

IN THE  
SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
v.	)	No. SC93333
	)	
STANLEY CARTER	)	
	)	
Appellant.	)	

APPEAL FROM THE CIRCUIT COURT OF  
THE CITY OF ST. LOUIS  
TWENTY-SECOND JUDICIAL CIRCUIT, DIVISION 12  
THE HONORABLE DENNIS SCHAUMANN, JUDGE

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APPELLANT’S SUBSTITUTE REPLY BRIEF

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## REPLY ARGUMENT I

The State has argued that the prosecutor's concern was not that these people were familiar with the area around the crime, but actually "centered upon certain opinions expressed by some of the potential jurors, namely that they might hold unfavorable views toward the people in the area, including the victim." Resp. Br. 24.

**(1) Moore.** In fact, Moore said he would be "very sympathetic" towards the victim. Tr. 54. Moore also said he was "very familiar with the area" and "what kind of mind set is there" and had been told to avoid the area due to crime. Tr. 120. When asked if he had "a little sympathy for victims," he replied, "absolutely." Tr. 121. When asked if that sympathy for victims would affect him in the case, he responded,

It really wouldn't affect my decision making because I think anybody would make themselves to be a victim, depending on how the story is told in certain cases. But I just think if anybody is being targeted or, how should I say this, I don't want to use the word investigate, I don't know the story. But somebody that was impacted by a certain situation . . . that caused them harm, I would be sympathetic towards them.

Tr. 121.

From these responses, the State argues that the prosecutor could have reasonably believed that “Moore could take a dim view of the victim in any given case.” Resp. Br. 28. But Moore was clear that while he was open to the possibility that either side could lie (a prerequisite for avoiding a strike for cause) his allegiance was “absolutely” to crime victims. Tr. 121. The State’s puzzling extrapolation from Moore’s comments that he would be not be sympathetic to victims of crime from this neighborhood is inconsistent with what Moore said. The Court should not credit the State’s interpretation of these comments.

**White.** On this topic, White simply said, “I know that area kind of well.” Tr. 122-123. The prosecutor’s justification for his strike was that, “[White] was familiar with the area” and that he struck “every person [who] stated he was also familiar with the area.” Tr. 189. “As a whole, the State decided to remove people familiar with that area and would have struck other people familiar with that area if there had been anyone left on the peremptory, the list of people that could, the State could strike peremptorily.” Resp. Br. 20; Tr. 189. On appeal the State has explained the concern was, like with Moore, a possible negative view about people from the area. Resp. Br. 19.

**Jones.** Jones was “familiar with the area” and “had family members there.” Tr. 118-119, 191; Resp. Br. 22. From this, the State has now expressed a concern that Jones, like Moore, might be hostile to people who live there, despite Jones stating that she had family in the neighborhood and might be moving to the area. Tr. 119; Resp. Br. 22.

**The “theory” behind the exclusion  
of these potential jurors was pretextual.**

The State’s “theory” offered to explain these strikes was not related to the case, clear, reasonably specific, or legitimate. Tr. 192; *State v. McFadden*, 216 S.W.3d 673, 676 (Mo. banc 2007). The theory is simply not believable or plausible in light of the facts of the case and the potential jurors’ responses in the record. *State v. Hopkins*, 140 S.W.3d 143, 148 (Mo. App. E.D. 2004); *Purkett v. Elem*, 514 U.S. 765, 768 (1995). There is a “low degree of logical relevance between the State's explanation for its peremptory strike of [the] venireperson[s] . . . and the case to be tried.” *State v. Livingston*, 220 S.W.3d 783, 789 (Mo. App. W.D. 2007). These strikes should not have been allowed.

First, of the challenged jurors, only Moore said anything about the area that could be construed as negative. Moore said the area was dangerous and that “anybody would make themselves to be a victim, depending on how the

story is told in certain cases” but that was in the context of him saying, repeatedly and emphatically, that he was sympathetic towards victims of crime. Tr. 121. It is not accurate to claim that Moore was predisposed to be hard on victims; in fact, it is the opposite.

Further, none of the other potential jurors at issue made similar statements.<sup>1</sup> In fact, Jones spoke favorably about the area. Tr. 118. She had family there, and planned to move to the neighborhood. Tr. 118-119. She spoke of the “social upbeat” of that community. Tr. 119. Again, the State’s “theory” of what this juror might have believed about the area was in fact the opposite of what this juror actually said. Tr. 192.

White simply knew the area “kind of well.” Tr. 122-123. He did not say anything positive or negative about the area, and the State did not choose to ask

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<sup>1</sup> The State repeatedly mentions statements by a venireperson named Qauwrells, who stated she would not automatically sympathize with the victim based on her knowledge of the area. Resp. Br. 19, 25. But Qauwrells was struck for this and for demanding more than one witness to a crime. The ruling on Qauwrells is not challenged in this appeal.

questions on this topic. The State's "theory" simply did not apply to him. Tr. 192.

The State criticizes census data that demonstrates that the area in question is populated exclusively by those who identify as black. Resp. Br. 25. This data, incidentally, was not simply something Appellant "looked up on the internet." Resp. Br. 25. In 2013, such data is primarily available online on government websites, and is likely not even available in hard copy form. The State's attempt to belittle this information or question its authenticity should be disregarded by this Court. And this data simply illustrates the racially segregated reality of portions of the City of St. Louis. Trial judges in the City of St. Louis are required to live there. Mo. Const. Art. 5, Sec. 21. The parties would have been aware that this area of the City of St. Louis around Fairground Park is predominately African-American.

Further, it is a fact that every person who responded that he or she was familiar with this area of the City of St. Louis was, in fact, African-American. Tr. 182, 190-192. According to the jury information filed under seal with this Court, of the seven jurors who said they were familiar to one degree or another with this area, all were African-American. While the State is, of course, correct that people of other races could certainly be familiar with this area too (Resp. Br. 26-

27), here that was not the case. African-Americans would, for example, be more likely to have family in the area, as venireperson Jones did. Tr. 118-119. If this reason is used, it must have some connection to the case, not just be an illusory concern that is applied wholesale to every black venireperson, without regard to what these people actually said on the topic.

The State argues that the fact the State used only five of its six peremptory strikes against African Americans “helps to undercut any inference of impermissible discrimination.” Resp. Br. 29. However, the jury list that is filed under seal in this case shows that 11 of the 37 jurors from which strikes were made were African-American venirepersons. Five of these jurors were struck for cause. Of the six remaining African Americans, five of them stated they were familiar, to one degree or another, with this area. Tr. 182, 190-191. The State struck each of these jurors. The State’s chosen theory allowed one African American juror, Emmittee Prince, to serve. Tr. 196. The fact it did not also strike Ms. Prince from the panel is not, as the State argues, evidence that helps its position on appeal. Resp. Br. 29.

This case is a rather striking example of the exclusion of black citizens from juries for a reason that collapse under scrutiny. Mr. Carter reiterates that the reason the State chose to justify striking these jurors was, and remains, illusory

and not based on a legitimate concern grounded in views the people expressed in the record. The trial court did not undertake the sensitive inquiry that *Batson* requires, and clearly erred in allowing these strikes. The case must be remanded for a new trial.

## REPLY ARGUMENT II

The State of Missouri has argued that the rebuttal closing argument in this was perfectly acceptable. Resp. Br. 32-33. The State argues it was simply “retaliatory” and that by putting on a defense, Mr. Carter somehow “provoked” these remarks. Resp. Br. 33. The State has characterized its argument as a mere critique of “tactics employed by the defense.” Resp. Br. 33.

These excuses have no merit. First, the State never identifies what defense “tactics” provoked this retaliation. Resp. Br. 33. Mr. Carter never argued that the victim was “lying” as the prosecutor stated. Tr. 511. Mr. Carter argued he was misidentified by the victim. The defense was that Mr. Carter was misidentified after officer Shell Sharp gave Mr. Carter’s name to the investigating officers, who responded by showing the victim a single photo of Mr. Carter. Tr. 501. To further demonstrate he was misidentified, the defense pointed to the discrepancy between the physical description of the shooter by the victim, and the description supplied by a passerby. Tr. 502. He also argued the identification was not reliable, given the short time the victim saw the shooter. Tr. 499-500.

It is true that defense counsel questioned why, if officers were concerned with getting the right person, they were not worried about the discrepancy in the

descriptions, and did not test any of the bloodstained clothes left at the scene. Tr. 504. He also pointed out that Mr. Carter turned himself in, and would be unlikely to be committing crimes or loitering on a parking lot on the day his wife gave birth. Tr. 506, 509. Further, counsel suggested that officers were more concerned with questioning Mr. Carter about unrelated criminal activity than finding the person who committed this crime. Tr. 508, 509.

From this, the prosecutor argued to the jury that this is a “standard” defense argument and that it should be disregarded because it, or some variation, is something he has heard in every case he has tried. Tr. 511. On appeal, the State wishes to characterize this as harmless hyperbole. Resp. Br. 32-37. However, the remarks went beyond that. The prosecutor identified two types of defense arguments he has seen in his years as a prosecutor. Tr. 511. One was to argue that the police didn’t go a good job. Tr. 511. The other was to claim the victim was lying. Tr. 511. Sometimes “they” pick one, “sometimes they go with both.” Tr. 32.

By employing arguments that are unfair and untrue yet cannot be disproven, the State deprived Mr. Carter of a fair trial. The prosecutor’s reckless and false statements would have had a decisive effect on the jury. There is ample authority for this Court to grant Mr. Carter a new trial based on these remarks in

closing argument, even without an objection. This is the type of behavior by the State that reaches outside professional bounds. *State v. Banks*, 215 S.W.3d 118, 120 (Mo. banc 2007) (prosecutor referring to the defendant as the “devil” was “wrong, unprofessional, and demeaning to a proper sense of justice and the legal system.”). On this point, Mr. Carter should receive a new trial.

## CONCLUSION

Based on Points I and II, this case must be remanded for a new trial.

Respectfully submitted,

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## CERTIFICATE OF SERVICE AND COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06(g) and Special Rule 361, I hereby certify that on this 30<sup>th</sup> day of September, 2013, a true and correct copy of the foregoing brief was served via the e filing system to the Office of the Attorney General, P. O. Box 899, Jefferson City, Missouri 65101. In addition, pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03 and that it complies with the page limitations of Special Rule 360. This brief was prepared with Microsoft Word for Windows, uses Book Antiqua Serif 13 point font, and does not exceed 15,500 words, 1,100 lines, or fifty pages. The word-processing software identified that this brief contains **2252** words.

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