and by detrimentally effecting trial strategy?

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[1] The sixth participant in the crime, Patrick T****, testified at the trial. (R. p. 461, line 21 - p. 462, line 5). The minor's name has been redacted on appeal.

2. Did the trial judge err in finding the rap sheets for the jury venire, run by the State, constituted attorney work product to which defense counsel was not entitled?

(FBOA, p. 3).

The State filed is final brief on April 26, 2012. The South Carolina Court of Appeals affirmed the convictions, without oral argument, by unpublished opinion filed December 5, 2012. (App. pp. 1-3). Petitioner filed a Petition for Rehearing in the Court of Appeals on December 20, 2012, challenging only the ruling as to Issue 2. (App. pp. 4-8). The Court denied the petition on January 25, 2013. (App. p. 10).

On March 27, 2013, Petitioner filed a Petition for Writ of Certiorari in this Court seeking review of the following question:

> Did the Court of Appeals err in affirming the trial judge's finding that rap sheets for the jury venire, run by the State, constituted attorney work prodcut to which defense counsel was not entitled.

(Cert. Petition, p. 3).

This Return follows.

RESPONDENT'S STATEMENT OF FACTS

The jury found Petitioner, and his co-defendants at trial, guilty of the murder, burglary and armed robbery on March 12, 2010. The facts at trial showed Petitioner and his co-defendants, armed with multiple weapons, resolved to use a ruse of purchasing marijuana from the victim to gain entry into his apartment, then rob him "for his weed, marijuana and money." (R. p. 487, lines 14-21). The robbery ended in murder.

Patrick T****, the sixth indicted co-defendant who was not tried with the others, testified at the joint trial. He testified Petitioner called him on March 12, 2010, and told him that Mario Shivers "had guns" that he should see. (R. p. 468, lines 7-11; p. 466, line 23 - p. 468, line 25). Patrick testified that Shiver had two SKS rifles (one with a knife), and one 9mm pistol. (R. p. 470, line 6 - p. 472, line 11). He also testified that Shivers suggested both the robbery and the intended victim, but that he, Shivers, and Ralph Coleman together planned the robbery. (R. p. 473, line 1 - p. 474, line 7). "Chris" Coleman and a friend came to the house in a Ford Explorer to provide transportation. (R. p. 474, lines 8-21). While in the car, the group continued to discuss the robbery with Shivers leading the discussions and planning. (R. p. 476, line 21 - p. 477, line 7). Shivers suggested the group needed another person for the robbery. Patrick suggested Walter "Pete" Harris should join the enterprise, which he did, bringing his own "black pistol." (R. p. 477, line 19 - p. 479, line 25). The plan was to use the ruse of purchasing marijuana to gain entry and rob the victim. (R. p. 480, lines 5-8). Harris offered to go first "to peak at the scene," however, he returned and attempted to disengage in the robbery "because he had know[n] someone that was in there." (R. p. 480, lines 8-21). Thereafter, Shivers suggested Petitioner join the group.

Patrick testified he called Petitioner and picked him up at a nearby club, the Corner Pocket. (R. p. 481, line 19- p. 482, line 12). Harris stayed with the group, even after he expressed concern, and together they explained the robbery plan to Petitioner. (R. p. 482, line 16- p. 483, line 5). The group agreed to rob victim "for his weed, marijuana and money." (R. p. 487, lines 14-21).

Patrick testified that Ralph Coleman, armed with a pistol from Harris, went in with Patrick. Ralph Coleman then "pulled his gun out on the female. And when [Patrick] opened the door that's when everybody came in with the guns." (R. p. 483, line 22 - p. 484, line 2). "Everybody" constituted Christopher Coleman, Shivers, Petitioner, and Walter Harris. According to Patrick, Petitioner was armed with one of the SKS rifles, Shivers was armed with the other SKS rifle, and Christopher Coleman used Shiver's 9mm pistol. (R. p. 484, lines 3-19). Harris, who was not armed at the time he entered the apartment according to Patrick, taped the victim's mouth. (R. p. 484, lines 20-22; p. 485, lines 3-6). Patrick testified that they were searching the home for "money and stuff," and when he heard a gunshot, he left. (R. p. 486, lines 3-10). Ultimately, Patrick heard "nineteen, twenty" shots from the apartment. (R. p. 486, lines 14-15). The group fled to the Explorer, and agreed to say nothing. (R. p. 487, lines 2-9).

Moneak Busby, knew Petitioner, a/k/a "Pokey," through his mother, Makiva Monroe, and his aunt, Shaun Monroe. In fact, she testified she was with Makiva and Shaun and another individual, Yvonne Sharperson, at the Corner Pocket on the night of March 12, 2010. (R. p. 749, line 1- p. 750, line 13). She saw Petitioner talking to two people at the door. She identified Shivers as one of the two people. (R. p. 751, line 6 - p. 752, line 23). After

Petitioner spoke to those individuals, there was a time where Busby could not find him in the club. He later showed up, by himself, approximately forty or forty-five minutes later. (R. p.753, line 7 - p. 754, line 23; p. 769, line 8 - p. 770, line 21).

Ms. Sharperson also testified that she recalled seeing Petitioner at the club, but the group could not find him at approximately 9:30 p.m. She, however, left shortly thereafter and did not know whether he left and returned. (R. p. 777, line 6 - p. 778, line 24).

Ashley Parsley testified that she was living with the victim in his apartment on the night of March 12, 2010. She was also helping victim sell marijuana from the apartment. (R. p. 379, line 15 - p. 380, line 22; p. 386, line 14 - p. 387, line 2). She and victim's friend Shannon Mitchell were in the apartment when Walter Harris first entered. Victim was asleep in a back bedroom. (R. p. 382, line 1 - p. 383, line 17). Mitchell testified that he knew Harris from high school. (R. p. 715, lines 3-4). Both Parsley and Mitchell testified that Harris asked for a certain type of marijuana ("droe"); and, that victim came from the back bedroom, checked Harris' identification, then apparently told him that he did not have any "droe" to sell as Harris left shortly thereafter without a purchase. (R. p. 385, line 10 - p. 388, line 21; p. 716, line 4 - p. 717, line 13). Mitchell testified that he left "maybe ten minutes" after Harris did. (R. p. 718, lines 17-19).

Parsley testified that shortly after Harris and Mitchell left, she answered the door for another person asking to purchase marijuana. (R. p. 393, lines 3-23). Victim was in the kitchen area of the apartment "making bags," *i.e.* packaging marijuana. (R. p. 391, line 6 - p. 392, line 2). As she was reaching for the drugs in the living area, the person "pulled a gun out on" her, told her "it was a stickup," instructed her to get face down on the floor, and she

complied. (R. p. 394, line 13 - p. 395, line 20). He also took the pistol she had (which actually belonged to victim) from her. (R. p. 395, lines 2-14). After this first man pulled a gun on her, she also "noticed a chubby guy." She sensed other people coming into the apartment but did not see anyone else directly as her face was toward the floor. (R. p. 396, lines 3-22). The victim came out of the kitchen area and started talking to the group. (R. p. 396, lines 1-2). Parsley could hear "a lot of talking, a lot of yelling, a lot of ripping up stuff, asking where the money is, and I heard like tape being torn, and then after that, that's when I heard gun shots." (R. p. 396, line 23 - p. 397, line 3). She testified that after the shots, "[t]hey ran out" the front door. She called 911. Victim was on the floor. He had been shot multiple times, and his mouth had been taped. (R. p. 397, line 10 - p. 399, line 4). Three days later, on March 15, 2010, Parsley identified Harris as the individual who came in for "droe" from a photographic lineup. (R. p. 401, line 6 - p. 404, line 13). On March 19, 2010, Parsley identified Shivers as the individual who pulled a gun on her, and Ralph Coleman as the second individual she briefly saw thereafter. (R. p. 404, line 14 - p. 408, line 22; p. 894, line 10 - p. 896, line 4).

Pathologist Dr. Janice Ross testified that victim was shot twenty-four times in his torso, arms and legs. (R. p. 791, lines 15-16). The cause of death was the "laceration of multiple organs due to multiple gun shot wounds of the chest and the abdomen." (R. p. 798, lines 8-10). She noted that the "entrance wounds had some variability in their size" which "suggests different calibers" of weapons. (R. p. 797, line 22 - p. 798, line 1). Dr. Ross was able to retrieve several bullets and bullet fragments from the body at autopsy, introduced as State's 81-91. (R. p. 794, line 19 - p. 795, line 6).

Investigating officer Lt. Gerald Carter testified that he retrieved shell casings from three different caliber weapons from the crime scene – two pistols (.40 caliber and 9 mm), and an assault rifle. (R. p. 667, lines 15-19). In assessing the scene, Lt. Carter was able to determine that "most of the shots fired which hit the victim were fired after he was already on the floor." (R. p. 683, lines 5-17). Lt. Carter also collected several bullet fragments that were submitted for analysis. (R. p. 677, line 10 - p. 682, line 21).

Andre Washington testified that he purchased a .40 caliber pistol from Harris several days after the shooting. When he determined the pistol was involved in a murder, he sold it to another individual, who was actually working with investigators and turned the weapon over to them. (R. p. 735, line 20 -p. 738, line 10; p. 880, lines 8-23). The gun was matched to eight of the .40 caliber shell casings at the scene, and was introduced at trial as State's Exhibit 73. (R. p. 690, line 17 - p. 692, line 6; p. 813, line 1 - p. 815, line 4).

Agent James Green of SLED testified as a firearms identification expert. (R. p. 805, line 23 - p. 806, line 8). In addition to having matched the .40 caliber shell casings to State's Exhibit 73, he was also able to tell that eleven other cases were fired by the same gun, but not State's Exhibit 73. (R. p. 813, lines 1 - p. 815, line 4). Five other casing recovered at the scene were consistent with "seven point six two by thirty-nine caliber" weapons, "your SKS or AK Forty-seven variance." (R. p. 815, lines 14-24). Further, the shells were fired by two different weapons. (R. p. 817, lines 6-22). Additionally, the various bullets and fragments recovered from the autopsy and from the scene were consistent with all three types of weapons, and several matched specifically to State's 73. (R. p. 818, line 23-p. 824, line 19; p. 826, lines 2-p. 827, line 9).

ARGUMENT

I.

The Court of Appeals properly found no abuse of discretion in the trial judge's ruling that the State's jury book, which included rap sheets run by the prosecution in anticipation of jury selection and not for any witness preparation, was attorney work product and not subject to disclosure.

Relevant Facts:

Petitioner joined in Ralph Coleman's motion to review the State's "jury book." (R. p. 215, lines 6-22; p. 220, lines 18-20). Counsel argued "the State has the ability to do an NCIC on any person" but that defense counsel did not, though counsel conceded the defense could request a SLED report at a cost of twenty-five dollars for each report. (R. p. 215, lines 10-13). Counsel argued:

> ... on the jurors in general we have the ability and the right to know as much as they do. There's no reason the State should be in a better position to pick a jury than the defense.

(R. p. 216, lines 16-20).

The Solicitor asserted work product privilege. (R. p. 216, line 23 - p. 217, line 3). The trial judge denied the defense's request for the jury book citing work product privilege. (R. p. 217, lines 19-22).

Counsel for Ralph Coleman was the spokesperson for all defendants during jury selection. (R. p. 287, lines 1-22). Counsel raised a *Batson*[2] challenge based on discrimination by race (African-American), and "possibly" gender (female). (R. p. 301, lines 2-18). The selected jury was comprised of (2) white males; (2) white females; (2) African-American

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[2] *Batson v. Kentucky*, 476 U.S. 79 (1986)(finding race-based discrimination in jury selection violated Equal Protection). *See also J.E.B. v. Alabama ex. rel. T.B.*, 511 U.S. 127 (1994)(extending *Batson* to gender-based discrimination in jury selection).

males; and (6) African American females. (R. p. 301, lines 19-21; pp. 1291-1293). Counsel argued that the State's strikes – (5) African-American females, (1) African-American males, and (1) white male – showed a prima facie case for discrimination. (R. p. 301, lines 11-15). Counsel argued she believed the white male was struck because he was a lawyer in the community, and did not challenge or credit that strike. (R. p. 301, lines 4-9). The State provided specific, race and gender neutral reasons for all of its strikes:

> Juror 198, BF, struck for a 2010 shoplifting arrest;
>
> Juror 97, BF, struck upon information brother in prison for murder (solicitor informed by an employee of the solicitor's office during jury selection);
>
> Juror 98, BF, struck upon information brother accused of child molestation;
>
> Juror 160, BF, struck due to 2009 prosecution by same solicitor's office, and could have been excused for cause;
>
> Juror 114, BM, record, 1973 marijuana conviction, 1987 DUI conviction, but failed to admit conviction on juror questionnaire
>
> Juror 7, WM, attorney
>
> Juror 131, BF, said she had a grandchild she cares for at home,
>
> Juror 92, BF, high blood pressure and medication "for her nerves"

(R. p. 302, line 8 - p. 304, line 6).

The trial judge found that all reasons were race neutral and turned to the defense. (R. p. 304, lines 10-11). Defense counsel argued:

> Yes, sir, I appreciate the reasons. I'm not sure that I can argue that any of them are - - but I just thought that it should be placed on the record and explained.

(R. p. 304, lines 12-15).

The trial judge denied the defense motion. (R. p. 304, lines 16-17).

Petitioner argued in the Court of Appeals that "[t]he trial judge erred in finding the rap sheets for the jury venire, run by the State, constituted attorney work product to which defense counsel was not entitled." (FBOA, p. 12).

The Court of Appeals resolved the issue as follow:

> 2. As to whether the trial court erred in finding Ryant was not entitled to the criminal records checks the State had compiled on prospective jurors: *State v. Childs*, 299 S.C. 471, 474, 385 S.E.2d 839, 841 (1989) (holding a defendant is no "entitled to criminal records checks or records of arrest" of potential jurors because "[n]o right to discovery exists in a criminal case absent statute or court rule"); Rule 5(a)(1), SCRCrimP (providing the State is required to disclose specific information, such as: statements of defendant, a defendant's prior record, documents and tangible objects the prosecution or defense may use as evidence at trial, and reports of examinations and tests); Rule 5(a)(2),SCRCrimP (exempting from discovery "internal prosecution and documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case"); *Childs*, 299 S.C. at 474, 385 S.E.2d at 841 (holding a trial court does not abuse its discretion in denying a discovery request if no statute or court rule requires disclosure of the particular information.).

(App. pp. 2-3).

In his petition for rehearing before the Court of Appeals, Petitioner asserted:

> ... Based on traditional concepts of fairness, reasonableness and judicial economy, the judge should have required the State to provide defense counsel an opportunity to make copies of the rap sheets of the jury venire.

(App. p. 5).

He also argued the issue here was distinguishable from the issue in *Childs*, relied on by the Court of Appeals, "because of the subsequent challenge by the defense to the State's jury selection...." (App. p. 8).

In the Petition for Writ of Certiorari before this Court, Petitioner argues again that "[b]ased on traditional concepts of fairness, reasonableness and judicial economy, the judge should have required the State to provide defense counsel an opportunity to make copies of the rap sheets of the jury venire." (Cert Petition, p. 7).

Discussion:

As a first point, certiorari in this matter should be denied as Petitioner's arguments do not clearly contest the precise issue presented to the trial judge. The argument on appeal shifts from a basic discovery issue to a sufficiency of the *Batson* hearing response. Moreover, even the basic discovery issue is somewhat shifting. At trial, counsel requested that the defense be able to view *the State's jury book* – not just criminal histories. (R. p. 215, lines 6-7). The trial judge did not abuse his discretion in finding the State's jury book constituted work product and was protected from disclosure. (R. p. 217, lines 19-23). That was the issue resolved below. Further, the "work product" argument advanced here – that the NCIC reports cannot be the prosecution's work product because the database for the report is not collected for prosecution, (Cert Petition, p. 7) – is not preserved for review as it was not raised to or addressed by the trial judge. It is well settled that "[a]n issue may not be raised for the first time on appeal, but must have been raised to the trial judge to be preserved for appellate review." *State v. Walker*, 366 S.C. 643, 660, 623 S.E.2d 122, 130-31 (Ct. App. 2005). Even so, Petitioner's general assertion of error in failing to disclose lacks

merit.

A defendant is not entitled to such information in this jurisdiction. In *State v. Childs*, 299 S.C. 471, 474, 385 S.E.2d 839, 841 (1989), this court held a defendant was not "entitled to criminal records checks or records of arrest" as "[n]o right to discovery exists in a criminal case absent statute or court rule" and there is no statute or court rule requiring a disclosure of this information...." This decision holds true.

Rule 5 (a)(1), S.C.R.Crim.P., sets out the information subject to disclosure by the State, and does not include juror criminal histories run in preparation for jury selection. In fact, Rule 5 (a)(2), specifically reserves the protection of other documents "made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case...." Thus, it appears that the "juror book" requested, which contains more than just criminal record checks, or, for that matter, any information gathered by the prosecution concerning jurors is not discoverable and is privileged. *See State v. Myers*, 359 S.C. 40, 49, 596 S.E.2d 488, 493 (2004) ("Rule 5(a)(2) SCRCrimP, exempts from discovery work product, or 'internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case....'"); *State v. Matthews*, 296 S.C. 379, 384, 373 S.E.2d 587, 591 (1988) (pre-Rule 5 case finding "[b]ackground information on the *venire,* if any, held by the solicitor here qualified as 'internal prosecution' matter connected with the prosecution of the case. As such it was not subject to disclosure."). *Accord Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010) (discussing "work product privilege" in civil case context: " in determining whether a document has been prepared 'in anticipation of

litigation,' most courts look to whether or not the document was prepared because of the prospect of litigation.")(internal citations omitted). *See also Guilder v. State*, 794 S.W.2d 765, 767 (Tex.App. 1990) (in criminal context, "An attorney's files and papers are work product and are therefore privileged.")

Other jurisdictions have also applied this same logic specifically in regard to jury qualification and selection, and found that a prosecutor's notes on jury selection are subject to protection under the work-product privilege or otherwise not subject to disclosure. *See Couser v. State*, 383 A.2d 389, 397 (Md. 1978) ("No authority exists to support the proposal that where a prosecutor has information on prospective jurors of the type involved here which the accused does not share, that the trial judge must, even though not requested, inspect the material and order disclosure of information relevant to challenging a juror for cause as well as information merely useful in exercising peremptory challenges."); *Wansley v. State*, 352 S.E.2d 368, 369 (Ga.1987) ("In this state the prosecution is not required to reveal or produce investigatory work routinely performed in criminal cases unless it is subject to discovery under OCGA § 17-7-210 (statements by defendant in custody), § 17-7-211 (scientific reports), or under *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) (exculpatory evidence)."); *Kelley v. State*, 602 So. 2d 473, 478 (Ala. Crim. App. 1992) ("This court has held that arrest and conviction records of potential jurors do not qualify as the type of discoverable evidence that falls within the scope of *Brady* and that a trial court will not be held in error for denying an Petitioner's motion to discover such documents."); *State v. Weiland*, 540 So. 2d 1288, 1290 (La. Ct. App. 1989) ("Weiland

complains because his request for the rap sheets of prospective jurors was denied by the trial judge. A defendant is not entitled to this information.").

To the extent that Petitioner alleges that he is entitled to only the criminal record reports, not only is precedent against him, two points make the request unreasonable. First, the jurors were asked if "any member of the jury panel [had] ever been prosecuted here or anywhere" and clearly, "have you ever been prosecuted?" Thus, the information was readily available for any of the parties, obtainable by questions to the individual jurors. (R. p. 275, lines 5-10). Even in a case where the reviewing court found criminal history reports alone were not work product, the *voir dire* was deemed sufficient uncover relevant information. *See Couser v. State*, 383 A.2d at 398 ("Nor can it be assumed that in the absence of disclosure of the dossier that an unbiased jury was not impaneled. ...an adequate voir dire examination will satisfactorily determine whether a prospective juror is prejudiced and therefore unable to render a fair and impartial verdict."). Further, the State does disclose relevant portions of the criminal histories and all parties and the court are informed, and it did here. (R. p. 303, lines 10-16). Further still, the record shows that not all the relevant information about arrests or convictions was taken from the criminal history reports.

For instance, in regard to Juror 160, the State did not rely on a report of conviction, but an employee's recollection. (R. p. 279, lines 2-7; p. 303, lines 3-8). Further, the defense was not only aware of that conviction *before* the prosecution received confirmation from their office source, but actually knew the conviction (for unlawful carrying of a pistol), the sentence (probation) and which public defender represented the juror. (R. p. 279, lines 2-

12).[3] Respondent notes that the defense did not move to strike the juror for cause, and the State announced before selection, that they would probably just strike the juror if called. (R. p. 279, lines 13-16). Further, another juror self-reported a dismissed charge after initial qualification. (R. p. 285, lines 7-12). That information was shared with all parties. (R. p. 285, lines 7-24; p. 290, lines 4-13). Further still, another juror was disqualified after the general qualification "because he had [...a...] prior burglary conviction," indicating, yet again, additional review. (R. p. 278, lines 9-20).

Thus, a fair reading is that the reports were not the only source of information concerning prior criminal charges and or convictions, and, again, the relevant information was shared with all parties. As such, Petitioner's concern that the prosecution's access to criminal records would create an uneven playing field is somewhat suspect, first, because information was received from various sources (with the defense, at least in one instance, apparently having superior information to that of the State); and, second, because the information from the one relevant criminal history report was released. Even had the information not been shared, though, Petitioner would be hard pressed to establish any prejudice. Simply, it is difficult to see the correlation between conviction and possible bias toward the accused – the contrary, however, is easily understood. *State v. Jackson*, 450 So. 2d 621, 628 (La. 1984) ("The criminal records of prospective jurors may be useful to the state in its desire to challenge jurors with inclinations or biases against the state. But they are

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[3] Again, though counsel for Ralph Coleman responded in this exchange, counsel for all five co-defendants "went through the list together" and decided on strikes together, clearing indicating a sharing of all information among the defense. (See R. p. 287, lines 14-16).

not pertinent to the purpose of *defendant's* voir dire: to *challenge* jurors whom defendant believes will not approach the verdict in a detached and objective manner. Whatever the practical desire of trial counsel, the recognized purpose of full voir dire is not to pack the jury with persons favorable to the defendant or to the state.") (emphasis in original); *State v. White*, 909 S.W.2d 391, 394 (Mo. Ct. App. 1995) ("No rationale is presented as to why striking a person convicted of assault from the panel results in prejudice or bias against the defendant."). Further, if Petitioner means to insinuate that the rap sheet was read in error, that would prove nothing in support of the *Batson* motion as it is only discriminatory intent at issue, not correctness in the record relied upon. At any rate, defense counsel could have taken the extraordinary step of having the judge review the record to confirm the information if there was doubt as to whether the report supported the assertion.

Finally, the request was for all the rap sheets for all the potential jurors, and was overly broad. NCIC reports on all jurors, even those not selected for the petit jury, are unnecessary. *Cf. State v. Wright*, 803 So.2d 793, 794 (Fla.App. 4 Dist. 2001)(quashing order requiring State to disclose "criminal records of all 100 listed witnesses, notwithstanding the state's notification that it only intended to call 30 of those witnesses"). The breadth of the request also draws additional concerns about other limitations, such as those stemming from privacy concerns. The reports contain privileged information that should not be released to an unauthorized user, or may involve other privilege asserted by the database authority. *See generally United States Dept. of Justice v. Reporters Committee For Freedom of Press*, 489 U.S. 749, 765 and 780 (1989) (acknowledging "the web of federal statutory and regulatory provisions that limits the disclosure of rap-sheet information" and as to FOIA request,

holding "a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no 'official information' about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is 'unwarranted.'"); *State v. Wright*, 803 So.2d at 795 ("because the defendants/respondents offered no authority to refute the state's claim that it is prohibited from disseminating the NCIC information, we hold that the trial court cannot order the state to produce such information.").

Even so, it remains that the fact of the convictions for Juror 160 and Juror 114, was provided to the defense, and the trial court, during the State's presentation in response to the *Batson* motion.[4] These are the only two instances where convictions were at issue, and only one depended upon a report. Not only does Petitioner failed to show entitlement, he fails to show relevance, or, at the very least, he fails to show prejudice.

In sum, the trial judge did not abuse his discretion in denying Petitioner's broad request to review the solicitor's "jury book." The Court of Appeals properly found no abuse of discretion in the trial judge's ruling.

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[4] Again, Respondent notes that it is not the correctness of the prior convictions that is at issue during a *Batson* motion, but the solicitor's reason for striking the juror.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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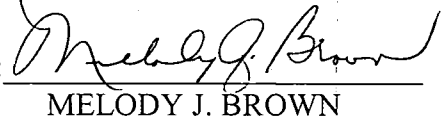
BY: 
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April 26, 2013.
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

On Petition for Writ of Certiorari to the Court of Appeals
Unpublished Opinion No. 2012-UP-647 (S.C.Ct.App. filed December 5, 2012)

The State, Respondent,

vs.

Danny Ryant, Petitioner.

Appellate Case No.: 2013-000400

PROOF OF SERVICE

I, Melody J. Brown, certify that I have served the *Return to Petition for Writ of Certiorari* on Petitioner by depositing a copy of same in the United States mail, postage prepaid, addressed to his attorney of record as follows:

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

This 26th day of April, 2013.

MELODY J. BROWN
S.C. Bar No. : 14244

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