Supreme Court of Ohio Clerk of Court - Filed November 12, 2019 - Case No. 2019-1558

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. _____
Plaintiff-Appellee,	:	
	:	On Appeal from the Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
JOSEPH L. BERRY,	:	Case No. 18AP-9
	:	
Defendant-Appellant.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT JOSEPH L. BERRY

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EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Mr. Berry's case is of public and great general interest because it concerns the confidence society can have in a criminal conviction, both at the earliest stages of a trial, when racial discrimination infects the jury selection process, and when unreliable eyewitness identification is permitted to come into the record.

In the present case, the trial court misapplied the three-step *Batson* analysis and permitted the removal of the only African American male juror without justification, in violation of the Equal Protection Clauses of the United States and Ohio Constitutions. The court of appeals further compounded the issue by misconstruing what occurred below and again misapplying the *Batson* test, in contravention of United States Supreme Court caselaw.

Additionally, when faced with an eyewitness identification based almost exclusively on rumors and not genuine memory, the trial court and court of appeals misapplied relevant United States Supreme Court caselaw to permit an unduly suggestive and unreliable piece of evidence to be entered into the record.

This Court should accept jurisdiction in this case to ensure public confidence in the outcomes of criminal trials. This case presents this Court with the opportunity to clarify the burdens at each step of the *Batson* analysis and to set forth, once and for all, how a moving party can establish a prima facie case at step one of the analysis. This case also allows this Court to clarify the type of suggestive state action that will be permitted in our criminal justice system.

STATEMENT OF THE CASE AND FACTS

Marshaun Gray died of a single gunshot to the back of his head at a Columbus nightclub in the early morning hours of October 12, 2008. Police began arriving at the scene soon after the shooting, but most of the club's nearly 150 patrons had left before their arrival.

That morning, the lead detective on the case, Detective Dorn, conducted interviews with witnesses. Specifically, he spoke with two women who were present during the shooting and knew the victim well: Kevina Gray, the mother of one of Marshaun's children; and Akilah Smith, Ms. Gray's best friend. Neither woman was able to identify the shooter or provide more descriptive information than his approximate height, his skin tone, and the color of his shirt. Ms. Smith was unsure whether the shooter had facial hair because she "didn't see anything but sleeve and gun."

At some point over the next two days, Detective Dorn contacted both women to schedule times to administer photo arrays. And at some point during those two days, Ms. Gray told Detective Dorn that she had heard rumors that Joseph Berry killed Marshaun Gray. A few days after the shooting, Detectives Dorn and Fulton administered a photo array to Ms. Gray. She picked out a photograph, stating she saw that individual at the club on the morning of the incident. She subsequently identified Mr. Berry as the shooter, but *only* after the detectives provided the name of the individual in the photograph she selected.

Another seven years lapsed before Mr. Berry was charged. On December 1, 2015, Mr. Berry was indicted for aggravated murder, in violation of R.C. 2903.01(A), and murder, in violation of R.C. 2903.02(A), both with firearm specifications under R.C. 2941.145(A).

On September 22, 2016, defense counsel filed a motion to "suppress all identifications [by Ms. Gray], both in and out of court, made in this case as they were obtained by an unduly

suggestive photographic identification procedure." Detective Fulton was the only witness to testify at the suppression hearing. Following his testimony, the judge denied the motion from the bench:

> I do not find that it was suggestive or a violation of *Stovall*. I'll permit it to be entered. Okay? I don't see any suggestive nature to it. Although it's not the practices now, I think it was well within the confines. I think enough protection was there to give it an honest evaluation, so I'll deny your motion.

The parties then proceeded to trial.

During voir dire, the State used two of its peremptory strikes to dismiss African American prospective jurors. After the State used its second strike to dismiss Prospective Juror Lawson, the only African American man on the panel, defense counsel raised a challenge under the United States Supreme Court's decision in *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). The trial court overruled the challenge and permitted Mr. Lawson's dismissal from the jury. The State exercised its final peremptory strike to excuse Prospective Juror Scott from serving as an alternate juror. Before voir dire concluded, defense counsel renewed the initial *Batson* challenge and raised a second challenge regarding Mrs. Scott. The trial court overruled both.

At trial, the State presented the testimony of eight witnesses, including Ms. Gray. She testified about the night in question and explained that she saw someone walk up to Marshaun Gray holding a gun, she could see the side of the shooter's face, and she noticed the color of his shirt. She also provided an in-court identification of Mr. Berry as the shooter.

Mr. Berry was eventually convicted on all counts. He was sentenced to life without the possibility of parole on the aggravated murder count plus a mandatory, consecutive three years of incarceration for the firearm specification.

On appeal, the court of appeals concluded that Mr. Berry failed to establish a prima facie case of racial discrimination in jury selection and therefore the trial court properly denied his

Batson challenges. Additionally, the court of appeals concluded that the trial court properly denied Mr. Berry's motion to suppress Kevina Gray's photo-array identification of Mr. Berry and subsequent in-court identification. In so doing, the court of appeals upheld Mr. Berry's convictions.

Mr. Berry now files this timely Memorandum in Support of Jurisdiction, asking this Court to grant him leave to appeal.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW I

The wholesale exclusion of venirepersons who share the same protected characteristics as the defendant gives rise to a mandatory inference of discrimination.

A jury selected without the taint of racial discrimination is a basic constitutional guarantee that defines the framework of every criminal trial, without exception. Prior to the United States Supreme Court's *Batson* decision, a criminal defendant claiming his Fourteenth Amendment rights were violated by the exclusion of African Americans from his jury was required to demonstrate systemic discrimination. *Swain v. Alabama*, 380 U.S. 202, 85 S.Ct. 824, 13 L.Ed.2d 759 (1965). However, the Court later recognized that the *Swain* test imposed a nearly insurmountable burden of proof that left prosecutors' use of peremptory challenges "largely immune from constitutional scrutiny." *Batson v. Kentucky*, 476 U.S. 79, 92-93, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). In its place, the Court established a three-step process for ferreting out purposeful racial discrimination *Id*. at 96-98.

At the first step of the *Batson* analysis, a defendant must establish a prima facie case that the prosecution struck a particular juror because of his or her race. *Id*. at 96. This is done by showing that "(1) the prosecution peremptorily challenged members of a cognizable racial group;

and (2) the facts and any other relevant circumstances raise an inference that the prosecution used the peremptory challenges to exclude jurors on account of their race." *State v. Jennings*, 10th Dist. Franklin Nos. 09AP-070, 09AP-75, 2009-Ohio-6840, ¶ 21. *See also Johnson v. California*, 545 U.S. 162, 169, 125 S.Ct. 2410, 162 L.Ed.2d 129 (2005). Relevant circumstances include "the state's use of a prior challenge against the same race; the defendant and the challenged juror are members of the same racially cognizable group; and/or disparate questions were asked in voir dire." *State v. Prieto*, 7th Dist. Mahoning No. 15 MA 0200, 2016-Ohio-8480, ¶ 42, citing *Batson* at 96-97. The United States Supreme Court did not intend for this to be an onerous step. *Johnson* at 162.

In this case, defense counsel raised a *Batson* challenge after the State removed from the venire Prospective Juror Lawson, the only African American male juror. The discussion regarding this peremptory strike proceeded as follows:

> MR. PIERSON: Your Honor, I think that there's two steps to this. First of all, they have to establish a pattern; second – defense counsel, before I am required to provide a reason – and then I provide a reason. There is no pattern here. There are multiple other jurors. Ms. Kash was number one to get excused by me, and then Mr. Lawson. I find it offensive and demeaning to the process that every time a black male is dismissed from a jury a Batson challenge is called, as if there is no other reason, for his responses to questions or other reasons.
>
> THE COURT: Okay. We're just making a record here. I don't see a Batson problem existing at this point in time, but we're making a record. Any particular reason you removed him other than his answers?
>
> MR. PIERSON: Other than his answers, no. Well, other than slightly his answers in court. His answers to me and also he was downstairs voir dired in another case, and I talked to the prosecutor on that case and got additional information about his answers to that question, those questions. And that came up with the formulation of why I should excuse him.

Defense counsel pointed to a number of flaws in the State's arguments, specifically noting that it was impossible to prove a pattern when there was only one African American man on the panel.

Despite Mr. Lawson being the only venireperson who looked like Mr. Berry and despite not knowing the content of Mr. Lawson's out-of-court statements, the court overruled the challenge:

> I don't see a problem at this point in time. They are making their objection. They are making their record and we'll see where it goes. You know, it's not like we don't have – there is a shortage of jurors in there, though. And just because he picked one doesn't necessarily mean that we have the issues.

The State went on to exercise its final peremptory strike to remove Prospective Juror Scott, who would have served as an alternate juror. After the only alternate juror was sworn in, the following discussion occurred:

> THE COURT: Did you want to renew Batson at this point in time
>
> MR. CARTER: Yes, Your Honor.
>
> THE COURT: -- on the alternate?
>
> MR. CARTER: Yes, Your Honor.
>
> THE COURT: Okay. I don't see the pattern. I understand why, so I don't think he's impinged upon your client. Plus, she's the second alternate in the line anyway. But you both had me nervous I would have no alternates.

With that, voir dire concluded.

On direct appeal, Mr. Berry asserted that the State failed to meet its burden at the second step of the *Batson* analysis because its reasons for dismissing Mr. Lawson were not sufficiently clear and the court failed to meet its burden at the third step of the analysis because the unclear, non-specific reasons proffered by the State were pretext for discrimination. Additionally, Mr.

Berry asserted that whether a prima facie case existed was a moot issue because the State offered its explanation for the peremptory challenge and the trial court made a final ruling on the matter.

The court of appeals disagreed, finding that the trial court did not, in fact, rule on the ultimate question of intentional discrimination. Instead, the court "construed the transcript of the voir dire proceedings to indicate the trial court's determination that Berry failed to establish a prima facie case of discrimination as to the removal of potential juror Lawson and alternate juror Scott." *State of Ohio v. Joseph L. Berry*, Franklin County Court of Appeals Case No. 18AP-9, ¶ 18. While Mr. Berry asserted below that he had established a prima facie case because the State dismissed the only person who looked like him and shared both protected statuses with Mr. Berry, the court of appeals concluded that this was insufficient to raise an inference of discrimination:

> In objecting to the peremptory challenges at trial, Berry's only reason given was that Lawson was 'the only male black juror that just got excused.' But that reason did not address the presence of African-American females, and there is no indication in the record as to whether these individuals were the only two African-Americans in the venire.

Id.

The court of appeals discounted Mr. Berry's argument that removal of the only person who looked like him was sufficient to satisfy the minimal burden at step one of the *Batson* analysis. The court was searching for broader trends in the exercise of peremptory challenges across the entire venire and did not consider the commonalities between Mr. Berry and Mr. Lawson.

However, as this Court has repeatedly held with respect to broader trends in jury selection,

> [t]he existence of a pattern of discriminatory strikes is *not* a prerequisite either to finding a prima facie case in step one of the *Batson* analysis or to finding actual discrimination in step three. Such a rule would ignore *Batson*'s requirement that the trial court consider *all* the circumstances in determining whether racial discrimination occurred. It would also mean that no *Batson* challenge could succeed unless the prosecutor challenged more than

> one member of the group in question. Such a rule would license prosecutors to exercise one illegal peremptory strike per trial. The law of equal protection does not allow "one free bite."

(Emphasis sic.) *State v. White*, 85 Ohio St.3d 433, 436, 709 N.E.2d 140 (1999). And the United States Supreme Court has been clear that "[r]acial identity between the defendant and the excused person might in some cases be the explanation for the prosecution's adoption of the forbidden stereotype, and if the alleged race bias takes this form, it may provide one of the easier cases to establish * * * a prima facie case[.]" *Powers v. Ohio*, 499 U.S. 400, 416, 111 S.Ct. 1364, 113 L.Ed.2d 411 (1991).

Without limits, prosecutors could strike jurors because of race or gender based on the assumption that a prospective juror would be favorable to a defendant with whom he shares those protected characteristics. *Flowers v. Mississippi*, __ U.S. __, 139 S.Ct. 2228, 2241-2242, 204 L.Ed.2d 638 (2019). *See also J.E.B. v. Alabama ex rel. TB*, 511 U.S. 127, 142, 114 S.Ct. 1419, 128 L.Ed.2d 89 (1994)"(Striking individual jurors on the assumption that they hold particular views simply because of their gender is 'practically a brand upon them, affixed by the law, an assertion of their inferiority"); *Batson* at 104-105 (Marshall, J., concurring) ("Exclusion of blacks from a jury, solely because of race, can no more be justified by a belief that blacks are less likely than whites to consider fairly or sympathetically the State's case against a black defendant than it can be justified by the notion that blacks lack the 'intelligence, experience, or moral integrity' to be entrusted with that role."). And equally disconcerting, prosecutors could remove jurors based on the combination of those protected characteristics. "It would seem anomalous and inconsistent with the primary end of ensuring an impartial jury and a fair trial to conclude that the protection we afford to groups defined by race *or* gender against impermissible exclusion from jury panels ought not extend to groups defined by race *and* gender." (Emphasis sic.) *Commonwealth v. Jordan*,

439 Mass. 47, 62, 785 N.E.2d 368 (2003). For that reason Mr. Lawson's removal should raise the specter of intentional discrimination and satisfy the first step of the *Batson* analysis.

PROPOSITION OF LAW II

The trial court's decision to excuse an African American juror after a *Batson* challenge is clearly erroneous when it fails to conduct the necessary *Batson* analysis and instead relies on impermissible factors without examining all of the relevant evidence.

In addition to misapplying the law and concluding that Mr. Berry failed to establish a prima facie case of intentional discrimination, the court of appeals also misconstrued what occurred below. The trial court gave the State an opportunity to explain its reasons for dismissing Mr. Lawson from the jury and the court accepted the explanation provided without conducting the required *Batson* analysis.

Preliminarily, because the State was given the opportunity to provide its reasons for dismissing Mr. Lawson and the trial court made a final ruling on the matter, whether a prima facie case of racial discrimination has been made is moot. *Hernandez v. New York,* 500 U.S. 352, 359, 111 S.Ct. 1859, 114 L.Ed.2d 395 (1991) ("Once a prosecutor has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the defendant had made a prima facie showing becomes moot.").

With a prima facie case established, the trial court moved on to conclude that the State provided facially neutral reasons for Mr. Lawson's dismissal and that those reasons were not pretext for discrimination. The court of appeals should have reviewed these determinations. Had it done so, it would have found that the trial court violated clearly established United States Supreme Court law in its application of the *Batson* test.

The showing of a prima facie case shifts the burden to the State to offer a race-neutral reason for the peremptory strike in the second *Batson* step. *Id*. at 358-359. Such a reason may be implausible, so long as it is facially neutral. *Purkett v. Elem*, 514 U.S. 765, 768, 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995). However, while it may be implausible, the State "must give a 'clear and reasonably specific' explanation of [its] 'legitimate reasons' for exercising the challenges." *Batson*, 476 U.S. 79, 98, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), fn. 20.

The low burden on the government at step two reflects both the legal rule that the burden of persuasion rests upon the defendant and the United States Supreme Court's assumption that trial courts will engage in a meaningful evaluation of a proffered reason's persuasiveness in step three of the test. *Purkett* at 768 (Emphasis sic.) ("It is not until the *third* step that the persuasiveness of the justification becomes relevant * * * [a]t that stage, implausible or fantastic justifications may (and probably will) be found to be pretexts for purposeful discrimination").

At step three, the trial court must "'assess the plausibility of' the prosecutor's reason for striking the juror 'in light of all evidence with a bearing on it.'" *State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751, 23 N.E.3d 1096, ¶ 52, quoting *Miller-El v. Dretke*, 545 U.S. 231, 252, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2005) (*Miller-El II*). While the trial court "need not make detailed findings addressing all the evidence before it," it must engage in a meaningful inquiry at this step. *Miller-El v. Cockrell*, 537 U.S. 322, 347, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003) (*Miller-El I*). At this stage, "[t]rial judges must exercise considerable care in reviewing a claim of racial discrimination in jury selection. A judge should make clear, on the record, that he or she understands and has applied the precise *Batson* test when racial discrimination has been alleged in opposition to a peremptory challenge." *Hicks v. Westinghouse Materials Co.*, 78 Ohio St.3d 95, 99, 676 N.E.2d 872 (1997).

When the State used its second peremptory strike to remove Mr. Lawson from the jury and the trial court asked the State to provide its reasons for removing Mr. Lawson, the State asserted, "Other than his answers, no. Well, other than slightly his answers in court. His answers to me and also he was downstairs voir dired in another case, and I talked to the prosecutor on that case and got additional information about his answers to that question, those questions. And that came up with the formulation of why I should excuse him."

Most of the State's conversation with Mr. Lawson occurred on the first day of voir dire, and the *Batson* challenge occurred on the second day. On this second day of voir dire, the State did not point to a specific answer Mr. Lawson provided that would justify his removal from the jury. Because the State did not point to any specific reason and only generally referred to Mr. Lawson's responses to questions both in and outside of this judge's courtroom, the State failed to meet its burden of "giv[ing] a 'clear and reasonably specific' explanation of [its] 'legitimate reasons' for exercising the challenges." *Batson*, 476 U.S. 79, 98, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), fn. 20.

And even more problematic than the failure to provide a clear and reasonably specific explanation, the State provided a reason that was not observable by either the trial court or defense counsel. Prosecutors are entitled to share information between each other. But when a *Batson* challenge is raised and the State articulates an explanation for the challenged peremptory based on out-of-court information, the prosecutor must share that information with the court and the moving party. If not, the court cannot be in a position to fulfill its obligations at the second and third steps of the *Batson* analysis, and the defendant cannot be in a position to meets its burden to prove intentional discrimination.

In this case, it is impossible to know what the State was referring to as its justification for Mr. Lawson's removal from the jury and whether that justification was race-neutral. And it is impossible to know what the trial court based its final determination on when it concluded that it did not "see a problem." The trial court accepted the State at its word without an actual understanding of which of Mr. Lawson's answers the State found so objectionable and without assessing the plausibility of that explanation "in light of all evidence with a bearing on it." *Miller-El II*, 545 U.S. 231, 252, 125 S.Ct. 2317, 162 L.Ed.2d 196 (2006).

And even if the State's proffered reasons were sufficiently clear and race-neutral under the second step of the *Batson* analysis, they were pretext for discrimination. A proper comparative juror analysis reveals how flimsy the basis behind the State's reasoning truly was. Here, the trial court failed to engage in any of the analysis required by *Batson*'s third step and did not make any factual findings related to pretext. Because the burden on the State at step two is merely to offer a facially neutral reason, the duty of the court to consider that reason's persuasiveness in step three is essential to the workability of the *Batson* test. *Id*. at 240.

This Court should accept jurisdiction to clarify the relative burdens and responsibilities at steps two and three of the *Batson* analysis.

PROPOSITION OF LAW III

An eyewitness identification that can be made only after police intervention is not the product of genuine memory and is both impermissibly suggestive and unreliable.

Eyewitness identifications are deemed reliable and persuasive because they are based on an eyewitness's genuine memory. However, identification testimony derived from suggestive identification procedures is not always based on memory of an event and may, instead, be based on other factors. The Due Process Clause of the Fifth and Fourteenth Amendments to the United

States Constitution prohibit the admission of unreliable identification testimony derived from such suggestive identification procedures for exactly that reason – they are not reliable memories of the eyewitness's observations. *Stovall v. Denno*, 388 U.S. 293, 18 L.Ed.2d 1199, 87 S.Ct. 1967 (1967).

Courts apply a two-prong test to determine the admissibility of identification testimony. *Neil v. Biggers*, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972). First, a court determines if the identification procedure was so impermissibly suggestive as to give rise to a substantial likelihood of misidentification. *Id*. at 197. Next, the court must consider whether the identification itself was unreliable under the totality of the circumstances. *Id*. at 199. The Supreme Court has identified five non-exhaustive factors that guide courts in determining whether an identification is a sufficiently reliable recounting of what the eyewitness actually observed. *Id*. at 199-200.

Ms. Gray's identification of Mr. Berry as the shooter happened only after impermissibly suggestive state action. As a result, it should have been suppressed. Two days after the shooting, Detectives Dorn and Fulton administered a series of photo arrays to Ms. Gray. Prior to the administration, she informed Detective Dorn she had heard rumors that someone named Joseph Berry was the shooter. Detective Fulton testified that he and Detective Dorn presented her with the photo array, gave her the standard instructions, and asked whether she recognized anyone in the pictures. She identified a photograph as someone who was "at the club the night it happened."

Had the identification procedure ended there, Mr. Berry would not be challenging its suggestiveness. However, after she picked out the photograph, Detective Dorn, knowing that Ms. Gray suspected Mr. Berry as the shooter based solely on rumors from the neighborhood, told Ms. Gray that she had identified Mr. Berry. After receiving this information, Ms. Gray took back the document and wrote on the bottom, "From putting a name with this face from the built [sic] and his height, this is the man who killed Marshaun Gray. 100 percent sure."

The court of appeals concluded that Ms. Gray identified Mr. Berry by her own independent knowledge, not steering by the State. However, her identification of Mr. Berry as the shooter was based not on her own memory and observations during Marshaun Gray's murder, but, instead, on the rumors she had heard from around the neighborhood. Absent the State's intervention, she would not have linked Mr. Berry's photograph with the murder. The procedure was so impermissibly suggestive that the identification was not a product of her memory. While the *Biggers* factors are used to determine the reliability of a person's memory, they are a poor tool for assessing the reliability of an eyewitness identification that is only possible after State intervention.

Where it is clear that an eyewitness identification is not based on memory, but is instead based on attributes not determinable by a photo array, a court should conclude that it is too impermissibly suggestive and unreliable to be admitted as evidence. In this case, the suggestive elements in this identification procedure made it all but inevitable that Ms. Gray would identify Mr. Berry, whether or not he was in fact the man she observed on the morning of Marshaun Gray's death. *Foster v. California*, 394 U.S. 440, 89 S.Ct. 1127, 22 L.Ed.2d 402 (1969).

Because Ms. Gray's identification of Mr. Berry as the shooter was not based on her own memory and was instead a product of rumor and State intervention, the *Biggers* factors do not fully answer the question of reliability and admissibility. This Court should accept jurisdiction to articulate a standard that answers this question.

PROPOSITION OF LAW IV

The intentionality of suggestive state action is irrelevant to the Due Process analysis under *Manson v. Brathwaite,* 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977).

The court of appeals concluded that "there [was] no evidence that either Detective Fulton or Detective Dorn 'steered' [Ms. Gray] to Berry as the perpetrator of the crime, independent of her

recollection." *State of Ohio v. Joseph L. Berry*, Franklin County Court of Appeals Case No. 18AP-9, ¶ 24. However, under *Manson v. Brathwaite*, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977), State action can be impermissibly suggestive without being the result of intentional steering. Suppression is an important deterrent to improper suggestive State action. But in addition to serving as a deterrent, *Manson*, *Biggers*, and others serve the critical role of protecting defendants' due process rights. And because unintentionally and intentionally suggestive eyewitness identification procedures are equally violative of a defendant's due process rights and can easily result in misidentification, both must be suppressed.

CONCLUSION

This case involves matters of public and great general interest. Mr. Berry requests that this Court accept jurisdiction in order to clarify the burdens at each step of the *Batson* analysis and the type of suggestive state action that will be permitted in our criminal justice system.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

A copy of the foregoing **MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT JOSEPH L. BERRY** was served by electronic mail to Michael P. Walton, Assistant Franklin County Prosecutor, mwalton@franklincountyohio.gov, on this 12th day of November, 2019.

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#1271956

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. _____
Plaintiff-Appellee,	:	
	:	On Appeal from the Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
JOSEPH L. BERRY,	:	Case No. 18AP-9
	:	
Defendant-Appellant.	:	

APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT JOSEPH L. BERRY
