

No. 18-352

In The
Supreme Court of the United States

STATE OF SOUTH CAROLINA,

Petitioner,

v.

RAYMOND LEWIS YOUNG,

Respondent.

**On Petition For Writ Of Certiorari To
The Court Of Appeals Of South Carolina**

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Raymond Young, an African-American, was convicted of numerous charges arising out of a gas station shoot-out in Greenville, South Carolina. In an unpublished opinion, the South Carolina Court of Appeals reversed Young's conviction and remanded for a new trial. *State v. Young*, Op. No. 2017-UP-426 (S.C. Ct. App. filed November 15, 2017). The South Carolina Supreme Court denied the State's petition for discretionary review. Seeking this Court's review, the State filed a petition for a writ of certiorari. This reply follows.

STATEMENT OF FACTS

During jury selection, the State struck three African-American jurors. Young challenged the strikes under *Batson v. Kentucky*, 476 U.S. 79 (1986). In response, the prosecutor claimed that one juror had been struck due to health issues and the other two because they lived in the same area as possible witnesses. Young challenged the State's basis for striking the two jurors by showing that the State had seated a similarly situated white juror. Rather than considering the prosecutor's justification for disparate treatment under a totality-of-the-facts analysis, the trial court ruled that it must accept the stated basis as racially neutral: "I don't see a discriminatory intent inherent in the proponent's explanation and so I believe those cases require me to find the reason offered to be deemed race neutral. So I'm going to deny your motion."

REASON CERTIORARI SHOULD BE DENIED

The South Carolina Court of Appeals correctly applied the relevant, controlling decisions of this Court.

PRECEDENT/ANALYSIS

In *Batson*, this Court held that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution forbids striking “potential jurors solely on account of their race. . . .” 476 U.S., at 89. The Court has established a three-step process for evaluating whether the exercise of peremptory challenges violates equal protection. *Purkett v. Elem*, 514 U.S. 765, 767-68 (1995). “First, [the] defendant must make a *prima facie* showing that a peremptory challenge has been exercised on the basis of race. Second, . . . the prosecution must offer a race-neutral basis for striking the juror in question; and third, in light of the parties’ submissions, the trial court must determine whether the defendant has shown purposeful discrimination.” *Snyder v. Louisiana*, 552 U.S. 472, 476-77 (2008) (internal quotation marks and brackets omitted).

At step one, the defendant must demonstrate “member[ship] of a cognizable racial group . . . and that the prosecutor . . . remove[d] from the venire members of the defendant’s race.” *Batson*, 476 U.S., at 96-97. Once a *prima facie* showing has been made, the second step requires the prosecutor to provide a race-neutral basis for the strike. *Id.*, at 97. This step of the inquiry “does not demand an explanation that is persuasive, or even plausible.” *Purkett*, 514 U.S., at

768. Moreover, “[u]nless a discriminatory intent is inherent in the . . . explanation, the reason offered will be deemed race neutral.” *Id.* (quoting *Hernandez v. New York*, 500 U.S. 352, 360 (1991)). If the prosecutor offers a race-neutral explanation, “the trial court must then decide (step [three]) whether the opponent of the strike has proved purposeful racial discrimination.” *Purkett*, 514 U.S., at 767.

During step three, the party asserting the *Batson* challenge must point to direct evidence of racial discrimination, such as showing that the prosecutor struck a juror for a facially race-neutral reason but did not strike a similarly situated juror of another race. *Miller-El v. Dretke*, 545 U.S. 231, 240-41 (2005). If disparate treatment is shown, the trial court must move beyond the surface of the strike’s stated basis and “undertake a sensitive in-quary” based on the totality of all relevant facts. *Batson*, 476 U.S., at 93-94.

Once Young established disparate treatment between similarly-situated African-American and white jurors, the trial court was required to evaluate the “persuasiveness” of the prosecutor’s justification for the strikes. *Purkett*, 514 U.S., at 768. “[T]he rule in *Batson* provides an opportunity to the prosecutor to give the reason for striking the juror, and it requires the judge to assess the plausibility of that reason in light of all evidence with a bearing on it.” *Miller-El*, 545 U.S., at 251-52. Step three involves an evaluation of the prosecutor’s credibility. *Snyder*, 552 U.S., at 477.

Attempting to apply *Batson*, the trial court stated that its decision was controlled by two state cases, neither of which involved the disparate treatment of

jurors or otherwise went beyond step two of *Batson*.¹ As a result, the trial court failed to conduct the totality-of-the-facts analysis required under step three.

CONCLUSION

Despite Young's showing of disparate treatment between white and African-American jurors, the trial court never moved past *Batson*'s second step. In reversing the trial court for failing to conduct a proper analysis under the third step of *Batson*, the court of appeals correctly applied the controlling precedent of this Court. Certiorari should therefore be denied.

Respectfully submitted,

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