



OPINIONS
OF
THE SUPREME COURT
AND
COURT OF APPEALS
OF
SOUTH CAROLINA

ADVANCE SHEET NO. 42
October 2, 2013
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

27321 - L. Paul Trask v. Beaufort County 15

UNPUBLISHED OPINIONS AND ORDERS

None

PETITIONS – UNITED STATES SUPREME COURT

27195 - The State v. K.C. Langford Pending
27224 - The State v. Stephen Christopher Stanko Pending
27233 - Brad Keith Sigmon v. State Pending
27235 - SCDSS v. Sarah W. Pending
2012-213159 - Thurman V. Lilly v. State Pending

EXTENSION TO FILE PETITION – UNITED STATES SUPREME COURT

2013-MO-013 - In the Interest of David L., a juvenile Granted until 11/7/13

PETITIONS FOR REHEARING

27304 - Thelma Poch v. Bayshore Concrete Pending
27306 - In the Interest of Justin B. Pending
27307 - The State v. Ervin Gamble Pending

EXTENSION OF TIME TO FILE PETITION FOR REHEARING

27314 - Christopher Price v. Peachtree Electrical Granted until 10/11/2013

The South Carolina Court of Appeals

PUBLISHED OPINIONS

5174-State v. Dondre Scott 17

UNPUBLISHED OPINIONS

2013-UP-360-State v. David Jakes
(Colleton, Judge Perry M. Buckner)

2013-UP-361-Michael Wayne McCarson v. Mary Carmen Roldan
(Greenville, Judge Alex Kinlaw, Jr.)

2013-UP-362-State v. John Wayne Brannon
(Spartanburg, Judge Roger L. Couch)

2013-UP-363-State v. Timothy Lemacks
(Colleton, Judge D. Craig Brown)

2013-UP-364-Sherry Slate Fortenberry v. Brian Keith Fortenberry
(York, Judge Henry T. Woods)

2013-UP-365-Atlantic Coast Properties v. Jerry E. Swann
(Aiken, Master-in-Equity M. Anderson Griffith)

2013-UP-366-State v. Phillip Parsons
(Georgetown, Judge Steven H. John)

PETITIONS FOR REHEARING

5131-Lauren Proctor v. Whitlark & Whitlark	Pending
5139-H&H of Johnston v. Old Republic National	Denied 09/27/13
5144-Emma Hamilton v. Martin Color-Fi, Inc.	Denied 09/27/13
5160-State v. Ashley Eugene Moore	Denied 09/27/13

5165-Bonnie L. McKinney f/k/a Bonnie L. Pedery v. Frank Pedery	Pending
5166-Scott R. Lawing v. Univar, USA, Inc., et al.	Pending
5167-State v. Thomas Michael Smith	Pending
2013-UP-189-Thomas Torrence v. SCDC	Pending
2013-UP-209-State v. Michael Avery Humphrey	Pending
2013-UP-233-Phillip Brown v. SCDPPP	Denied 09/27/13
2013-UP-294- State v. Jason Husted	Denied 09/27/13
2013-UP-296-Parsons v. John Wieland Homes	Pending
2013-UP-303-William Jeff Weekley v. John Lance Weekley, Jr.	Pending
2013-UP-322-A.M. Kelly Grove v. SCDHEC	Denied 09/27/13
2013-UP-335-Billy Lee Lisenby v. State	Denied 09/25/13
2013-UP-338-State v. Jerome Campbell	Pending
2013-UP-340-Randy Griswold v. Kathryn Griswold	Pending
2013-UP-346-State v. George Branham	Pending
2013-UP-358-Marion L. Driggers v. Daniel Shearhouse	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

4750-Cullen v. McNeal	Pending
4764-Walterboro Hospital v. Meacher	Pending
4779-AJG Holdings v. Dunn	Pending
4832-Crystal Pines v. Phillips	Pending
4851-Davis v. KB Home of S.C.	Pending

4872-State v. Kenneth Morris	Pending
4880-Gordon v. Busbee	Pending
4888-Pope v. Heritage Communities	Pending
4895-King v. International Knife	Pending
4898-Purser v. Owens	Pending
4909-North American Rescue v. Richardson	Pending
4923-Price v. Peachtree Electrical	Pending
4926-Dinkins v. Lowe's Home Centers	Pending
4933-Fettler v. Genter	Pending
4934-State v. Rodney Galimore	Pending
4947-Ferguson Fire and Fabrication v. Preferred Fire Protection	Pending
4956-State v. Diamon D. Fripp	Pending
4960-Justin O'Toole Lucey et al. v. Amy Meyer	Pending
4964-State v. Alfred Adams	Pending
4970-Carolina Convenience Stores et al. v. City of Spartanburg	Pending
4973-Byrd v. Livingston	Pending
4975-Greeneagle Inc. v. SCDHEC	Pending
4979-Major v. City of Hartsville	Pending
4982-Katie Green Buist v. Michael Scott Buist	Pending
4989-Dennis N. Lambries v. Saluda County Council et al.	Pending
4992-Gregory Ford v. Beaufort County Assessor	Pending

4995-Keeter v. Alpine Towers International and Sexton	Pending
4997-Allegro v. Emmett J. Scully	Pending
5001-State v. Alonzo Craig Hawes	Pending
5003-Earl Phillips as personal representative v. Brigitte Quick	Pending
5006-J. Broach and M. Loomis v. E. Carter et al.	Pending
5008-Willie H. Stephens v. CSX Transportation	Pending
5010-S.C. Dep't of Transportation v. Janell P. Revels et al.	Pending
5011-SCDHEC v. Ann Dreher	Pending
5013-Geneva Watson v. Xtra Mile Driver Training	Pending
5016-The S.C. Public Interest Foundation v. Greenville Cty. et al.	Pending
5017-State v. Christopher Manning	Pending
5019-John Christopher Johnson v. Reginald C. Lloyd et al.	Pending
5020-Ricky Rhame v. Charleston Cty. School District	Pending
5022-Gregory Collins v. Seko Charlotte and Nationwide Mutual	Pending
5025-State v. Randy Vickery	Pending
5031-State v. Demetrius Price	Pending
5032-LeAndra Lewis v. L.B. Dynasty	Pending
5033-State v. Derrick McDonald	Pending
5034-State v. Richard Bill Niles, Jr.	Pending
5035-David R. Martin and Patricia F. Martin v. Ann P. Bay et al.	Pending
5041-Carolina First Bank v. BADD	Pending

5044-State v. Gene Howard Vinson	Pending
5052-State v. Michael Donahue	Pending
5053-State v. Thomas E. Gilliland	Pending
5055-Hazel Rivera v. Warren Newton	Pending
5059-Kellie N. Burnette v. City of Greenville et al.	Pending
5060-State v. Larry Bradley Brayboy	Pending
5061-William Walde v. Association Ins. Co.	Pending
5062-Duke Energy v. SCDHEC	Pending
5065-Curiel v. Hampton Co. EMS	Pending
5071-State v. Christopher Broadnax	Pending
5072-Michael Cunningham v. Anderson County	Pending
5074-Kevin Baugh v. Columbia Heart Clinic	Pending
5077-Kirby L. Bishop et al. v. City of Columbia	Pending
5078-Estate of Livingston v. Clyde Livingston	Pending
5081-The Spriggs Group, P.C. v. Gene R. Slivka	Pending
5082-Thomas Brown v. Peoplease Corp.	Pending
5087-Willie Simmons v. SC Strong and Hartford	Pending
5090-Independence National v. Buncombe Professional	Pending
5092-Mark Edward Vail v. State	Pending
5093-Diane Bass v. SCDSS	Pending
5095-Town of Arcadia Lakes v. SCDHEC	Pending

5097-State v. Francis Larmand	Pending
5099-Roosevelt Simmons v. Berkeley Electric	Pending
5101-James Judy v. Ronnie Judy	Pending
5110-State v. Roger Bruce	Pending
5111-State v. Alonza Dennis	Pending
5112-Roger Walker v. Catherine Brooks	Pending
5113-Regions Bank v. Williams Owens	Pending
5116-Charles A. Hawkins v. Angela D. Hawkins	Pending
5117-Loida Colonna v. Marlboro Park (2)	Pending
5118-Gregory Smith v. D.R. Horton	Pending
5119-State v. Brian Spears	Pending
5121-State v. Jo Pradubsri	Pending
5122-Ammie McNeil v. SCDC	Pending
5125-State v. Anthony Marquese Martin	Pending
5126-A. Chakrabarti v. City of Orangeburg	Pending
5130-Brian Pulliam v. Travelers Indemnity	Pending
5132-State v. Richard Brandon Lewis	Pending
5135-Microclean Tec. Inc. v. Envirofix, Inc.	Pending
5137-Ritter and Associates v. Buchanan Volkswagen	Pending
5151-Daisy Simpson v. William Simpson	Pending
5152-Effie Turpin v. E. Lowther	Pending

5157-State v. Lexi Dial	Pending
2010-UP-356-State v. Darian K. Robinson	Pending
2011-UP-052-Williamson v. Orangeburg	Pending
2011-UP-108-Dippel v. Horry County	Pending
2011-UP-109-Dippel v. Fowler	Pending
2011-UP-400-McKinnedy v. SCDC	Pending
2011-UP-447-Brad Johnson v. Lewis Hall	Pending
2011-UP-475-State v. James Austin	Pending
2011-UP-495-State v. Arthur Rivers	Pending
2011-UP-502-Heath Hill v. SCDHEC and SCE&G	Pending
2011-UP-558-State v. Tawanda Williams	Pending
2011-UP-562-State v. Tarus Henry	Pending
2012-UP-030-Babae v. Moisture Warranty Corp.	Pending
2012-UP-058-State v. Andra Byron Jamison	Pending
2012-UP-060-Austin v. Stone	Pending
2012-UP-078-Seyed Tahaei v. Sherri Tahaei	Pending
2012-UP-081-Hueble v. Vaughn	Pending
2012-UP-089-State v. A. Williamson	Pending
2012-UP-091-State v. Mike Salley	Pending
2012-UP-134-Richard Cohen v. Dianne Crowley	Pending
2012-UP-152-State v. Kevin Shane Epting	Pending

2012-UP-153-McCall v. Sandvik, Inc.	Pending
2012-UP-203-State v. Dominic Leggette	Pending
2012-UP-217-Forest Beach Owners' Assoc. v. C. Bair	Pending
2012-UP-218-State v. Adrian Eaglin	Pending
2012-UP-219-Dale Hill et al. v. Deertrack Golf and Country Club	Pending
2012-UP-267-State v. James Craig White	Pending
2012-UP-270-National Grange Ins. Co. v. Phoenix Contract Glass, LLC, et al.	Pending
2012-UP-274-Passaloukas v. Bensch	Pending
2012-UP-276-Regions Bank v. Stonebridge Development et al.	Pending
2012-UP-278-State v. Hazard Cameron	Pending
2012-UP-285-State v. Jacob M. Breda	Pending
2012-UP-286-Diane K. Rainwater v. Fred A. Rainwater	Pending
2012-UP-292-Demetrius Ladson v. Harvest Hope	Pending
2012-UP-295-Larry Edward Hendricks v. SCDC	Pending
2012-UP-293-Clegg v. Lambrecht	Pending
2012-UP-302-Maple v. Heritage Healthcare	Pending
2012-UP-312-State v. Edward Twyman	Pending
2012-UP-314-Grand Bees Development v. SCDHEC et al.	Pending
2012-UP-321-James Tinsley v. State	Pending
2012-UP-330-State v. Doyle Marion Garrett	Pending
2012-UP-332-George Tomlin v. SCDPPPS	Pending

2012-UP-348-State v. Jack Harrison, Jr.	Pending
2012-UP-351-State v. Kevin J. Gilliard	Pending
2012-UP-365-Patricia E. King v. Margie B. King	Pending
2012-UP-404-McDonnell and Assoc v. First Citizens Bank	Pending
2012-UP-432-State v. Bryant Kinloch	Pending
2012-UP-433-Jeffrey D. Allen v. S.C. Budget and Control Bd. Employee Insurance Plan et al.	Pending
2012-UP-460-Figueroa v. CBI/Columbia Place Mall et al.	Pending
2012-UP-462-J. Tennant v. Board of Zoning Appeals	Pending
2012-UP-479-Elkachbendi v. Elkachbendi	Pending
2012-UP-481-State v. John B. Campbell	Pending
2012-UP-502-Hurst v. Board of Dentistry	Pending
2012-UP-504-Palmetto Bank v. Cardwell	Pending
2012-UP-552-Virginia A. Miles v. Waffle House	Pending
2012-UP-561-State v. Joseph Lathan Kelly	Pending
2012-UP-563-State v. Marion Bonds	Pending
2012-UP-569-Vennie Taylor Hudson v. Caregivers of SC	Pending
2012-UP-573-State v. Kenneth S. Williams	Pending
2012-UP-576-State v. Trevee J. Gethers	Pending
2012-UP-577-State v. Marcus Addison	Pending
2012-UP-579-Andrea Beth Campbell v. Ronnie A. Brockway	Pending

2012-UP-580-State v. Kendrick Dennis	Pending
2012-UP-585-State v. Rushan Counts	Pending
2012-UP-600-Karen Irby v. Augusta Lawson	Pending
2012-UP-603-Fidelity Bank v. Cox Investment Group et al.	Pending
2012-UP-608-SunTrust Mortgage v. Ostendorff	Pending
2012-UP-616-State v. Jamel Dwayne Good	Pending
2012-UP-623-L. Paul Trask, Jr., v. S.C. Dep't of Public Safety	Pending
2012-UP-627-L. Mack v. American Spiral Weld Pipe	Pending
2012-UP-647-State v. Danny Ryant	Pending
2012-UP-654-State v. Marion Stewart	Pending
2012-UP-658-Palmetto Citizens v. Butch Johnson	Pending
2012-UP-663-Carlton Cantrell v. Aiken County	Pending
2012-UP-674-SCDSS v. Devin B.	Pending
2013-UP-007-Hoang Berry v. Stokes Import	Pending
2013-UP-010-Neshen Mitchell v. Juan Marruffo	Pending
2013-UP-014-Keller v. ING Financial Partners	Pending
2013-UP-015-Travelers Property Casualty Co. v. Senn Freight	Pending
2013-UP-020-State v. Jason Ray Franks	Pending
2013-UP-034-Cark D. Thomas v. Bolus & Bolus	Pending
2013-UP-037-Cary Graham v. Malcolm Babb	Pending
2013-UP-056-Lippincott v. SCDEW	Pending

2013-UP-058-State v. Bobby J. Barton	Pending
2013-UP-062-State v. Christopher Stephens	Pending
2013-UP-063-State v. Jimmy Lee Sessions	Pending
2013-UP-066-Dudley Carpenter v. Charles Measter	Pending
2013-UP-069-I. Lehr Brisbin v. Aiken Electric Coop.	Pending
2013-UP-070-Loretta Springs v. Clemson University	Pending
2013-UP-071-Maria McGaha v. Honeywell International	Pending
2013-UP-078-Leon P. Butler, Jr. v. William L. Wilson	Pending
2013-UP-081-Ruth Sturkie LeClair v. Palmetto Health	Pending
2013-UP-082-Roosevelt Simmons v. Hattie Bailum	Pending
2013-UP-084-Denise Bowen v. State Farm	Pending
2013-UP-085-Brenda Peterson v. Hughie Peterson	Pending
2013-UP-090-JP Morgan Chase Bank v. Vanessa Bradley	Pending
2013-UP-095-Midlands Math v. Richland County School Dt. 1	Pending
2013-UP-110-State v. Demetrius Goodwin	Pending
2013-UP-115-SCDSS v. Joy J.	Pending
2013-UP-120-Jerome Wagner v. Robin Wagner	Pending
2013-UP-125-Caroline LeGrande v. SCE&G	Pending
2013-UP-127-Osmanski v. Watkins & Shepard Trucking	Pending
2013-UP-133-James Dator v. State	Pending
2013-UP-147-State v. Anthony Hackshaw	Pending

2013-UP-154-State v. Eugene D. Patterson	Pending
2013-UP-158-CitiFinancial v. Squire	Pending
2013-UP-162-Martha Lynne Angradi v. Edgar Jack Lail, et al.	Pending
2013-UP-183-R. Russell v. DHEC and State Accident Fund	Pending
2013-UP-188-State v. Jeffrey A. Michaelson	Pending
2013-UP-199-Wheeler Tillman v. Samuel Tillman	Pending
2013-UP-206-Adam Hill v. Henrietta Norman	Pending
2013-UP-218-Julian Ford Jr. v. SCDC	Pending
2013-UP-224-Katheryna Mulholland-Mertz v. Corie Crest	Pending
2013-UP-232-Theresa Brown v. Janet Butcher	Pending
2013-UP-236-State v. Timothy E. Young	Pending
2013-UP-241-Shirley Johnson v. Angela Lampley	Pending
2013-UP-251-Betty Jo Floyd v. Ken Baker Used Cars	Pending
2013-UP-279-MRR Sandhills v, Marlboro County	Pending
2013-UP-290-Mary Ruff v. Samuel Nunez	Pending
2013-UP-297-Greene Homeowners v. W.G.R.Q.	Pending
2013-UP-310-Westside Meshekoff Family v. SCDOT	Pending
2013-UP-327-Roper LLC v. Harris Teeter	Pending

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

L. Paul Trask, Jr., Personally, and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, Petitioners,

v.

Beaufort County, Curtis Copeland, in his Official Capacity as Coroner of Beaufort County and Individually, and Copeland Company of Beaufort, LLC, Defendants,

of whom Curtis Copeland, Individually and Copeland Company of Beaufort, LLC, are Respondents.

Appellate Case No. 2011-194646

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Beaufort County
Doyet A. Early, III, Circuit Court Judge

Opinion No. 27321
Heard September 18, 2013 – Filed October 2, 2013

DISMISSED AS IMPROVIDENTLY GRANTED

Stephen P. Groves, Sr., of Nexsen Pruet, LLC, of Charleston, and Thomas S. Tisdale, Jr., of Hellman & Yates, PA, of Charleston, for Petitioners.

Andrew F. Lindemann, of Davidson & Lindemann, PA, of Columbia, for Respondents.

PER CURIAM: We granted a writ of certiorari to review the court of appeals' decision in *Trask v. Beaufort County*, 392 S.C. 560, 709 S.E.2d 536 (Ct. App. 2011). We now dismiss the writ as improvidently granted.

DISMISSED AS IMPROVIDENTLY GRANTED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Dondre Scott, Appellant.

Appellate Case No. 2010-170047

Appeal From Florence County
Thomas A. Russo, Circuit Court Judge

Opinion No. 5174
Heard June 4, 2013 – Filed October 2, 2013

REVERSED AND REMANDED

Robert M. Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, Senior
Assistant Attorney General W. Edgar Salter, III, all of
Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, for Respondent.

GEATHERS, J.: Appellant Dondre Scott appeals his convictions for murder, armed robbery, and possession of a weapon during the commission of a violent crime. Scott argues the trial court erred in granting the State's *Batson*¹ motion and quashing the first jury selected. We reverse and remand for a new trial.

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

FACTS/PROCEDURAL HISTORY

On October 1, 2009, Scott and his co-defendant, Sylvester Davis, Jr., were indicted by a Florence County Grand Jury for murder, armed robbery, and possession of a weapon during the commission of a violent crime. Jury selection began on August 9, 2010. During the initial jury selection, Scott, who is black, exercised peremptory strikes on eight prospective white jurors.² After the jury was selected,³ the State requested a *Batson* hearing, asserting the defense struck only white jurors. The trial court ultimately found Scott's reasons for striking Jurors 72 and 191 were pretextual. The trial court quashed the first jury, and a new jury was selected. Juror 72 was selected for the second jury. Because only Juror 72 served on the jury that convicted Scott, this appeal is limited to Juror 72.

At the *Batson* hearing, Scott's defense counsel explained that he struck Juror 72 because he was a warehouse manager whose "employment related to supervising and overseeing." Concerning the employment of Juror 72, defense counsel stated that he "did not feel comfortable with someone who holds [that] position of authority being on this particular jury." In response, the State argued that the strike was mere pretext because several similarly situated black jurors were seated on the jury. The State noted that Juror 80, a black female who was a stock room manager for Rose's Department Store, was seated on the jury. Additionally, the State argued, "there were several teachers and substitute teachers that [sic] were seated that [sic] were African-American and they certainly have supervisory capacity over people for sure."

In rebuttal, defense counsel challenged the State's portrayal of teachers as supervisors. Defense counsel asserted a teacher could not be categorized as a supervisor because, "[t]here's less than any supervision in most school rooms these days. But be that as it may, it's not the same as supervising adults and I never thought of a teacher as being a supervisor. I thought of them as being a teacher." Additionally, defense counsel explained that he seated Juror 80, in spite of her employment in a managerial position, because he had mistakenly written down that she worked in "home sales." In response, the trial judge stated that the employment information of each juror had been announced in open court. Defense

² Scott exercised peremptory challenges against three white males and five white females, one of whom was a potential alternate.

³ The jury was ultimately composed of six black females, three black males, two white females, and one white male. The alternates were one white female and one black male.

counsel reiterated, "I heard something different than what everyone else heard apparently because I wrote home sales down." The trial judge accepted defense counsel's explanation, observing, "I do not doubt you at all, at all. And you know what, I'm looking at my list, juror number 80 . . . I wrote down [she worked in] health sales."

Although the trial judge accepted defense counsel's explanation that the seating of Juror 80 was a mistake, he expressed concern that the seating of several black jurors who were teachers was evidence of purposeful discrimination. Specifically, the trial judge shared his own belief that teachers could be categorized as supervisors, stating the following, "I don't think there's anyone more in a managerial position or a position of authority than a teacher and a professor at Francis Marion who is one of our jurors." Accordingly, the trial judge granted the State's *Batson* motion as to Juror 72, finding that the excluded white venire panelist who was employed as a warehouse manager was similarly situated to seated black jurors who were employed as teachers.

The jury found Scott guilty of murder, armed robbery, and possession of a weapon during the commission of a violent crime. The trial court sentenced Scott to life imprisonment for the murder charge, thirty years' imprisonment for the armed robbery charge, and five years' imprisonment for the possession of a weapon during the commission of a violent crime charge. This appeal followed.

STANDARD OF REVIEW

"Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record." *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). "Appellate courts give the trial judge's finding great deference on appeal, and review the trial judge's ruling with a clearly erroneous standard." *Id.* "A finding is clearly erroneous if it is not supported by the record." *Id.* at 620, 545 S.E.2d at 813.

LAW/ANALYSIS

Scott contends the trial court erred in finding his reason for striking Juror 72, a white juror who worked as a warehouse manager, was pretext for purposeful racial discrimination on the ground that similarly situated black jurors were seated on the jury. Specifically, Scott argues the trial court erred in finding that several seated black jurors who were employed as teachers were similarly situated to Juror 72. We agree.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender." *Id.* at 615, 545 S.E.2d at 810. "The purposes of *Batson* and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venireperson's [sic] right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process." *State v. Haigler*, 334 S.C. 623, 628-29, 515 S.E.2d 88, 90 (1999) (citations omitted). "When one party strikes a member of a cognizable racial group or gender, the trial court must hold a *Batson* hearing if the opposing party requests one." *Shuler*, 344 S.C. at 615, 545 S.E.2d at 810.

In *Purkett v. Elem*, 514 U.S. 765, 767 (1995), the Supreme Court of the United States explained the proper procedure for a *Batson* hearing as follows:

Under our *Batson* jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination.

Step two of this process does not demand an explanation that is persuasive or even plausible. *State v. Cochran*, 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct. App. 2006) (quoting *Purkett*, 514 U.S. at 767-68). At step two, "the proponent of the strike does not carry 'any burden of presenting reasonably specific, legitimate explanations for the strikes.'" *Id.* (quoting *State v. Adams*, 322 S.C. 114, 123, 470 S.E.2d 366, 371 (1996)). "Therefore, '[u]nless a discriminatory intent is inherent' in the explanation provided by the proponent of the strike, 'the reason offered will be deemed race neutral' and the trial court must proceed to the third step of the *Batson* process." *Id.* (quoting *Purkett*, 514 U.S. at 768).

"At step three, the opponent of the strike must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination." *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298 (citing *Adams*, 322 S.C. at 124, 470 S.E.2d at 372). "The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike." *Haigler*,

334 S.C. at 629, 515 S.E.2d at 91. "This burden is generally established by showing similarly situated members of another race were seated on the jury." *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298. "When the opponent of the strike proves the proponent of the strike practiced purposeful racial discrimination, the trial court must quash the entire jury panel and initiate another jury selection de novo." *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298.

For the purpose of demonstrating potential jurors are similarly situated under *Batson*, potential jurors are not required to be "identical in all respects." *Miller-El v. Dretke*, 545 U.S. 231, 247 n.6 (2005) ("A *per se* rule that a defendant cannot win a *Batson* claim unless there is an exactly identical white juror would leave *Batson* inoperable; potential jurors are not products of a set of cookie cutters."). Rather, the potential jurors need only be alike "'in all relevant aspects.'" *Startzell v. City of Philadelphia*, 533 F.3d 183, 203 (3d Cir. 2008) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)). Therefore, in determining whether potential jurors are similarly situated, our courts have focused their inquiry on whether there are meaningful distinctions between the individuals compared. *See State v. McCray*, 332 S.C. 536, 540-41, 506 S.E.2d 301, 302-03 (1998) (finding three white jurors who were seated on the jury were not similarly situated to four black jurors who were struck from the jury because "[t]he white jurors did not have the same relationship to law enforcement as the black jurors" when the black jurors had relatives or friends who, at the time of the trial, were employed in law enforcement, and the relatives or friends of the white jurors were no longer employed in law enforcement); *State v. Williams*, 379 S.C. 399, 401-02, 665 S.E.2d 228, 230 (Ct. App. 2008) (holding the trial court erred in finding an unemployed juror was similarly situated to an employed juror whose spouse was unemployed).

There are sufficient distinctions between a teacher and a warehouse manager. *Cf. United States v. Davis*, 154 F.3d 772, 781 (8th Cir. 1998) (finding there was a sufficient distinction between the challenged juror who worked as a drug counselor and several seated jurors who worked as drug prevention volunteers to defeat a *Batson* challenge). The duties of a teacher are common knowledge. A teaching position involves some supervisory and management skills; particularly, a teacher exercises authority over other individuals—his or her students. However, a teaching position, in itself, is not a management or supervisory position.⁴ There is a stark

⁴ The Supreme Court of the United States recently held that under the National Labor Relations Act, a supervisor is any individual with the authority to make "tangible employment actions" that effect a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly

difference in the degree of authority exercised by a teacher and a manager. Specifically, defense counsel pointed out at trial that a warehouse manager has the ability to hire, fire, or demote other adult co-workers. A teacher does not share these characteristics.⁵ Because of the significant distinctions between these two types of employment, we find the trial court erred in finding that a black professor and several black teachers who were seated on the jury were similarly situated to Juror 72, a white warehouse manager.

Furthermore, the State argues as an additional sustaining ground that the seating of Juror 80, a black female who was employed as a stockroom manager at Rose's Department Store, established that Scott's stated reason for striking Juror 72, a warehouse manager, was pretext for racial discrimination. We find this argument is without merit. In this instance, the trial judge found that Scott's defense counsel provided a facially valid explanation for inconsistently applying his stated reason—that he mistakenly wrote down that Juror 80 worked in home sales. Specifically, the trial judge stated, "I do not doubt you at all, at all. And you know what, I'm looking at my list, juror number 80 . . . I wrote down [she worked in] health sales." *See State v. Kelley*, 319 S.C. 173, 176-77, 460 S.E.2d 368, 369-70 (1995) (holding the solicitor provided a race-neutral explanation for why he did not strike a juror with similar characteristics to a juror previously stricken); *State v. Casey*, 325 S.C. 447, 454, 481 S.E.2d 169, 173 (Ct. App. 1997) (stating that "the uneven application of a neutral reason does not automatically result in a finding of invidious discrimination if the strike's proponent provides a race or gender neutral explanation for the inconsistency"); *id.* (holding that although the solicitor did not challenge a female juror with prior jury service yet struck a male juror with prior service, and thus the reason for striking the juror was applied inconsistently, the solicitor's explanation that it was merely an omission and mistake on his part was gender-neutral). Therefore, in the instant matter, the trial judge granted the State's *Batson* motion in connection with Juror 72 not because of the strike of Juror 80, but *solely* on the ground that defense counsel did not strike jurors who were

different responsibilities, or a decision causing a significant change in benefits." *Vance v. Ball State Univ.*, 133 S. Ct. 2434, 2443 (2013) (citation omitted).

⁵ Our analysis in this case is limited to discerning differences between a warehouse manager and teachers in general. We recognize there may be certain instances where an individual employed as a teacher exercises a similar level of control over co-workers as does a warehouse manager. However, in this instance, the record does not indicate the degree of supervisory responsibilities that the seated professor or teachers had.

employed as teachers whom the trial judge deemed similarly situated to a warehouse manager.

CONCLUSION

Because the trial court improperly granted the State's *Batson* motion as to Juror 72 and Juror 72 was seated on the second jury, Scott was denied his right to exercise his peremptory challenges. Therefore, we remand this case for a new trial.⁶ See *Edwards*, 384 S.C. at 509, 682 S.E.2d at 823 (holding if a trial court improperly grants the State's *Batson* motion and one of the disputed jurors is seated on the jury, then the erroneous *Batson* ruling has tainted the jury and prejudice is presumed because there is no way to determine with any degree of certainty whether a defendant's right to a fair trial by an impartial jury was abridged, and the proper remedy in such a case is a new trial). Accordingly, the decision of the trial court is

REVERSED AND REMANDED.

FEW, C.J., and LOCKEMY, J., concur.

⁶ Because we reverse and remand this matter to the trial court, we need not consider Scott's remaining sentencing issue. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when resolution of a prior issue is dispositive).