[Cite as *State v. Bowden*, 2010-Ohio-758.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO	C. A. No. 24767
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
NIKITA LASHAWN BOWDEN	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 08 08 2834

DECISION AND JOURNAL ENTRY

Dated: March 3, 2010

BELFANCE, Judge.

{¶1} Defendant-Appellant Nikita Bowden appeals from her conviction in the Summit County Court of Common Pleas. For reasons set forth below, we affirm.

FACTS

{¶2} In December 2005, Bowden applied to the Ohio Department of Job and Family Services to receive child care benefits for her two children and two foster children. Bowden signed the application which states that "Child care is only to be used during hours of employment or training with allowances for travel time and other special circumstances approved by the [County Department of Job and Family Services ('CDJFS')]." The application also instructs that Bowden must "report to the CDJFS any change which affects [her] child care benefits, including a change in family income, a change in hours of employment or training * * * " and that "[s]uch changes shall be reported within TEN DAYS of the date the change

occurred." Bowden was approved to receive child care benefits during certain hours subject to, inter alia, the above restrictions stated in the application.

{¶3} Tamera Roberts is certified by the Summit County Department of Job and Family Services ("SCDJFS") as a child care provider. Roberts provided daycare services for Bowden's children during the months of January through March 2006. In order to receive payment for her services, Roberts was required to complete time sheets each day that Bowden brought her children for daycare. Roberts was supposed to enter the exact time that Bowden both dropped off and picked up the children, and Bowden was required to initial next to the times. At the end of a two-week period, both Roberts and Bowden would sign the form. Bowden's signature certified that "the hours of child care listed have been rendered and the consumer has attended authorized school/work plus transportation time during hours for which the agency has been billed. Any additional service beyond the approved authorized time must be paid directly by [Bowden]."

{¶4} SCDJFS began to investigate Roberts and Bowden when the time sheets for Bowden's children showed a repeated pattern of the children being dropped off and picked up at the exact same times each day. The time sheets were supposed to reflect the precise time the children were dropped off and picked up and were not to be rounded off or estimated. During the process of investigating the time sheets, SCDJFS requested Bowden's employment records from her employer to ensure that she was using the services only for approved purposes (i.e. school or work). Comparison of Bowden's employment records to the child care time sheets revealed that it appeared Bowden was using the services for periods during which she was not working. At meetings with SCDJFS employees, Bowden and Roberts affirmed the accuracy of the time sheets. Bowden claimed that the records from her employer were inaccurate and told

members from the agency that she would obtain accurate information. Bowden did not provide any updated records. At one point Bowden told a SCDJFS employee that she would call to set up a payment plan; Bowden never called back to do so. Thus, after an investigation by the Sheriff's Office, Bowden was charged with one count of theft by deception in violation of R.C. 2913.02(A)(3), a felony of the fifth degree. A jury found Bowden guilty and she was sentenced to nine months in prison, which was suspended on the condition that Bowden complete two years of community control, which included $1,743.88 in restitution. Bowden has timely appealed, raising three assignments of error for our review, which will be rearranged to facilitate our review.

BATSON CHALLENGE

{¶5} In Bowden's third assignment of error she argues that the trial court erred in sustaining the State's peremptory challenge to strike an African-American prospective juror, thus violating the mandates of *Batson v. Kentucky* (1986), 476 U.S. 79. "Although a prosecutor ordinarily is entitled to exercise permitted peremptory challenges for any reason at all, as long as that reason is related to his view concerning the outcome of the case to be tried, the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race * * *." (Internal citations and quotations omitted.) Id. at 89.

{¶6} "A court adjudicates a *Batson* claim in three steps. First, the opponent of the peremptory challenge must make a prima facie case of racial discrimination." (Internal citation and quotations omitted.) *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, at ¶106. "To make a prima facie case of such purposeful discrimination, an accused must demonstrate: (a) that members of a recognized racial group were peremptorily challenged; and (b) that the facts and any other relevant circumstances raise an inference that the prosecutor used the peremptory

challenges to exclude jurors on account of their race." (Internal citations and quotations omitted.) *State v. Hill* (1995), 73 Ohio St.3d 433, 444-445.

> "Second, if the trial court finds this requirement fulfilled, the proponent of the challenge must provide a racially neutral explanation for the challenge. However, the explanation need not rise to the level justifying exercise of a challenge for cause. Finally, the trial court must decide based on all the circumstances, whether the opponent has proved purposeful racial discrimination. A trial court's findings of no discriminatory intent will not be reversed on appeal unless clearly erroneous." (Internal citations and quotations omitted.) *Bryan* at ¶106.

{¶7} As the Supreme Court of Ohio has consistently applied the clearly erroneous standard in reviewing *Batson* challenges, and has done so as recently as 2008, that is the standard which we apply as well. See *State v. Were*, 118 Ohio St.3d 448, 2008-Ohio-2762, at ¶61; see, also, *State v. Frazier*, 115 Ohio St.3d 139, 2007-Ohio-5048, at ¶64; *State v. Herring* (2002), 94 Ohio St.3d 246, 257; *State v. Johnson* (2000), 88 Ohio St.3d 95, 116. "If the trial court determines [in the third step] that the proffered reason is merely pretextual and that a racial motive is in fact behind the challenge, the juror may not be excluded." *Frazier* at ¶65.

{¶8} During voir dire the State used a peremptory challenge in order to remove prospective Juror S. The following discussion occurred:

> "[Defense counsel]: Your Honor, I see no reason for removing Mrs. [S.] She is an African-American.
>
> "[The trial court]: There doesn't have to be a reason, so what's the basis of your objection? Are you making a Batson challenge?
>
> "[Defense counsel]: I would like to, Your Honor.
>
> "[The trial court]: That's fine. I want to state that for the record.
>
> "[The State]: Your Honor, the defense -- Batson has to show a pattern of conduct. He has to show a pattern that one person is of color. A black individual has been struck. That is not a pattern. It fails.
>
> "[The trial court]: I'm not sure if that is what the law still says. I think the law is changed now. There actually doesn't have to be a pattern established, but

> assuming that, the court, the issue is open if you were to be asked to give a reason for excusing.
>
> "[The State]: Your Honor, she's currently receiving benefits or has received benefits before that would sway in view of the defendant.
>
> "[The trial court]: Did she indicate she received benefits?
>
> "[Defense counsel]: I didn't hear that.
>
> "[The State]: She did.
>
> "[Defense counsel]: The defense is - - what the State is trying to do here is have an all white jury, which I feel would be prejudicial to my client.
>
> "[The trial court]: Well, you made a very major point about the fact that your client receives benefits and is a single mother, so I can't say that's - -
>
> "[Defense counsel]: I just wanted to make sure.
>
> "[The trial court]: - - a rational reason, so I'm going to overrule your objection and the juror will be excused."

Initially we note that the trial court was correct in concluding that a pattern of removal of African-American jurors was unnecessary. "[T]he mere fact that the state challenged only one black prospective juror does not preclude a *Batson* challenge." *State v. White* (1999), 85 Ohio St.3d 433, 436. Here, Bowden's trial counsel objected to the removal of Juror S., an African-American juror. The trial court appears to have concluded that Bowden presented a prima facie case of racial discrimination as it provided the State with the opportunity to provide a racially neutral explanation for the removal. The State then proceeded to do so; specifically the State indicated it was striking the juror due to the fact that the juror had received welfare benefits.

{¶9} The above listed discussion is the only argument presented to the trial court concerning the *Batson* issue. However, on appeal, Bowden's appellate counsel argues that the trial court failed to consider that Juror W. was similarly situated as she also previously received welfare benefits. This argument was not presented to the trial court during the *Batson* challenge

and thus the trial court had no opportunity to consider it. Nonetheless, the Supreme Court of the United States has stated that "[i]f a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson*'s third step." *Miller-El v. Dretke* (2005), 545 U.S. 231, 241; see, also *Frazier* at ¶71 (applying *Miller-El* to the defendant's case). Assuming, without deciding, that we are required to consider Bowden's argument concerning Jurors S. and W., we are not persuaded by it. Here, we note that it is unclear from the record what race Juror W. is. It is also unclear from the record what the racial composition of the prospective juror pool was. Assuming, based upon Bowden's trial counsel's statement that the State was trying to create an all white jury and that Juror W. was not African-American, we still cannot conclude that the trial court's decision was clearly erroneous. The transcript from the voir dire testimony indicates that Juror W. received welfare benefits so long ago, apparently thirty years prior to the trial, that she initially forgot she even received them. It is unclear how long Juror W. received welfare benefits. Juror S. received welfare benefits for four years. While it is unclear how long ago Juror S. received welfare benefits, it is clear that it was recent enough for her to readily recall that she received them suggesting that her receipt of the benefits may have been much more recent than Juror W's. Based upon all the evidence before the trial court, we cannot say that the trial court's decision to allow the removal of Juror S. was clearly erroneous. See *Bryan* at ¶106. Bowden's assignment of error is overruled.

SUFFICIENCY

{¶10} In Bowden's second assignment of error she argues that the evidence presented by the State was insufficient to support her conviction. We disagree.

{¶11} "Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo." *State v. Williams*, 9th Dist. No. 24731, 2009-Ohio-6955, at ¶18, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. When assessing the sufficiency of the evidence, this Court examines the evidence "'to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.'" *State v. Flynn*, 9th Dist. No. 06CA0096-M, 2007-Ohio-6210, at ¶8, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. In reviewing challenges to sufficiency, we must view the evidence in a light most favorable to the prosecution. *State v. Cepec*, 9th Dist. No. 04CA0075-M, 2005-Ohio-2395, at ¶5, citing *Jenks*, 61 Ohio St.3d at 279.

{¶12} Bowden was charged with one count of theft by deception, in violation of R.C. 2913.02(A)(3). R.C. 2913.02(A)(3) provides that "[n]o person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services * * * [b]y deception[.]" Because Bowden was charged with exerting control over property and/or services valued at or over $500 but less than $5,000, the offense was a fifth-degree felony. See R.C. 2913.02(B)(2).

{¶13} "'Deprive' means to do any of the following:

> "(1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;
>
> "(2) Dispose of property so as to make it unlikely that the owner will recover it;
>
> "(3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for the money, property, or services, and without reasonable justification or excuse for not giving proper consideration." R.C. 2913.01(C).

"'Services' include labor, personal services, [and] professional services * * * ." R.C. 2913.01(E).

> "'Deception' means knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact." R.C. 2913.01(A).

"A person acts purposely when it is [her] specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is [her] specific intention to engage in conduct of that nature." R.C. 2901.22(A). "A person acts knowingly, regardless of his purpose, when [she] is aware that [her] conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when [she] is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶14} Certified child care provider, Tamara Roberts, testified for the prosecution. Specifically Roberts testified with respect to the contents, and process conducted for filling out and remitting, ten time sheets for child care services. Roberts provided daycare services for Bowden's four children during the period of January 2006 through March 2006. Roberts received payment for the services from SCDJFS by submitting time sheets to the agency. Roberts would fill in the time sheet each day with the approximate time that Bowden dropped the children off and with the time that Bowden picked them up. Bowden would then initial next to the times. At the end of the two-week period, both Roberts and Bowden would sign the form. Bowden's signature certified that "the hours of child care listed have been rendered and the consumer has attended authorized school/work plus transportation time during hours for which the agency has been billed. Any additional service beyond the approved authorized time must be paid directly by [Bowden]." Roberts averred that she received payment for the daycare services provided to Bowden's children. Roberts testified that the time sheets were accurate. Roberts

further indicated that at a meeting in July 2006 attended by two SCDJFS employees and Roberts and Bowden, Bowden also affirmed that the hours on the time sheet were accurate, and Bowden stated that she was out of work.

{¶15} Kathryn Waynesboro, a child care specialist for the SCDJFS, testified that she was the individual responsible for monitoring the daycare services provided by Roberts. Waynesboro stated that daycare benefits could only be used for work or school purposes and that the hours on the time sheets should be filled in precisely and should not be estimated. Waynesboro began to investigate Roberts' time sheets when she noticed that Bowden's children were dropped off and picked up at the exact same times each day. Waynesboro forwarded the case on to Rebecca Dalton, a field investigator with SCDJFS.

{¶16} The State also offered the testimony of Rebecca Dalton. During her investigation, Dalton subpoenaed employment records from Bowden's employer to ensure that Bowden was using the child care services only for approved work purposes. Dalton testified that she set up a calendar to compare the time sheets to the employment records. Dalton noticed multiple discrepancies during the time period from January 2006 through March 2006; on several occasions child care time sheets were completed, and payments were issued to Roberts, for days Bowden's employment records showed that she was not working. Dalton averred that she calculated the amount paid to Roberts for times that Bowden was not working; the amount calculated for January 2006 was $734.32; the amount calculated for February 2006 was $394.44; and the amount she calculated for March 2006 was $615.12. Thus, the total unauthorized amount was $1,743.88. Dalton held a meeting in July 2006 with Waynesboro, Roberts and Bowden to discuss the discrepancies. At the meeting Bowden told Dalton that there were other employment records that SCDJFS did not have and that Bowden was working during the time

periods at issue. Neither Bowden nor Roberts said anything about the time sheets being inaccurate.

{¶17} Dalton had another subpoena pending and so she waited to get that information. The employment history provided via that subpoena matched the information contained in the material provided from the first subpoena. Dalton scheduled another meeting with her supervisor and Bowden for August 2006. Bowden stated at that meeting that she would contact her employer and get the missing records. Bowden did not supply any additional records. At some point, however, Bowden did say that she would call to set up a payment plan. When Bowden did not provide additional records and did not set up a payment plan, Dalton forwarded the case on to the Summit County Sheriff's Office.

{¶18} Detective David Stone from the Summit County Sheriff's Office testified concerning his investigation into Bowden's case. At the time, Detective Stone worked in the welfare fraud unit. During an interview, Bowden stated that she did not keep a copy of her application for child care benefits, but was aware that she had ten days to report changes in employment and she knew that not meeting the reporting requirement could result in jail time. Bowden maintained that there were errors in the employment records and that she was going to send the Detective copies of accurate records. Bowden never provided additional employment records.

{¶19} The regional administrator of Bowden's place of employment also testified. He indicated that the subpoenaed information was accurate. He further averred that Bowden worked for the company from January 27, 2005 until February 23, 2006. Finally, the State supplied as exhibits the ten child care time sheets, the subpoenaed work records, as well as Bowden's application for benefits. The application for benefits signed by Bowden states that "Child care is

only to be used during hours of employment or training with allowances for travel time and other special circumstances approved by the [County Department of Job and Family Services ('CDJFS')]." The application also instructs that Bowden must "report to the CDJFS any change which affects [her] child care benefits, including a change in family income, a change in hours of employment or training * * * " and that "[s]uch changes shall be reported within TEN DAYS of the date the change occurred."

{¶20} We conclude that the evidence presented by the State, "'if believed, would convince the average mind of [Bowden's] guilt beyond a reasonable doubt.'" *Flynn* at ¶8, quoting *Jenks*, 61 Ohio St.3d at paragraph two of the syllabus. Bowden signed an application indicating that she would use the child care benefits only while she was at school or work. Further, on each of the time sheets at issue, Bowden signed her name, certifying that she was at work while the child care services were being provided. Bowden was also aware that she had to report changes in her employment within ten days of the change. Roberts testified that the time sheets were accurate, and stated that Bowden confirmed their accuracy at the meeting with SCDJFS. The State presented evidence that Bowden was not always at work when she was using the child care benefits, and that Roberts was nonetheless, paid for that time. A representative of Bowden's employer testified that Bowden's last date of employment was February 23, 2006; thus, any hours on the child care time sheets for the end of February and March 2006 would not have been authorized as Bowden was not working. Dalton testified that the total amount of services the State paid Roberts for hours that Bowden was not working totaled $1,743.88. There was also testimony that Bowden told Dalton that she would call in and set up a payment plan, which supports the conclusion that Bowden knowingly used the benefits for unauthorized purposes. A reasonable jury could conclude that Bowden intended to deprive

SCDJFS of child care benefits and knowingly exerted control over those benefits by deception; Bowden certified that she used the benefits only while at work or school, while evidence presented by the State indicated that such certification was false, as Bowden was not working for a portion of the time the benefits were utilized. Deception means "knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another * * * ." R.C. 2913.01(A). In this case, Bowden's actions of signing a form certifying something she knew to be false amounted to deception under the statute.

MANIFEST WEIGHT

{¶21} In Bowden's first assignment of error, she argues that her conviction is against the manifest weight of the evidence. We disagree.

{¶22} When determining whether a conviction is supported by the manifest weight of the evidence,

> "an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Cepec* at ¶6, quoting *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

We must only invoke the discretionary power to grant a new trial in "extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant." *Flynn* at ¶9, citing *Otten*, 33 Ohio App.3d at 340. When reviewing a conviction pursuant to the manifest weight standard, we must determine whether the State met its burden of persuasion. *Cepec* at ¶6.

{¶23} In addition to the testimony discussed above, Roberts testified on cross examination that she did occasionally round off numbers on the times sheets; the example she

gave was that if the children were brought at 8:58 or 8:59 a.m. she would put in 9:00 a.m. and that if they were brought in at 8:45 a.m. she might round it off. However, she did also clearly state that the ten time sheets were accurate. She also testified that she never asked Bowden to initial a blank time sheet so that she could fill it in later. Roberts testified that if she made an error in a time sheet she would start over in Bowden's presence.

{¶24} On cross-examination, Waynesboro testified that the times the children were dropped off or picked up should have been reported on the sheet exactly and should not have been rounded. Thus, if the children were dropped off at 8:45 a.m., the time sheet should have read 8:45 a.m.

{¶25} Bowden argues that the fact that Roberts testified to rounding off the time sheets when Waynesboro testified that the sheets should have contained the precise drop off and pick up times amounts to an inconsistency in the State's evidence, thereby rendering the witnesses' testimony not credible. Bowden does not further develop this argument. We disagree.

{¶26} A jury could have found Roberts' and Waynesboro's testimony to be credible and not inconsistent. Roberts admitted that she rounded off times in the time sheets and Waynesboro indicated that doing so was inappropriate. These two statements are not incompatible. Further, a jury could reasonably conclude that while Roberts rounded off the precise times on the time sheets, they were still accurate in the sense that Roberts did provide child care services on the dates and times listed on the time sheets. Roberts did not hide the fact that she approximated the times on the time sheets, and thus, it would not have been unreasonable for the jury to find Roberts' testimony credible. Further, the jury was instructed that it could "believe or disbelieve all or any part of the testimony of any witness."

{¶27} It is uncontested that the time sheets presented by the State as exhibits were the time sheets submitted to SCDJFS for payment. Roberts stated that she received payment for those services. Thus, for any hours Bowden received benefits which she certified occurred while she was at work, and she was not at work, Bowden could reasonably be found guilty of theft by deception. The State provided uncontroverted evidence that the amount of the unauthorized benefits was $1,743.88. The testimony evidences that both Bowden and Roberts confirmed the accuracy of the time sheets, and there was also testimony that Roberts received payments from SCDJFS based on those time sheets. Thus, whether Roberts reported the precise times on the sheets is somewhat irrelevant; Roberts was paid for those times and Bowden certified she was at work during those times and received child care services during those times.

{¶28} While there was some testimony indicating that Bowden claimed that the employment records were inaccurate and that she was working during all the hours she received child care services for, no employment records corroborating that testimony were submitted into evidence. Thus, after a thorough review of the entire record we cannot conclude that the jury "lost its way" and created "a manifest miscarriage of justice" in finding Bowden guilty of theft by deception. *Cepec* at ¶6, quoting *Otten*, 33 Ohio App.3d at 340.

CONCLUSION

{¶29} In light of the foregoing, we overrule Bowden's assignments of error and affirm the judgment of the Summit County Court of Common Pleas.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
CONCURS

DICKINSON, P. J.
CONCURS, SAYING:

{¶30} I concur with the majority's judgment and most of its opinion. I do not agree, however, that this Court should apply a "clearly erroneous" standard of review to Ms. Bowden's third assignment of error. As I previously pointed out, "[t]he 'clearly erroneous standard of review' is a phrase that federal appellate courts use to designate the standard they use in reviewing factual determinations in non-jury cases." *State v. Browand*, 9th Dist. No. 06CA009053, 2007-Ohio-4342, at ¶28 (Dickinson, J., concurring). "Ohio courts review findings of fact to determine whether they are supported by sufficient evidence and whether they are against the manifest weight of the evidence." *Id.* at ¶29.

{¶31} As noted by the majority, a three-step analysis applies to *Batson* challenges. Assuming that Ms. Bowden established a prima facie case that the prosecutor used his preemptory challenge to remove Ms. S. because of her race, the prosecutor provided a racially neutral explanation for that removal by articulating that he had done so because Ms. S. had previously received welfare benefits. The third step of the analysis, whether Ms. Bowden carried her ultimate burden of proving that the prosecutor's removal of Ms. S. was the product of discriminatory intent, presented the trial court with a "pure issue of fact." *Hernandez v. New York*, 500 U.S. 352, 364 (1991). Because the trial court's determination that she did not carry that burden is not against the manifest weight of the evidence, I concur in the overruling of Ms. Bowden's third assignment of error.

{¶32} I acknowledge that I have previously joined in opinions that incorrectly applied the federal standard of review to *Batson* cases before this Court and, in fact, wrote one such opinion myself. *State v. Moss*, 9th App. No. 24511, 2009-Ohio-3866, at ¶9; *State v. Stafford*, 9th App. No. 24144, 2009-Ohio-701, at ¶49; *State v. Goley*, 9th App. No. 16669, 1995 WL 324061 at *7 (May 31, 1995). It's better to be sometimes right than all times wrong. See *State v. Holcomb*, 9th Dist. No. 24287, 2009-Ohio-3187, at ¶26 (Dickinson, J., concurring) (quoting Letter from Abraham Lincoln to the People of Sangamo County (Mar. 9, 1832), in Abraham Lincoln Speeches and Writings 1832-1858 (The Library of America 1989) 4-5).

APPEARANCES:

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