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Thirty Years of Disappointment: North Carolina's Remarkable Appellate Batson Record

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THIRTY YEARS OF DISAPPOINTMENT: NORTH CAROLINA'S REMARKABLE APPELLATE *BATSON* RECORD*

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On April 30, 1986, the United States Supreme Court handed down its decision in Batson v. Kentucky. *The opinion reiterated that the Equal Protection Clause of the Fourteenth Amendment prohibits the exercise of peremptory strikes on the basis of race during jury selection. The Court provided what is now a familiar three-step framework for determining whether purposeful discrimination against minority jurors has occurred. Since its decision in* Batson*, the Supreme Court has continued to explore issues arising within this framework and has offered further guidance in adjudicating* Batson *claims.*

Our research examines North Carolina's disappointing Batson *record in the thirty years since the decision was handed down. In the 114 cases decided on the merits by North Carolina appellate courts, the courts have never found a substantive* Batson *violation where a prosecutor has articulated a reason for the peremptory challenge of a minority juror. In all of the seventy-four cases decided by the Supreme Court of North Carolina during that time, that court has never once found a substantive* Batson *violation. In contrast, over the past thirty years every state appellate court located in the Fourth Circuit has found at least one substantive* Batson *violation where the State struck a minority juror. North Carolina's remarkable record is even more disappointing in the light of recent studies finding the existence of*

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pervasive prosecutorial racial discrimination in North Carolina jury selection.

In an attempt to explain this record, this Article maintains that North Carolina courts misapply Batson *jurisprudence in several important ways, namely at the first and third step of the framework. This article concludes that North Carolina courts should implement a correct application of* Batson*'s principles in order to provide minority defendants a fair shot at eliminating racial discrimination in jury selection at trial.*

INTRODUCTION

In light of the recent thirtieth anniversary of the United States Supreme Court's decision in *Batson v. Kentucky*,[1] decided April 30, 1986, it seems appropriate to pause and consider the record compiled by the North Carolina appellate courts over the last thirty years in adjudicating *Batson* claims.[2] Briefly, that record is remarkable and disappointing: North Carolina's highest court has never once in those thirty years found a substantive *Batson* violation.[3] As other courts have observed, "[s]tatistics are not, of course, the whole answer, but nothing is as emphatic as zero."[4]

In *Batson*, the Supreme Court reaffirmed that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the State from exercising peremptory challenges against potential jurors on the basis of race.[5] In its earlier

1. 476 U.S. 79 (1986).

2. This analysis seems especially timely in light of the United States Supreme Court's recent decision in Foster v. Chatman, where the Court reaffirmed and applied *Batson* to reverse the Georgia Supreme Court and find a *Batson* violation. Foster v. Chatman, 136 S. Ct. 1737, 1747–55 (2016).

3. A "substantive *Batson* violation" refers here to an appellate court's holding that the State has engaged in purposeful racial discrimination in the exercise of peremptory challenges against minority jurors.

4. *E.g.*, United States v. Hinds Cty. Sch. Bd., 417 F.2d 852, 858 (5th Cir. 1969).

5. *Batson*, 476 U.S. at 84–86 (citing Strauder v. West Virginia, 100 U.S. 303 (1880)); *see also* Norris v. Alabama, 294 U.S. 587 (1935); Neal v. Delaware, 103 U.S. 370 (1881).

decision in *Swain v. Alabama*,[6] however, the Court had held that a criminal defendant could not prove such discrimination absent a showing of systematic and repeated discrimination "in case after case, whatever the circumstances."[7] The *Batson* Court overruled *Swain* on this point, reasoning that *Swain* had "placed on defendants a crippling burden of proof" and made "prosecutors' peremptory challenges . . . largely immune from constitutional scrutiny."[8] To replace *Swain*, the *Batson* Court established a three-step framework for determining whether the State engaged in purposeful racial discrimination against minority jurors in the exercise of peremptory challenges at one particular criminal trial.[9] That thirty-year-old framework is now familiar: first, the defendant must establish a prima facie case by showing that the circumstances at trial raise an inference of discrimination; second, if the defendant succeeds, the burden shifts to the State to offer a race-neutral reason for the peremptory challenge; and third, if the State succeeds, the court must then determine if the defendant has met his or her ultimate burden of proving purposeful discrimination.[10] In several post-*Batson* decisions, discussed in some detail below, the Supreme Court has addressed legal issues raised within the basic *Batson* framework, such as the degree of proof necessary to establish a prima facie case and the importance of comparative juror analysis.[11]

Part I sets forth the record compiled by the North Carolina appellate courts in *Batson* cases over the last thirty years. Part II then contrasts that record to the findings in a recent academic study of state prosecutors' peremptory challenges. Part III demonstrates how that record is the result of state court misapplications of United States Supreme Court *Batson* jurisprudence, and Part IV compares that record to the *Batson* records in North Carolina's neighboring states. To conclude, this Article suggests that North Carolina appellate courts begin correctly applying the *Batson* framework and jurisprudence so as to provide a fair chance to eliminate a species of racial discrimination in our state.

6. 380 U.S. 202 (1965).
7. *Id.* at 223; *see Batson*, 476 U.S. at 91–92.
8. *Batson*, 476 U.S. at 92–93.
9. *Id.* at 96–98.
10. *Id.*
11. *See, e.g.*, Miller-El v. Dretke, 545 U.S. 231, 240–66 (2005) (observing that "[t]he numbers" describing the State's use of peremptory challenges in that case were "remarkable").

I. THE APPELLATE *BATSON* RECORD IN NORTH CAROLINA

Since 1986, and as of September 6, 2016,[12] the Supreme Court of North Carolina has decided seventy-four cases on the merits in which it adjudicated eighty-one *Batson* claims raised by criminal defendants over alleged racial discrimination against minority jurors in the State's exercise of peremptory challenges at criminal trials.[13] To date, that court has not found a substantive *Batson* violation in any of those cases.[14] In seventy-one of those seventy-four cases, that court found no *Batson* error whatsoever.[15] In the three remaining cases, that court held the trial court erred at *Batson*'s first step in finding no prima facie case existed and conducted or ordered further review.[16] However, none of these three cases has ultimately resulted in the holding of a substantive *Batson* violation.[17]

Since 1986, the North Carolina Court of Appeals has decided forty-two cases in which it has adjudicated forty-three *Batson* claims on the merits, also involving many more jurors than claims.[18] In thirty-seven of those forty-two cases, that court found no *Batson* error whatsoever.[19] In two cases, the court found the defendant had established a prima facie case at *Batson*'s first step and remanded for consideration at *Batson*'s third step, but neither case ultimately

12. The North Carolina appellate courts' last decision day before this Article's print date.

13. *See infra* Addendum, Table 1. The claims involved far more than eighty jurors. In a few cases, the court has adjudicated two different claims in one case; for example, the court may find no *Batson* error at step one as to some jurors and no *Batson* violation at step three as to other jurors. *See, e.g.*, State v. Locklear, 349 N.C. 118, 138–40, 505 S.E.2d 277, 288–90 (1998). Please note that this analysis includes only published decisions. Unpublished decisions do not reveal any additional grants of *Batson* relief. The North Carolina Court of Appeals' decision finding a prima facie case in *State v. Quick*, 116 N.C. App. 362, 448 S.E.2d 149 (1994), was both unpublished and reversed on further review by the Supreme Court of North Carolina. State v. Quick, 341 N.C. 141, 146, 462 S.E.2d 186, 190 (1995); *see infra* notes 45, 82–85 and accompanying text.

14. *See infra* Addendum, Table 1.

15. *See infra* Addendum, Table 1.

16. State v. Barden, 356 N.C. 316, 342–45, 572 S.E.2d 108, 126–28 (2002); State v. Hoffman, 348 N.C. 548, 553–55, 500 S.E.2d 718, 722–23 (1998); State v. Smith, 328 N.C. 99, 123–27, 400 S.E.2d 712, 725–28 (1991). *Barden* was remanded for consideration at *Batson*'s third step and litigation is currently ongoing. *See* State v. Barden, 362 N.C. 277, 280, 658 S.E.2d 654, 655 (2008). On remand in *Hoffman*, the trial judge held there was no purposeful discrimination at *Batson*'s third step, and the Supreme Court of North Carolina affirmed on further appeal. State v. Hoffman, 349 N.C. 167, 173, 505 S.E.2d 80, 84 (1998). Finally, in *Smith*, the Supreme Court of North Carolina itself found no purposeful discrimination at *Batson*'s third step. *Smith*, 328 N.C. at 123–27, 400 S.E.2d at 725–28.

17. *Barden*, 356 N.C. at 342–45, 572 S.E.2d at 126–28; *Hoffman*, 349 N.C. at 167, 505 S.E.2d at 84; *Smith*, 328 N.C. at 126–127, 400 S.E.2d at 725–28.

18. *See infra* Addendum, Table 2.

19. *See infra* Addendum, Table 2.

resulted in the finding of a substantive *Batson* violation.[20] To date, that court has found a substantive *Batson* violation involving minority jurors in only one case, which involved very unusual facts.[21] In *State v. Wright*,[22] the defendant objected to the challenge of seven black jurors; the prosecutor stated reasons for striking five of the jurors, but did not state any specific reason for striking the other two.[23] On appeal, the court observed that unlike all other previous North Carolina *Batson* cases, where prosecutors had provided reasons for "each and every" strike, the *Wright* prosecutor "had not even offered any explanation as to two jurors" or "specifically mentioned" the two jurors "at all."[24] The court held that in the absence of any stated reason for the strikes, "it follows that the peremptory challenges [were] not allowed."[25]

Two of the North Carolina Court of Appeals' forty-two cases involve successful "reverse *Batson*" claims where the court found purposeful discrimination against white jurors challenged by black defendants.[26] In *State v. Cofield*,[27] the defendant challenged four of six white jurors.[28] The trial judge allowed one strike but found a prima facie case as to the other three.[29] Although the defendant gave many demeanor- and non-demeanor-based reasons for his strikes, the trial judge held that all of those reasons were pretext and required the three jurors to serve.[30] On appeal, the court held the 66% "strike rate" established a prima facie case and relied on comparative juror analysis to uphold the finding of a reverse *Batson* violation.[31] In *State v. Hurd*,[32] the black defendant challenged a white juror who, when

20. State v. McCord, 140 N.C. App. 634, 653–54, 538 S.E.2d 630, 645–46 (2000); State v. Hall, 104 N.C. App. 375, 381–84, 410 S.E.2d 76, 79–81 (1991). On remand in these two cases the trial courts found no purposeful discrimination and those holdings were affirmed on appeal. State v. McCord, 158 N.C. App. 693, 696–99, 582 S.E.2d 33, 35–37 (2003); State v. Sessoms, 119 N.C. App. 1, 4–7, 458 S.E.2d 200, 202–04 (1995).

21. *See* State v. Wright, 189 N.C. App. 346, 352–54, 658 S.E.2d 60, 64–65 (2008).

22. 189 N.C. App. 346, 658 S.E.2d 60 (2008).

23. *Id.* at 352–53, 658 S.E.2d at 64–65.

24. *Id.* at 352–54, 658 S.E.2d at 64–65.

25. *See id.* at 351–54, 658 S.E.2d at 63–65 (quoting State v. Cofield, 129 N.C. App. 268, 275, 498 S.E.2d 823, 828 (1998)).

26. *See* State v. Hurd, __ N.C. App. __, __, 784 S.E.2d 528, 536 (2016); State v. Cofield, 129 N.C. App. 268, 280, 498 S.E.2d 823, 831 (1998). When reviewing these and all other *Batson* claims discussed in this Article, the North Carolina appellate courts review the trial court's ruling for clear error rather than conducting a de novo review of the claim.

27. 129 N.C. App. 268, 498 S.E.2d 823 (1998).

28. *Cofield*, 129 N.C. App. at 277, 498 S.E.2d at 830.

29. *Id.* at 272, 498 S.E.2d at 827.

30. *Id.* at 270–73, 498 S.E.2d at 826–28.

31. *See id.* at 277–80, 498 S.E.2d at 830–32.

32. __ N.C. App. __, __, 784 S.E.2d 528 (2016).

asked on voir dire about the death penalty, stated "I would say before I came here I ha[d] no problem"; "I think that's what we need to be done";"I don't like the fact that someone's life [is] being taken"; and "there's a punishment for a crime."[33] Upon the State's *Batson* objection, the defendant stated two race-neutral reasons for the strike: the juror's pro-death penalty statements and his own subjective feeling the juror was "in favor of capital punishment as a matter of disposition."[34] The trial court engaged in extensive comparative juror analysis, concluded the defendant's stated reasons were "pretextual," and disallowed the challenge.[35] On appeal, the court engaged in comparative juror analysis, comparing the voir dire answers regarding the death penalty of the challenged white juror and another unchallenged "Asian/Black" juror, and upheld the finding of a reverse *Batson* violation.[36]

In light of North Carolina's history of racial discrimination in criminal justice,[37] it is indeed disturbing that two "reverse *Batson*" cases involving black defendants' challenges of white jurors are the only cases in North Carolina appellate history finding substantive *Batson* violations where attorneys have provided reasons for strikes. In sum, in all the 114 North Carolina appellate *Batson* cases involving minority jurors decided on the merits since 1986, the courts have never found a substantive *Batson* violation where a prosecutor has managed to articulate even one reason, however fantastic, for the peremptory challenge.

II. THE MICHIGAN STATE UNIVERSITY STUDY

North Carolina's remarkable appellate *Batson* record, including its Supreme Court's record of not finding a single substantive *Batson* violation in thirty years, might lead one to conclude that racial discrimination in North Carolina jury selection is a thing of the past. However, recent academic studies show that this conclusion is simply not true. In 2011, researchers at Michigan State University College of Law conducted a comprehensive study of over 7,400 peremptory strikes made by North Carolina prosecutors in 173 capital cases tried

33. *Id.* at __, 784 S.E.2d at 531–32.
34. *See id.* at __, 784 S.E.2d at 532.
35. *Id.* at __, 784 S.E.2d at 532–33.
36. *Id.* at __, 784 S.E.2d at 531–32, 536–37.
37. *See generally* Seth Kotch & Robert P. Mosteller, *The Racial Justice Act and The Long Struggle with Race and the Death Penalty in North Carolina*, 88 N.C. L. REV. 2031, (2010) (examining the impact of racial bias on the imposition of the death penalty in North Carolina and the implications of the Racial Justice Act).

between 1990 and 2010.[38] The study showed prosecutors struck 52.6% of eligible black jurors and only 25.7% of all other eligible jurors in those capital trials.[39] The probability of this disparity occurring in race-neutral jury selection is less than one in ten trillion.[40] This disparity was significantly greater in cases involving black defendants, where the average strike rate of eligible black jurors was 60%.[41] After adjusting for race-neutral characteristics, researchers found prosecutors struck black jurors at 2.48 times the rate they struck all other jurors.[42] As one commentator has noted with regard to the state's use of peremptory strikes in North Carolina criminal trials, "[t]he impact of race is neither theoretical nor minor, but real and substantial,"[43] and discriminatory peremptory strikes continue to be a powerful mechanism for exclusion of black jurors from participation in the criminal justice system.[44]

III. NORTH CAROLINA'S MISAPPLICATIONS OF UNITED STATES SUPREME COURT *BATSON* JURISPRUDENCE

An analysis of North Carolina's appellate *Batson* record begs the question: why is this record so remarkable and disappointing? The most likely answer is that North Carolina courts routinely misapply United States Supreme Court *Batson* jurisprudence, most notably at steps one and three of the *Batson* framework.

38. *See* Catherine M. Grosso & Barbara O'Brien, *A Stubborn Legacy: The Overwhelming Importance of Race in Jury Selection in 173 Post-*Batson *North Carolina Capital Trials*, 97 IOWA L. REV. 1531, 1542–43 (2012) (reporting on the study).

39. *Id.* at 1548.

40. NORTH CAROLINA RACIAL JUSTICE ACT JURY SELECTION STUDY 22 (2010); Order Granting Motion for Appropriate Relief at 58, State v. Robinson, 91-CRS-23143 (N.C. Super. Ct. Apr. 20, 2012), http://www.deathpenaltyinfo.org/documents/RobinsonRJAOrder.pdf [https://perma.cc/A3P4-J7A2].

41. Grosso & O'Brien, *supra* note 38, at 1549–50.

42. *Id.* at 1553.

43. Robert P. Mosteller, *Responding to* McCleskey *and* Batson*: The North Carolina Racial Justice Act Confronts Racial Peremptory Challenges in Death Cases*, 10 OHIO ST. J. CRIM. L. 103, 132–34 (2012).

44. Preliminary findings from a study of jury selection in all non-capital North Carolina felony trials from 2011–2012, involving 22,000 potential jurors, conducted by Wake Forest University School of Law professors "indicate that prosecutors strike non-white potential jurors at a disproportionate rate. In these cases, prosecutors struck 16 percent of non-white potential jurors, while they struck only 8 percent of white potential jurors." Kami Chavis, *The Supreme Court Didn't Fix Racist Jury Selection: Timothy Foster Got Justice, But Prosecutors Still Have Wide Leeway to Exclude Black Jurors*, THE NATION (May 31, 2016), https://www.thenation.com/article/the-supreme-court-didnt-fix-racist-jury-selection/ [https://perma.cc/2MUH-QYNS].

A. Misapplications at Batson*'s Step One*

Of the Supreme Court of North Carolina's seventy-four *Batson* cases, thirty-four contain adjudications at *Batson*'s first step.[45] In thirty-two of those thirty-four cases, that court wholly or in part denied the claim on the ground that the defendant failed to establish a prima facie case.[46] Indeed, in one of those thirty-two cases, that court reversed a decision of the North Carolina Court of Appeals finding a prima facie case.[47] Overall, the Supreme Court of North Carolina has found a prima facie case in whole or in part in only three of the thirty-four cases it reviewed.[48] The record in the North Carolina Court of Appeals is equally remarkable. In fourteen of the sixteen cases raising issues at *Batson*'s first step that court denied relief on the ground that the defendant failed to establish a prima facie case.[49]

North Carolina appellate courts misapply the law in many ways as they review *Batson* claims at the step one prima facie case stage, including: (1) failing to give meaningful weight to the relevant prima facie case circumstance of a pattern of strikes against prospective minority jurors; (2) giving considerable weight to imagined and unarticulated possible reasons for strikes gleaned from juror voir dire responses; and (3) imposing a far too onerous burden of proof on defendants at *Batson*'s first step.

1. Failure to Give Weight to a Pattern of Strikes

In *Batson*, the Court held that "a 'pattern' of strikes against black jurors included in the particular venire" is an important relevant circumstance that itself could "give rise to an inference of

45. *See infra* Addendum, Table 1 & 3; *see also* State v. Barden, 356 N.C. 316, 342–45, 572 S.E.2d 108, 126–28 (2002); State v. Smith, 328 N.C. 99, 123–27, 400 S.E.2d 712, 725–28 (1991).

46. *See infra* Addendum, Table 3. The Supreme Court of North Carolina reviews race-based and gender-based discrimination claims under the same general framework, and in two cases that court has denied gender-based discrimination claims on the ground the defendant did not establish a prima facie case. State v. Call, 349 N.C. 382, 403–04, 508 S.E.2d 496, 510 (1998); State v. Bates, 343 N.C. 564, 595–97, 473 S.E.2d 269, 286–87 (1996).

47. State v. Quick, 341 N.C. 141, 145–46, 462 S.E.2d 186, 189–90 (1995). Justices Frye and Webb dissented in *Quick*, arguing the court was unwilling to draw the line on *Batson*. *Id.* at 147, 462 S.E.2d at 190 (Frye, J., dissenting).

48. *See* cases cited *supra* note 16. In *Hoffman*, the court denied the claim at step one as to some jurors and allowed the claim at step one as to others. State v. Hoffman, 348 N.C. 548, 551–55, 500 S.E.2d 718, 720–23 (1998).

49. *See infra* Addendum, Table 4; *see also* State v. McCord, 140 N.C. App. 634, 653–54, 538 S.E.2d 630, 645–46 (2000); State v. Hall, 104 N.C. App. 375, 381–84, 410 S.E.2d 76, 79–81 (1991).

discrimination."[50] Misapplying *Batson*, in at least eighteen cases involving more than one peremptory challenge,[51] the Supreme Court of North Carolina has failed to find error in trial court determinations finding no prima facie case even though the prosecutor struck 50% or more of minority jurors in the tendered qualified pool.[52] In two cases, that court refused to find a prima facie case when the prosecutor struck 100% of the minority jurors tendered.[53] In four cases, the court refused to find a prima facie case when the prosecutor struck or attempted to strike 69% or more of qualified minority jurors.[54] In an additional six cases, the court refused to find a prima facie case when the prosecutor's strike rate of minority jurors was 60% or higher.[55] In two other cases, the court refused to find a prima facie case when the prosecutor's strike rate was higher than 50%.[56]

Finally, in four cases, the court refused to find a prima facie case when the strike rate was 50%.[57] The North Carolina Court of Appeals has similarly refused to find prima facie cases when prosecutors have

50. Batson v. Kentucky, 476 U.S. 79, 96–97 (1986).

51. Approximately ten of the thirty-four cases involve only one strike. *See infra* Addendum, Table 3.

52. *See* cases cited *infra* notes 51–55.

53. State v. Chapman, 359 N.C. 328, 342–43, 611 S.E.2d 794, 807–08 (2005) (three of three, 100%); State v. Williams, 343 N.C. 345, 357–60, 471 S.E.2d 379, 385–87 (1996) (two of two, 100%).

54. State v. Fletcher, 348 N.C. 292, 318–20, 500 S.E.2d 668, 683–84 (1998) (three of four challenged when juror Hudson struck, 75%; four of five challenged when juror Watkins struck, 80%); State v. Beach, 333 N.C. 733, 740–41, 430 S.E.2d 248, 252 (1993) (nine of thirteen, 69%); State v. Davis, 325 N.C. 607, 618–19, 386 S.E.2d 418, 423 (1989) (eight of eleven, 73%); State v. Robbins, 319 N.C. 465, 491–92, 356 S.E.2d 279, 295 (1987) (seven of nine, 78%).

55. State v. Maness, 363 N.C. 261, 275–76, 677 S.E.2d 796, 805–06 (2009) (five of eight challenged when juror Simmons struck, 63%); State v. Taylor, 362 N.C. 514, 528–29, 669 S.E.2d 239, 254–55 (2008) (three of five, 60%); State v. Locklear, 349 N.C. 118, 137–41, 505 S.E.2d 277, 288–90 (1998) (two of three challenged when juror Cummings struck, 67%); State v. Hoffman, 348 N.C. 548, 550–53, 500 S.E.2d 718, 720–22 (1998) (two of three challenged when juror Cox struck, 67%); State v. Gregory, 340 N.C. 365, 398–99, 459 S.E.2d 638, 657 (1995) (five of eight, 63%); State v. Abbott, 320 N.C. 475, 480–82, 358 S.E.2d 365, 369–70 (1987) (three of five, 60%).

56. State v. Smith, 351 N.C. 251, 262–63, 524 S.E.2d 28, 37–38 (2000) (six of eleven, 55%); State v. Allen, 323 N.C. 208, 219, 372 S.E.2d 855, 862 (1988), *vacated on other grounds*, 494 U.S. 1021 (1990) (ten of seventeen, 59%).

57. State v. Nicholson, 355 N.C. 1, 24–25, 558 S.E.2d 109, 127 (2002) (four of eight, 50%); State v. Norwood, 344 N.C. 511, 527, 476 S.E.2d 349, 355 (1996) (one of two, 50%); State v. Quick, 341 N.C. 141, 145–46, 462 S.E.2d 186, 189–90 (1995) (two of four, 50%); State v. Belton, 318 N.C. 141, 153–60, 347 S.E.2d 755, 762–64 (1986) (six of twelve, 50%, although this case was decided under the Sixth Amendment's impartial jury guarantee rather than *Batson* because the jury selection took place before *Batson* was rendered).

struck 80%,[58] 75%,[59] 71%,[60] and 50%[61] of qualified minority jurors. The repeated failure to find a prima facie case of discrimination where the record shows a pattern of striking 50% or more of qualified minority jurors shows the North Carolina appellate courts give little to no weight to the "pattern of strikes" circumstance in adjudicating claims under *Batson*'s first step, except perhaps when the challenged jurors are white.[62] Indeed, in a perversion of *Batson*, the Supreme Court of North Carolina frequently asserts that a strike rate of 57.2% is "some evidence that there was no discriminatory intent"[63] and routinely cites cases with strike rates of over 50% as "tend[ing] to refute an allegation of discrimination."[64]

2. Imagining Reasons for Strikes

In determining whether a defendant has established a prima facie case under *Batson*, the North Carolina appellate courts consistently conjure race-neutral reasons for strikes gleaned from juror voir dire responses and then impute those imagined reasons to the prosecutor or judge who never articulated them. In *Miller-El v. Dretke*,[65] commonly referred to as *Miller-El II*, the United States Supreme Court condemned this practice, stating that "[a] *Batson* challenge does not call for a mere exercise in thinking up any rational basis" for

58. *See* State v. Cherry, 141 N.C. App. 642, 647–48, 541 S.E.2d 205, 208 (2000) (twelve of fifteen, 80%).

59. *See* State v. Mills, 225 N.C. App. 773, 780, 741 S.E.2d 427, 431–32 (2013) (three of four, 75%).

60. *See* State v. Carmon, 169 N.C. App. 750, 756, 611 S.E.2d 211, 215 (2005) (five of seven, 71%).

61. *See, e.g.*, State v. Moore, 167 N.C. App. 495, 500, 606 S.E.2d 127, 130 (2004) (two of four, 50%); State v. Robinson, 97 N.C. App. 597, 600, 389 S.E.2d 417, 420 (1990) (three of six, 50%); State v. McNeill, 99 N.C. App. 235, 241, 393 S.E.2d 123, 126 (1990) (four of eight, 50%); State v. Batts, 93 N.C. App. 404, 409, 378 S.E.2d 211, 213 (1989) (two of four, 50%).

62. In the "reverse *Batson*" case of *State v. Cofield*, where the challenged jurors were white, the Court of Appeals held striking four of six jurors, or 67%, "reveal[ed] a 'pattern of strikes' against Caucasian jurors" supporting a prima facie case of discrimination under *Batson*. State v. Cofield, 129 N.C. App. 268, 277, 498 S.E.2d 823, 830 (1998); *see supra* text accompanying notes 26–31. As displayed above, it is disturbing that in at least eleven cases a 67% or higher strike rate against minority jurors did *not* reveal a legally significant "pattern of strikes" or raise a prima facie case of discrimination. *See supra* text accompanying notes 53–55, 58–60.

63. *See* State v. Smith, 328 N.C. 99, 121, 400 S.E.2d 712, 725 (1991) (twelve of twenty-one, citing an acceptance rate of 42.8%); *see also* State v. Spruill, 338 N.C. 612, 632, 452 S.E.2d 279, 289 (1994).

64. *See, e.g.*, State v. Taylor, 362 N.C. 514, 529, 669 S.E.2d 239, 255 (2008); State v. Ross, 338 N.C. 280, 285, 449 S.E.2d 556, 561 (1994).

65. 545 U.S. 231 (2005).

a strike, and criticizing lower courts for "imagin[ing] . . . reason[s] that might not have been shown up as false."[66]

Misapplying this principle, North Carolina appellate courts routinely conjure possible legitimate reasons for strikes from juror responses during voir dire and then rely on those reasons to uphold the finding of no prima facie case. For example, in *State v. Nicholson*,[67] the prosecutor struck two jurors without stating a reason.[68] On appeal, the Supreme Court of North Carolina relied on reasons not stated by the prosecutor—the two jurors expressed reservations about imposing the death penalty on voir dire—to find a prima facie showing had not been made, stating that "[t]he responses of these prospective jurors . . . are relevant to a determination of whether defendant has made a prima facie showing."[69] In *State v. Chapman*,[70] the appellate court expressed similar sentiments when considering a juror's expressed death penalty reservations and another juror's family criminal history to find that a prima facie case had not been made because these responses "provided obvious non-racial reasons for peremptory challenge."[71] In at least seventeen of its thirty-two cases finding no prima facie case, the Supreme Court of North Carolina has relied on a reason it itself had conjured from the voir dire to end the *Batson* inquiry at step one.[72] In eight of its fourteen cases finding no prima facie case, the North Carolina Court of Appeals has done the same.[73] This practice is error according to the framework provided by the United States Supreme Court.[74]

66. *Id.* at 250–52.

67. 355 N.C. 1, 558 S.E.2d 109 (2002).

68. *See id.* at 22–23, 558 S.E.2d at 125–26.

69. *Id.* at 23, 558 S.E.2d at 126.

70. 359 N.C. 328, 611 S.E.2d 794 (2005).

71. *Id.* at 343, 611 S.E.2d at 808; *see also* State v. Hoffman, 348 N.C. 548, 553, 500 S.E.2d 718, 722 (1998) (finding no prima facie case because a struck juror's response indicated a connection to defense counsel and for that reason "the State may have feared a bias in favor of defendant").

72. *See infra* Addendum, Table 5. In the cases listed in Addendum, Tables 5 and 6, the reasons cited by the appellate court were not proffered by the respective prosecutors. Rather, the courts themselves drew inferences from juror voir dire testimony in the record.

73. *See infra* Addendum, Table 6.

74. *See* Paul H. Schwartz, Comment, *Equal Protection in Jury Selection? The Implementation of* Batson v. Kentucky *in North Carolina*, 69 N.C. L. REV. 1533, 1551–56 (1991).

3. Imposing an Excessive Burden of Proof

In *Johnson v. California*,[75] the United States Supreme Court held that it is not necessary to fully prove the existence of purposeful discrimination or even show discrimination "more likely than not" occurred in order to establish a prima facie case under *Batson*.[76] Instead, the *Johnson* Court indicated that the burden of proof was far less onerous and held that "a defendant satisfies the requirements of *Batson*'s first step by producing evidence sufficient to permit the trial judge to draw an inference that discrimination has occurred."[77]

In misapplication of *Johnson*, the North Carolina appellate courts apply a crippling, virtually undefined,[78] and far too onerous burden of proof on defendants at *Batson*'s step one. North Carolina appellate decisions refusing to find a prima facie case where defendants have clearly produced evidence "sufficient to permit the . . . draw[ing] [of] an inference that discrimination has occurred" demonstrate the burden of proof applied at *Batson*'s first step is far too strict.[79] For example, in *State v. Chapman*,[80] the Supreme Court did not find a prima facie case where the prosecutor struck all three qualified minority jurors for a 100% minority strike rate, and the ultimate all-white jury sentenced the black defendant to death.[81] Similarly, in *State v. Robbins*,[82] the court did not find a prima facie case where the prosecutor struck 78% of qualified minority jurors and used more peremptory challenges on minority than white jurors to produce an all-white jury that sentenced the black defendant to death.[83]

In *State v. Quick*,[84] the prosecutor struck 50% of qualified minority jurors and no white jurors in a case involving a black

75. 545 U.S. 162 (2005).
76. *Id.* at 170.
77. *Id.*
78. Usually, the Supreme Court of North Carolina does not define the burden of proof it imposes in order to establish a prima facie case under *Batson*. Often, the court simply states a defendant "must make a prima facie showing." *See, e.g.*, State v. Taylor, 362 N.C. 514, 527, 669 S.E.2d 239, 254 (2008), *cert. denied*, 558 U.S. 581 (2009). Sometimes, the court overstates the necessary showing. *See, e.g.*, State v. Locklear, 349 N.C. 118, 136, 505 S.E.2d 277, 287 (1998) (requiring the defendant show that "racial discrimination appears to have been the motivation for the challenges" (quoting State v. Porter, 326 N.C. 489, 497, 391 S.E.2d 144, 150 (1990))).
79. *Johnson*, 545 U.S. at 170.
80. 359 N.C. 328, 611 S.E.2d 794 (2005).
81. *Id.* at 342, 611 S.E.2d at 807.
82. 319 N.C. 465, 356 S.E.2d 279 (1987).
83. *Id.* at 490–92, 356 S.E.2d at 294–95 (seven of nine, 78%).
84. 341 N.C. 141, 462 S.E.2d 186 (1995).

defendant.[85] On initial appeal, the North Carolina Court of Appeals found a prima facie case and remanded.[86] However, on further appeal, the Supreme Court of North Carolina reversed, holding that there was not sufficient evidence of a prima facie case and no *Batson* error.[87] In *State v. Gregory*,[88] the court did not find a prima facie case where the prosecutor struck 62.5% of qualified minority jurors and used half of the State's peremptory challenges against minority jurors, and the black defendant was sentenced to death.[89] Similarly, in *State v. Davis*,[90] the court did not find a prima facie case where the prosecutor struck 73% of qualified minority jurors and used more than half of the State's peremptory challenges against minority jurors, and the black defendant was sentenced to death.[91]

To be sure, the Supreme Court of North Carolina occasionally states that "a prima facie showing . . . is not intended to be a high hurdle for defendants to cross."[92] However, that court's actions, discussed above, speak much louder than those words. Since 1986, the North Carolina appellate courts have made a total of fifty-one adjudications at *Batson*'s step one in cases involving minority jurors and found only five prima facie cases.[93] This 10% prima facie case finding rate belies the "not intended to be a high hurdle" language and reveals that, in fact, the North Carolina appellate courts have

85. *Id.* at 143, 146, 462 S.E.2d at 188–89.

86. *Id.* at 143, 462 S.E.2d at 187–88 (two of four, 50%).

87. *Id.* at 142–47, 462 S.E.2d at 187–90.

88. 340 N.C. 365, 459 S.E.2d 638 (1995).

89. *See id.* at 398–99, 459 S.E.2d at 657 (five of eight, 62.5%).

90. 325 N.C. 607, 386 S.E.2d 418 (1989).

91. *Id.* at 618–19, 386 S.E.2d at 423 (eight of eleven, 73%); *see also* State v. Taylor, 362 N.C. 514, 529, 669 S.E.2d 239, 255 (2008) (refusing to find a prima facie case where the prosecutor struck three of five, or 60%, of qualified minority jurors and only two minority jurors sat on the ultimate jury); State v. Carmon, 169 N.C. App. 750, 756, 611 S.E.2d 211, 215 (2003) (holding the same where the prosecutor struck five of seven, or 71%, of minority jurors and used all of the State's peremptory challenges against minority jurors); State v. Fletcher, 348 N.C. 292, 319–20, 500 S.E.2d 668, 684 (1998) (holding the same where the prosecutor had challenged three of four, or 75%, of minority jurors at one point, and 80% at a later point, even though an earlier challenge had been denied); State v. Beach, 333 N.C. 733, 736–41, 430 S.E.2d 248, 250–52 (1993) (holding the same where the prosecutor struck nine of thirteen, or 69%, of qualified minority jurors and used 75% of the State's peremptory challenges to exclude minority jurors, and where only two minority jurors sat on the ultimate jury); State v. Belton, 318 N.C. 141, 153, 347 S.E.2d 755, 762–63 (1986) (holding the same in a case involving a black defendant and white victims where the prosecutor struck six of twelve, or 50%, of minority jurors and used 57% of the State's peremptory challenges against minority jurors).

92. *See, e.g.*, State v. Waring, 364 N.C. 443, 478, 701 S.E.2d 615, 638 (2010) (quoting State v. Hoffman, 348 N.C. 548, 553, 500 S.E.2d 718, 722 (1998)).

93. *See infra* Addendum, Tables 3 & 4; *see also supra* notes 45–49 and accompanying text.

made *Batson*'s step one an almost insurmountable barrier for defendants to cross.

B. Misapplications at Batson*'s Step Three*

Of the Supreme Court of North Carolina's seventy-four *Batson* cases, forty-six contain adjudications at *Batson*'s third step.[94] In every one of those forty-six cases—100%—that court denied the claim on the ground that the defendant failed to establish a case of purposeful discrimination.[95] The record in the North Carolina Court of Appeals is almost equally remarkable. Of the forty *Batson* cases involving minority jurors, twenty-five contain adjudications at *Batson*'s third step.[96] In twenty-four of those cases, that court denied the defendant's claim at step three.[97] In the sole outlier decision, discussed in Part I, the court found a *Batson* violation only because the prosecutor inexplicably never gave a reason for two of the strikes.[98] No North Carolina appellate court has ever found purposeful discrimination against minority jurors under *Batson* when the prosecutor has articulated any reason for the strike.

North Carolina appellate courts misapply the law in many ways as they adjudicate *Batson* claims at the purposeful discrimination stage, including: (1) refusing to recognize and give weight to disparate treatment of similarly situated jurors and (2) giving excessive deference to findings by the trial judge of no purposeful discrimination.

1. Ignoring Disparate Treatment of Similarly Situated Jurors

The United States Supreme Court has explicitly approved the practice of comparing a prosecutor's disparate treatment of similarly situated minority and white jurors *even when the jurors are not identical in all respects*, and held that such disparate treatment is powerful evidence of discriminatory intent at *Batson*'s third step.[99] In *Miller-El II*, the Court stated:

> [m]ore powerful than . . . bare statistics . . . are side-by-side comparisons of some black venire panelists who were struck

94. *See infra* Addendum, Table 7. In virtually all of these cases, the court reached the step three phase only because it or the trial court skipped the step one phase entirely.

95. *See infra* Addendum, Table 7.

96. *See infra* Addendum, Table 8.

97. *See infra* Addendum, Table 8.

98. State v. Wright, 189 N.C. App. 346, 352–54, 658 S.E.2d 60, 63–65 (2008); *see also supra* text accompanying notes 21–25.

99. Miller-El v. Dretke, 545 U.S. 231, 241, 247 n.6 (2005).

> and white panelists allowed to serve. If 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.[100]

The Court called such side-by-side comparisons "comparative juror analysis,"[101] an approach it had explicitly endorsed as early as 2003 in *Miller-El v. Cockrell*,[102] commonly referred to as *Miller-El I*. In dissent, Justice Thomas rejected the legitimacy of comparative juror analysis unless the potential jurors were "comparable in all respects that the prosecutor proffer[ed] as important."[103] The *Miller-El II* majority flatly rejected Justice Thomas' reasoning, stating that:

> [n]one of our cases announces a rule that no comparison is probative unless the situation of the individuals compared is identical in all respects, and there is no reason to accept one . . . 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.[104]

In *Foster v. Chatman*,[105] the United States Supreme Court recently compared treatment of black and white jurors, even though they seemingly shared only one common trait, and found "compelling" evidence of disparate treatment and purposeful discrimination.[106] The Court stated: "[s]till other explanations given by the prosecution, while not explicitly contradicted by the record, are difficult to credit because the State willingly accepted white jurors with the same traits that supposedly rendered [the struck black juror] an unattractive juror."[107] The Court then individually examined the given "explanations" trait by trait, such as age and marital status, and

100. *Id.* at 241; *see* Foster v. Chatman, 136 S. Ct. 1737, 1754 (2016).

101. *Miller-El v. Dretke*, 545 U.S. at 241.

102. 537 U.S. 322 (2003).

103. *Miller-El v. Dretke*, 545 U.S. at 291 (Thomas, J., dissenting). In his dissent, Justice Thomas also stated that " '[s]imilarly situated' does not mean matching any one of several reasons the prosecution gave for striking a potential juror—it means matching *all* of them." *Id.* (quoting *Miller-El v. Cockrell*, 537 U.S. at 362–63 (Thomas, J., dissenting)).

104. *Id.* at 247 n.6. The Court then actually performed painstaking comparative juror analysis of jurors who had "strong similarities as well as some differences," found disparate treatment, and held that this disparate treatment was a strong factor proving purposeful discrimination. *Id.* at 241–52; *see also* Snyder v. Louisiana, 552 U.S. 472, 483–85 (2008).

105. 136 S. Ct. 1737 (2016).

106. *Foster*, 136 S. Ct. at 1750–54.

107. *Id.* at 1750.

found meaningful discrimination between black and white jurors even though the disparate treatment related solely to one common trait.[108] Further, the compared jurors in *Foster* were far from identical: a black juror whose son had a criminal conviction was compared to white jurors whose sons did not have convictions; and a black juror whose wife worked at a mental hospital was compared to a white juror who no longer worked at the hospital.[109]

Remarkably, both before and after *Miller-El I* and *II*, no North Carolina appellate court has ever relied on comparative juror analysis to find a *Batson* violation in a case involving minority jurors. Indeed, the courts have improperly and consistently refused to engage in comparative juror analysis unless jurors were identical in all respects, and routinely disregarded disparate treatment of similarly situated jurors, as defined in *Miller-El II*, in adjudicating purposeful discrimination at *Batson*'s third step.[110] In decisions before *Miller-El I* and *II*, such as *State v. Williams*,[111] the Supreme Court of North Carolina refused to give any weight to disparate treatment of jurors unless the jurors were exactly identical, holding that "[d]isparate treatment of prospective jurors is not necessarily dispositive on the issue of discriminatory intent . . . . Because the ultimate decision to accept or reject a given juror depends on consideration of many relevant characteristics, one or two characteristics between jurors will rarely be directly comparable."[112] In *State v. Porter*,[113] the court held that "alleged disparate treatment of prospective jurors would not be dispositive necessarily . . . . Rarely will a single factor control the

108. *Id.* at 1750–54.

109. *Id.* at 1751–54.

110. The only exceptions are the "reverse *Batson*" cases of *State v. Hurd*, __ N.C. App. __, __, 784 S.E.2d 528, 534 (2016), and *State v. Cofield*, 129 N.C. App. 268, 270, 277, 498 S.E.2d 823, 826, 830 (1998), where the challenged jurors were white. In *Cofield*, the North Carolina Court of Appeals applied comparative juror analysis even though the black and white jurors merely "parall[ed]" each other and had "almost . . . identical credentials." *Cofield*, 129 N.C. App. at 270, 498 S.E.2d at 826; *see supra* text accompanying notes 21–32. In *Hurd*, the court employed comparative juror analysis even though the minority and white jurors' answers were not identical; the face of the decision shows the jurors gave only one similar answer regarding the death penalty, those two answers were not identical ("probably about a four" versus "four" on a hypothetical death penalty scale), and there is no indication the unchallenged juror ever similarly stated "there's a punishment for a crime." *Hurd*, __ N.C. App. at __, 784 S.E.2d at 532–36. These cases are the only cases in North Carolina appellate history utilizing comparative juror analysis to find a *Batson* violation. These two cases also happen to be reverse *Batson* cases disallowing black defendants' challenges of white jurors.

111. 339 N.C. 1, 452 S.E.2d 245 (1994).

112. *Id.* at 18, 452 S.E.2d at 256.

113. 326 N.C. 489, 391 S.E.2d 144 (1990).

decision-making process."[114] The court rejected comparison of jurors who were not identical in all respects, stating:

> This approach fails to address the factors as a totality which when considered together provide an image of a juror . . . . "[M]erely because some of the observations regarding each stricken venireperson may have been equally valid as to other members of the venire who were not challenged [does not] require[ ] . . . finding the reasons were pretextual."[115]

In decisions after *Miller-El I* and *II*, the North Carolina appellate courts have obstinately continued to refuse to engage in comparative juror analysis unless jurors were identical in all respects. For example, in the 2004 decision in *State v. Bell*,[116] the State struck a black juror allegedly because her foster child was seeking psychiatric treatment, but passed a white juror who "worked with and around psychologists on a daily basis" and other white jurors who had "connections to the psychiatric field."[117] The State struck another black juror allegedly because she had been charged with a crime, although the charges were "dropped," and because she had a child with special needs; however, the State passed white jurors whose relatives were convicted and charged with crimes and other white jurors "with previous experiences in the criminal justice system."[118] On appeal, the *Bell* court insisted the jurors were "not . . . similarly situated individuals" and rejected the defendant's disparate treatment claims "because the same combination of factors was not present in the other two prospective jurors" and "no juror had experienced all . . . the circumstances that caused the State to dismiss" a minority juror.[119] In

114. *Id.* at 501, 391 S.E.2d at 152.

115. *Id.* at 501, 391 S.E.2d at 152–53 (quoting State v. Thomas, 780 S.W.2d 128, 131 (Mo. Ct. App. 1989)); *see also* State v. Rouse, 339 N.C. 59, 80, 451 S.E.2d 543, 554 (1994) (stating that disparate treatment not demonstrated "[e]ven if the responses of these eleven [unchallenged] jurors were similar to those of" struck black juror), *overruled on other grounds by* State v. Hurst, 360 N.C. 181, 624 S.E.2d 309 (2006); State v. Thomas, 329 N.C. 423, 432, 407 S.E.2d 141, 147 (1991).

116. 359 N.C. 1, 603 S.E.2d 93 (2004).

117. *Id.* at 13–14, 603 S.E.2d at 103.

118. *Id.* at 14–16, 603 S.E.2d at 103–04.

119. *Id.* at 13–16, 603 S.E.2d at 103–04; *see also* State v. McClain, 169 N.C. App. 657, 669, 610 S.E.2d 783, 791 (2005) (rejecting comparative juror analysis unless jurors were identical); State v. Littlejohn, 158 N.C. App. 628, 633, 582 S.E.2d 301, 305 (2003) (same). In contrast to *Bell*, the United States Supreme Court saw sufficient similarities to conduct meaningful comparative juror analysis between a black juror who was struck allegedly in part because his wife currently worked at a mental hospital and a white juror who was passed even though she had once, but did not currently, work at that same hospital. Foster v. Chatman, 136 S. Ct. 1737, 1754 (2016).

other post-*Miller-El I* decisions, North Carolina courts have simply not addressed the disparate treatment claims made by defendants and failed to perform any comparative juror analysis.[120]

In *State v. Waring*,[121] the Supreme Court of North Carolina's most recent *Batson* case, the court cited *Miller-El II* and indicated it might be more open to comparative juror analysis and disparate treatment claims.[122] However, on closer inspection, *Waring*'s holdings and results clearly show that the court continues to misapply the law and require that jurors be identical in all respects before it will find probative disparate treatment. In *Waring*, the prosecutor struck a black juror primarily because she had been charged—but not prosecuted—for driving a car with an altered vehicle identification number ("VIN"), and because her jury questionnaire and voir dire were inconsistent with court records.[123] The prosecutor then passed a white juror who had twice been convicted of drunk driving and whose jury questionnaire and voir dire were also inconsistent with court records.[124] Although there were only very minor differences between the jurors,[125] the appellate court held that the jurors "were not similarly situated" and consequently found no significance in the prosecutor's disparate treatment.[126] At the same trial, the prosecutor also challenged a black juror who stated personal opposition to the death penalty when first asked but later qualified her answer by pledging three times that she could impose death and was not predisposed to life; however, the prosecutor passed two white jurors who "expressed various opinions about the death penalty" when

120. *See* State v. Chapman, 359 N.C. 328, 340–43, 611 S.E.2d 794, 806–08 (2005); State v. James, 230 N.C. App. 346, 354, 750 S.E.2d 851, 857 (2013).

121. 364 N.C. 443, 701 S.E.2d 615 (2010).

122. *Id.* at 487, 701 S.E.2d at 643 ("While a prosecutor's reason for exercising a peremptory challenge can appear race-neutral when standing alone, a comparative analysis [of jurors] may provide a more reliable gauge of its plausibility.").

123. *Id.* at 489–90, 701 S.E.2d at 644.

124. *Id.* at 490–91, 701 S.E.2d at 644–45.

125. The record does not support the prosecutor's claim the black juror did not have a position on the death penalty; the juror said three times she had thought about the death penalty, she could vote for death, she would not be reluctant to perform her duties, and her position was: "I still didn't come up with a position where I would be swayed in either way." *Id.* at 481–91, 701 S.E.2d at 640–45. *Compare* Miller-El v. Dretke, 545 U.S. 231, 242–46 (2005) (stating that prosecutor's reason for strike "mischaracterized [the juror's] testimony" and was discredited), *with* Foster v. Chatman, 136 S. Ct. 1737, 1753–54 (2016) (discrediting prosecutor's assertion that he struck a black juror because the juror "appeared to be confused" about his position on the death penalty where the record of jury voir dire showed the juror "unequivocally voiced his willingness to impose the death penalty"). The record suggests the *Waring* prosecutor ran record checks on black, but not white, jurors. *Waring*, 364 N.C. at 489, 701 S.E.2d at 644.

126. *Waring*, 364 N.C. at 490–91, 701 S.E.2d at 645.

asked and also later qualified their answers.[127] The defendant indicated that one white juror initially expressed "personal issues" with the death penalty but "ultimately stated he could follow the law," and the other said she was "predisposed to life without parole" and that death "would not be 'plan A.' "[128] Although there were no other significant differences between the jurors, the appellate court found that there was a "definable difference" between the jurors with regard to death penalty views, and consequently, no probative disparate treatment.[129]

These decisions, including the most recent ones in *Waring*, *Bell*, and *Carter*, demonstrate that the North Carolina appellate courts improperly continue post-*Miller-El I* and *II* to refuse to find significance in disparate treatment of jurors unless the jurors are identical in all respects, even if those courts do not expressly acknowledge that continued practice. Under any reasonable view, the black and white jurors in *Waring* and other cited cases shared very strong similarities and were similarly situated as defined in *Miller-El II*. The differences between the *Waring* jurors were so minor and insignificant as to be practically nonexistent; in fact, there were more differences between the *Miller-El II* jurors, who received meaningful comparative juror analysis, than there were between the *Waring* jurors who did not. While the *Waring* prosecutor's disparate treatment of the jurors should have been powerful evidence of purposeful discrimination, the disparate treatment was of no probative value at all because the North Carolina court incorrectly held that the jurors were allegedly "definably different." *Waring* shows that a determined North Carolina trial or appellate court can

127. *Id.* at 479, 701 S.E.2d at 638.

128. *Id.*

129. *Id.* at 475–80, 701 S.E.2d at 636–39; *see also* State v. Carter, 212 N.C. App. 516, 522–25, 711 S.E.2d 515, 522–24 (2011) (finding that two black jurors whose relatives were incarcerated and one "without . . . much experience in the community," were not similarly situated to a white juror whose relative was incarcerated, white jurors who had criminal records, and two white jurors who were new to the community); State v. Matthews, 162 N.C. App. 339, 342–43, 595 S.E.2d 446, 449–50 (2004) (holding that the prosecutor's strike of a black juror who had been excused from a jury in a prior case, but failure to strike white jurors with similar experience, "does not rise to the level of demonstrating discriminatory intent"). *Compare* State v. McCord, 158 N.C. App. 693, 697–99, 582 S.E.2d 33, 36 (2003) (holding no disparate treatment when the prosecutor struck a black juror who was young, single, and employed "by an unfamiliar business," but did not strike white jurors who were single and employed by unfamiliar businesses because no white juror "possessed all three qualities"), *with Foster*, 136 S. Ct. at 1752–53 (comparing disparate treatment of a black juror with a young son who had a criminal conviction and white jurors with young sons who did not have criminal convictions despite the State's argument the jurors were "not similar").

always find minute differences between what are, in reality, similarly situated jurors and then justify ignoring true disparate treatment because of those insignificant differences. The North Carolina appellate courts have rejected comparative juror analysis and disparate treatment claims in more than twenty-five cases as they have erroneously refused to acknowledge that disparate treatment can be probative even where jurors are not identical in all respects.[130] This continued practice violates the letter and spirit of *Miller-El II* and *Foster v. Chatman*, and is why the North Carolina appellate courts have never found a *Batson* violation against minority jurors employing comparative juror analysis. Indeed, as the Supreme Court foresaw in *Miller-El II*, the practice of requiring an "exactly identical white juror" has made *Batson* and comparative juror analysis "inoperable" in North Carolina.[131]

2. Affording Excessive Deference

The United States Supreme Court has recognized the principle that, in *Batson* cases, "the trial court's decision on the ultimate question of discriminatory intent represents a finding of fact of the sort accorded great deference on appeal and will not be overturned unless clearly erroneous."[132] However, the same Court has also cautioned that "deference does not imply abandonment or abdication of judicial review. Deference does not by definition preclude relief[,]" and chided reviewing courts for blindly following a trial court's determinations rather than giving "full consideration to the substantial evidence" put forth by a defendant in support of a *Batson* claim.[133] Later, the Court observed that "[i]f any facially neutral reason sufficed to answer a *Batson* challenge, then *Batson* would not amount to much more than *Swain*. Some stated reasons are false, and . . . some false reasons are shown up within the four corners of a given case[.]"[134] Further, in *Snyder v. Louisiana*,[135] the Court recognized that such high deference is inappropriate where the prosecutor alleges a demeanor-based reason for a strike but the trial court fails to "[make] a finding that an attorney credibly relied on demeanor in exercising [the] strike."[136]

130. *See infra* Addendum, Table 9.
131. Miller-El v. Dretke, 545 U.S. 231, 247 n.6 (2005).
132. Miller-El v. Cockrell, 537 U.S. 322, 340 (2003) (quoting Hernandez v. New York, 500 U.S. 352, 364 (1991)).
133. *Id.* at 340–41.
134. *Miller-El v. Dretke*, 545 U.S. at 240.
135. 552 U.S. 472 (2008).
136. *See id.* at 479.

Misapplying these holdings, North Carolina appellate courts afford far too much deference to trial courts and conduct cursory review of *Batson* claims at best. Indeed, in review of almost every *Batson* claim within the jurisdiction, the appellate courts rely on the proposition that "[a] trial court's rulings regarding race-neutrality and purposeful discrimination are largely based on evaluations of credibility and should be given great deference" and hold no violation without considered analysis of the claim.[137]

This toothless review in *Batson* cases is especially improper in light of the dubious reasons North Carolina prosecutors routinely give for their peremptory challenges of minority jurors at the second step of the *Batson* framework. Review of the *Batson* cases shows a surprisingly large number of prosecutors' reasons are based on alleged juror demeanor, such as jurors' body language or failure to make appropriate eye contact.[138] An even larger number of

137. *See, e.g.*, State v. King, 353 N.C. 457, 469–70, 546 S.E.2d 575, 586–87 (2001). In contrast, the North Carolina Court of Appeals conducted an exhaustive review of the State's *Batson* claim in the reverse *Batson* case of *State v. Hurd*, __ N.C. App. __, 784 S.E.2d 528 (2016). There, although the court accorded great deference to the trial court's determination, it also extensively compared the voir dire answers of the challenged white juror to those of an unchallenged "Asian/Black" juror, examined the entire context of the strike, including a pre-trial motion that was not in the appellate record, and even faulted the defendant's reasons for the strike as somehow "fail[ing] to resolve" other statements made by the challenged juror on voir dire. *Id.* at __, 784 S.E.2d at 532–33, 535–36. Then, the court rejected the defendant's proffered reasons even though they were the very same type of reasons the court has routinely accepted in previous cases involving strikes of minority jurors. *See id.* at __, 784 S.E.2d at 537. This reverse *Batson* decision, notwithstanding its deference to the trial court, is one of the few North Carolina appellate cases to exhaustively review a *Batson* claim and truly scrutinize the reasons proffered for the strike. Again, it is troublesome that one of the few North Carolina cases to fully consider a *Batson* claim on appeal involves a reverse *Batson* claim rather than one involving minority jurors.

138. *See, e.g.*, State v. Bonnett, 348 N.C. 417, 434, 502 S.E.2d 563, 575 (1998). For example, prosecutors claimed to have struck minority jurors in part because they "sat with [their] arms crossed," State v. White, 349 N.C. 535, 549, 508 S.E.2d 253, 263 (1998); answered questions "with [their] arms folded," State v. Robinson, 336 N.C. 78, 95, 443 S.E.2d 306, 313 (1994); and were "leaning away" from the prosecutor, State v. Lyons, 343 N.C. 1, 12, 468 S.E.2d 204, 208 (1996). Other prosecutors have claimed they struck minority jurors because the jurors were allegedly "nervous," State v. Smith, 328 N.C. 99, 125, 400 S.E.2d 712, 727 (1991); "head-strong," State v. Floyd, 115 N.C. App. 412, 415, 445 S.E.2d 54, 57 (1994); "soft-spoken," State v. Gaines, 345 N.C. 647, 668, 483 S.E.2d 396, 409 (1997); "belligerent," *Bonnett*, 348 N.C. at 434, 502 S.E.2d at 575; "hostile," State v. Jackson, 322 N.C. 251, 255, 368 S.E.2d 838, 840 (1988); or because the jurors were "smiling," State v. Locklear, 349 N.C. 118, 139, 505 S.E.2d 277, 289 (1998). When contradictory reasons, such as both "hostile" and "smiling," are legitimate, it would seem very hard for the State to lose. *Compare* State v. Barnes, 345 N.C. 184, 211–13, 481 S.E.2d 44, 58–59 (1997) (reviewing a prosecutor's striking of a black juror because she was "not a local person" and another black juror who had too many community ties), *with* Foster v. Chatman, 136 S. Ct. 1737, 1748, 1751 (2016) (discrediting proffered reasons for

prosecutors' reasons are based on even more subjective juror characteristics and allegedly based on their opinion that the juror was evasive, immature, confrontational, authoritarian, equivocal, misleading, hesitant, or uncertain.[139] Further, many prosecutorial reasons are not based on facts found in the record or proved to be true. Thus, prosecutors frequently claim their strikes of minority jurors are based on record checks they performed before trial, information from a police officer or prosecutor's office staff member, or information the prosecutor says he or she knows to be true that conflicts with the juror's questionnaire or voir dire answers.[140] Prosecutors often cite reasons that are totally unrelated to the case being tried and seemingly fantastic. For example, a prosecutor claimed to have struck a minority juror because the juror was "physically attractive."[141] These reasons, all of which have been accepted by North Carolina trial and appellate courts, "reek[ ] of afterthought."[142]

Orders issued in 2012 by Gregory Weeks, a North Carolina trial judge in Cumberland County, in connection with Racial Justice Act

peremptory strikes where the prosecutor struck one black juror in part because he asked to be excused from jury service and another black juror in part because she did not ask to be excused from jury service).

139. *See, e.g.*, *Bonnett*, 348 N.C. at 434–35, 502 S.E.2d at 575 (reviewing a prosecutor's striking of a juror based on the juror's "air of defiance"). Other alleged reasons have included the juror's "rather militant animus," State v. Golphin, 352 N.C. 364, 430, 533 S.E.2d 168, 213 (2000); the juror's "non-verbal communication suggested hostility and indifference," *Jackson*, 322 N.C. at 257, 368 S.E.2d at 841; and that the juror was "potentially less responsible," *Barnes*, 345 N.C. at 211, 481 S.E.2d at 58. Still other reasons include that the prosecutor "just did not feel comfortable with [the juror's] answers and her demeanor," State v. Williams, 343 N.C. 345, 358, 471 S.E.2d 379, 386 (1996); "didn't get a good sense that [the juror] ha[s] a good sense of herself," State v. Waring, 364 N.C. 443, 478, 710 S.E.2d 615, 638 (2010); or "perceived 'some reluctance' " in the juror's answers, State v. Larrimore, 340 N.C. 119, 134, 456 S.E.2d 789, 796 (1995).

140. *See, e.g.*, *Bonnett*, 348 N.C. at 434, 502 S.E.2d at 575; State v. Kandies, 342 N.C. 419, 436–38, 467 S.E.2d 67, 76–77 (1996).

141. *Barnes*, 345 N.C. at 210–11, 481 S.E.2d at 58. Other asserted reasons include that the juror "had never held a professional position," State v. Martin, 105 N.C. App. 182, 187, 412 S.E.2d 134, 136 (1992); the juror had an "alleged acquaintance with [the] defendant's former girlfriend," State v. Pender, 218 N.C. App. 233, 239, 720 S.E.2d 836, 840 (2012); the juror was "not promoted in the military as [soon as the prosecutor thought] he should have been," State v. Floyd, 343 N.C. 101, 105, 468 S.E.2d 46, 49 (1996); and the juror had "personal problems" with her own daughter, State v. Bell, 359 N.C. 1, 14, 603 S.E.2d 93, 104 (2004). In *State v. Best*, the court explicitly expressed that it would approve "implausible or even fantastic" reasons. 342 N.C. 502, 511, 467 S.E.2d 45, 51 (1996). *But see Foster*, 136 S. Ct. at 1752 (finding that the prosecutor's implausible' and 'fantastic' assertion" supported the Court's conclusion that the prosecutor's reason for striking the juror was "pretextual").

142. *Foster*, 136 S. Ct. at 1755 (quoting Miller-El v. Dretke, 545 U.S. 231, 246 (2005)).

litigation show the regularity with which North Carolina prosecutors offer pretextual reasons for peremptory strikes at *Batson*'s step two.[143] Judge Weeks' orders surveyed a large number of criminal cases not discussed here, and reveal that the reasons prosecutors gave for strikes in those cases were often subjective, irrelevant, and thinly-disguised pretext for racial discrimination.[144] Judge Weeks also found that in the 1990s North Carolina prosecutors circulated and used a "cheat sheet" of approved reasons for minority strikes that included such reasons as "lack of eye contact," "air of defiance," "arms folded," "leaning away from questioner," and "evasive."[145] The similarity between the reasons listed in the "cheat sheet" and the reasons given in the cases discussed here further demonstrates the given reasons were pure pretext.[146]

In light of the highly suspect nature of the reasons North Carolina prosecutors give for minority juror strikes at *Batson*'s step two, the failure of the appellate courts to weigh the validity of those reasons and find purposeful discrimination at *Batson*'s step three is especially improper. Under correct review at *Batson*'s third step, "the persuasiveness of the justification becomes relevant . . . [and] implausible or fantastic justifications may (*and probably will*) be found to be pretexts for purposeful discrimination."[147] North Carolina appellate courts, however, accept fanciful reasons as race-neutral and do not consider their unpersuasive nature when determining whether purposeful discrimination has occurred. North Carolina appellate courts routinely grant too much deference even where the State's reasons are weak, the trial court has not made a demeanor-based factual finding, and there is strong evidence of purposeful discrimination.

143. *See* Order Granting Motions for Appropriate Relief at 1–6, State v. Golphin, 97-CRS-47314-15 (N.C. Super. Ct. Dec. 13, 2012), https://www.aclu.org/files/assets/rja_order_12-13-12.pdf [https://perma.cc/XV6V-VDQ5]; Order Granting Motion for Appropriate Relief, *supra* note 40, at 1–3.

144. Order Granting Motions for Appropriate Relief, *supra* note 143, at 112–36.

145. *Id.* at 73–77.

146. Without expressing any opinion on the findings, conclusions, or substantive merits of Judge Weeks' orders, on December 18, 2015, the Supreme Court of North Carolina vacated them for procedural error and remanded for further proceedings in the trial court. State v. Augustine, 368 N.C. 594, 780 S.E.2d 552 (2015); State v. Robinson, 368 N.C. 596, 780 S.E.2d 151 (2015).

147. Purkett v. Elem, 514 U.S. 765, 768 (1995) (emphasis added). Indeed, in *Foster*, the United States Supreme Court itself conducted an "independent examination of the record," which revealed that much of the prosecutor's reasoning had "no grounding in fact" and many of the prosecutor's reasons "[could not] be credited." *Foster*, 136 S. Ct. at 1749, 1751.

For example, in *State v. Thomas*[148] the prosecutor struck seven of eight eligible black prospective jurors in a case involving a black defendant and a white victim.[149] While the prosecutor said he struck jurors because "one was young and unmarried, and not as stable and mature as the State preferred; one had never before thought about the death penalty and appeared evasive; [and] one was young and stated that serving on the jury would work hardship on his job because he traveled a lot"; the defendant argued on appeal that these reasons were pretext since the State failed to strike white jurors with the same characteristics.[150] Despite the high minority strike rate, the State's weak and subjective reasons, no apparent factual finding by the trial court regarding one juror's alleged evasiveness, and evidence showing pretext, the Supreme Court of North Carolina nonetheless accorded the trial court "great deference" and did not find a *Batson* violation.[151] In *State v. Bell*, the court did not find a *Batson* violation even though the prosecutor struck nine of eleven minority jurors, gave demeanor-based reasons for strikes, passed similarly situated white jurors, and the trial court apparently made no factual findings.[152]

In *State v. Fletcher*,[153] a case involving a black defendant and a white female victim, the prosecutor challenged two of the first three black jurors, disparately questioned black juror Greene, and did not challenge white jurors who gave answers similar to Greene.[154] Further, the trial court found the prosecutor's challenge to another black juror was racially discriminatory.[155] Nevertheless, the Supreme Court of North Carolina accorded "great deference" and did not find a *Batson* violation as to Greene.[156] In *State v. Lyons*,[157] the State struck three minority prospective jurors allegedly because one "was

148. 329 N.C. 423, 407 S.E.2d 141 (1991).

149. *Id.* at 432, 407 S.E.2d at 147 (seven of eight, 87.5%).

150. *Id.* at 430, 407 S.E.2d at 146.

151. *Id.* at 431–33, 407 S.E.2d at 146–48. Similarly, in *State v. Bond*, that court incorrectly afforded "much deference" and did not recognize a *Batson* violation where the State used eight of nine peremptory strikes against black prospective jurors (approximately 89%); the juror at issue was allegedly struck because he "expressed some hesitation and . . . appeared to be concerned and worried when asked about the death penalty," although there was no indication the trial court made a factual finding as to demeanor. 345 N.C. 1, 21, 478 S.E.2d 163, 173 (1996).

152. State v. Bell, 359 N.C. 1, 11–16, 603 S.E.2d 93, 103–05 (2004).

153. 348 N.C. 292, 500 S.E.2d 668 (1998).

154. *Id.* at 314–17, 500 S.E.2d at 681–84.

155. *Id.*

156. *Id.* at 313–14, 500 S.E.2d at 680–81.

157. 343 N.C. 1, 468 S.E.2d 204 (1996).

leaning away from the entire jury selection process," one was a nurse and looked "shocked" and "puzzled" in response to voir dire questions, and one did not have a "sufficient stake in the community."[158] Although the trial court did not make factual findings as to the demeanor of those jurors and the State accepted three white jurors who were also nurses, the Supreme Court of North Carolina nonetheless accorded excessive deference and did not find a *Batson* violation.[159]

Similarly, in *State v. Tirado*[160] the State used eight of its first ten peremptory strikes against minority prospective jurors in a case involving minority defendants and two white victims.[161] The prosecutor said he struck one juror because he would not maintain eye contact and provided short answers on voir dire and another because "she didn't understand sometimes—I don't—can't say that she wasn't paying attention. I don't know. We just don't know what the cause of it was, but we could see the result of that concern was her sitting over a long trial[.]"[162] Despite the prosecutor's inability to articulate the reason for striking the female juror and absent specific factual findings by the trial court as to demeanor, the appellate court nonetheless found no error, reasoning that "the trial court was in the best position to assess the prosecutor's credibility."[163]

These cases illustrate the overwhelming tendency of North Carolina appellate courts to provide cursory review of *Batson* claims and to afford excessive deference to lower court *Batson* findings—an approach that contrasts sharply with that of the United States

158. *Id.* at 11–13, 468 S.E.2d at 208–09.

159. *Id.* at 13–14, 468 S.E.2d at 209–10. Similarly, that court afforded "great deference" and did not find a *Batson* violation in *Kandies* even where the State struck nine black prospective jurors, allegedly basing two of the strikes on the opinions of "a source within the High Point Police Department" not before the court, and where the defendant argued that the State failed to strike similarly situated white prospective jurors. *See* State v. Kandies, 342 N.C. 419, 434–37, 467 S.E.2d 67, 75–76 (1996); Amanda S. Hitchcock, Recent Development, *"Deference Does Not by Definition Preclude Relief": The Impact of* Miller-El v. Dretke *on* Batson *Review in North Carolina Capital Cases*, 84 N.C. L. REV. 1328, 1353–55 (2006). Furthermore, in *King*, the defendant challenged one of the State's six strikes against black prospective jurors. State v. King, 353 N.C. 457, 468, 546 S.E.2d 575, 585–86 (2001). The prosecutor said he struck the juror based on information "from another source" not named or in the record and because the juror's uncle had been murdered. Even though the prosecutor admitted the information was totally unconfirmed and passed a white juror whose wife had been raped, the Supreme Court of North Carolina nonetheless afforded the trial court "great deference" and did not recognize a *Batson* violation. *Id.* at 470–72, 546 S.E.2d at 587–88.

160. 358 N.C. 551, 599 S.E.2d 515 (2004).

161. *Id.* at 568–70, 599 S.E.2d at 528–29 (eight of ten, 80%).

162. *Id.*

163. *Id.*

Supreme Court over the last ten years. In *Foster*, *Snyder*, and *Miller-El II*, the state courts did not find *Batson* violations; however, the Supreme Court conducted searching "independent examination of the record" and, despite the highly deferential standard of review, found clear error in the state courts' decisions and substantive violations.[164] These recent decisions clearly indicate that state courts are affording excessive deference to lower court *Batson* findings, a message the North Carolina appellate courts seemingly have yet to hear.[165]

IV. THE *BATSON* RECORDS IN NEIGHBORING STATES

North Carolina's remarkable appellate *Batson* record stands in sharp contrast to the records of her neighboring states in the Fourth Circuit, which have all been much more willing than North Carolina to engage in meaningful *Batson* analysis and hold *Batson* violations when warranted. The records in these states are further evidence North Carolina misapplies *Batson* jurisprudence. Since 1986, the appellate records in these neighboring states with respect to adjudication of claims of purposeful racial discrimination against minority jurors at *Batson*'s step three are as follows[166]:

164. *See* Foster v. Chatman, 136 S. Ct. 1737, 1749, 1755 (2016); Snyder v. Louisiana, 552 U.S. 472, 485–86 (2008); Miller-El v. Dretke, 545 U.S. 231, 266 (2005).

165. In *Foster*, the Court noted Georgia prosecutors had at times been "downright indignant" at accusations they engaged in purposeful racial discrimination under *Batson*. *Foster*, 136 S. Ct. at 1755. So too, perhaps, are the North Carolina defense lawyers in the reverse *Batson* cases of *Hurd* and *Cofield*, who were similarly found to have violated *Batson*. The authors suggest that any such indignation should instead be focused toward state jury selection practices which produce overwhelming statistical disparities that simply could not occur in race-neutral jury selection. *See* Batson v. Kentucky, 476 U.S. 79, 98–99 (1986) (if affirmations of good faith "were accepted as rebutting a defendant's prima facie case, the Equal Protection Clause 'would be but a vain and illusory requirement' . . . . The reality of practice . . . shows that the [peremptory] challenge may be, and unfortunately at times has been, used to discriminate against black jurors") (quoting Norris v. Alabama, 294 U.S. 587, 598 (1935)).

166. Although appellate courts in neighboring states have found substantive *Batson* violations in civil cases, North Carolina appellate courts have made no such findings. *See infra* Addendum, Table 10 (providing published cases in which courts in neighboring states found substantive *Batson* violations).

Appellate *Batson* Records in Fourth Circuit States Since 1986

State Court	*Batson* Adjudications at Step Three	Number of Batson Violations Found
W. Va.	9	2
Md.	6	3
Va.	18	3
Va. Ct. App.	13	3
S.C.	33	11
S.C. Ct. App.	14	2

Accordingly, every other court of last resort in virtually every state neighboring North Carolina has found at least one substantive *Batson* violation in the last thirty years.[167] South Carolina's has found eleven such violations.[168] Compare these neighboring states' records to the Supreme Court of North Carolina's record of zero violations in seventy-four *Batson* cases and the overall North Carolina appellate record of zero violations in 113 *Batson* cases when the prosecutor has stated a reason for striking minority jurors. With regard to *Batson* jurisprudence within the region, North Carolina appears to stand alone.

CONCLUSION

In *Batson*, the United States Supreme Court overruled its previous decision in *Swain v. Alabama*, reasoning that *Swain* "placed on defendants a crippling burden of proof" and made "prosecutors' peremptory challenges . . . largely immune from constitutional scrutiny."[169] Unfortunately, over the last thirty years, North Carolina has created a remarkable and disappointing appellate *Batson* record by misapplying binding precedent found in *Batson* and subsequent decisions, paying lip service to *Batson* jurisprudence, and continuing to adhere to rejected pre-*Batson* principles. Thirty years after *Batson*, North Carolina defendants challenging racially discriminatory

167. *See infra* Addendum, Table 10. A 2010 study by the Equal Justice Initiative showed the appellate courts in six other southern states—Florida, Georgia, Mississippi, Alabama, Arkansas, and Louisiana—have all ordered multiple reversals for substantive *Batson* violations and racially-tainted jury selection. EQUAL JUSTICE INITIATIVE, ILLEGAL RACIAL DISCRIMINATION IN JURY SELECTION: A CONTINUING LEGACY 19–27 (2010), http://www.eji.org/raceandpoverty/juryselection [https://perma.cc/9YCU-7RLN]. Alabama's appellate courts have ordered over eighty such reversals. *Id.*

168. *See infra* Addendum, Table 10.

169. Batson v. Kentucky, 476 U.S. 79, 92–93 (1986).

peremptory strikes still face a crippling burden of proof and prosecutors' peremptory challenges are still effectively immune from constitutional scrutiny.

Although *Batson* has received criticism for not providing the most effective tool for eradicating racial discrimination in jury selection, the *Batson* records in North Carolina's neighboring states and the United States Supreme Court's decisions in *Foster*, *Snyder*, and *Miller-El II* belie the notion that *Batson* is completely toothless in combating discriminatory peremptory challenges. Further, as recently affirmed in *Foster*, the *Batson* framework is the law of the land which must be given meaningful and correct application in North Carolina rather than the cursory nod and misapplication it has received to date. Hopefully, *Batson*'s thirtieth anniversary and the *Foster* decision will be the turning point for North Carolina's thus far remarkable and disappointing appellate *Batson* record.

ADDENDUM

A. Table 1: Supreme Court of North Carolina Published Cases Adjudicating Batson *Claims on the Merits, 1986–2016*

1. *State v. Waring*, 364 N.C. 443, 701 S.E.2d 615 (2010).
2. *State v. Maness*, 363 N.C. 261, 677 S.E.2d 796 (2009).
3. *State v. Taylor*, 362 N.C. 514, 669 S.E.2d 239 (2008).
4. *State v. Augustine*, 359 N.C. 709, 616 S.E.2d 515 (2005).
5. *State v. Chapman*, 359 N.C. 328, 611 S.E.2d 794 (2005).
6. *State v. Bell*, 359 N.C. 1, 603 S.E.2d 93 (2004).
7. *State v. Tirado*, 358 N.C. 551, 599 S.E.2d 515 (2004).
8. *State v. Barden*, 356 N.C. 316, 572 S.E.2d 108 (2002).
9. *State v. Williams*, 355 N.C. 501, 565 S.E.2d 609 (2002).
10. *State v. Rogers*, 355 N.C. 420, 562 S.E.2d 859 (2002).
11. *State v. Nicholson*, 355 N.C. 1, 558 S.E.2d 109 (2002).
12. *State v. Fair*, 354 N.C. 131, 557 S.E.2d 508 (2001).
13. *State v. King*, 353 N.C. 457, 546 S.E.2d 575 (2001).
14. *State v. Hardy*, 353 N.C. 122, 540 S.E.2d 334 (2000).
15. *State v. Smith*, 352 N.C. 531, 532 S.E.2d 773 (2000).
16. *State v. Golphin*, 352 N.C. 364, 533 S.E.2d 168 (2000).
17. *State v. Blakeney*, 352 N.C. 287, 531 S.E.2d 799 (2000).
18. *State v. Braxton*, 352 N.C. 158, 531 S.E.2d 428 (2000).
19. *State v. Lawrence*, 352 N.C. 1, 530 S.E.2d 807 (2000).
20. *State v. Smith*, 351 N.C. 251, 524 S.E.2d 28 (2000).
21. *State v. Thomas*, 350 N.C. 315, 514 S.E.2d 486 (1999).
22. *State v. White*, 349 N.C. 535, 508 S.E.2d 253 (1998).
23. *State v. Hoffman*, 349 N.C. 167, 505 S.E.2d 80 (1998).
24. *State v. Locklear*, 349 N.C. 118, 505 S.E.2d 277 (1998).
25. *State v. Hoffman*, 348 N.C. 548, 500 S.E.2d 718 (1998).
26. *State v. Bonnett*, 348 N.C. 417, 502 S.E.2d 563 (1998).
27. *State v. Lemons*, 348 N.C. 335, 501 S.E.2d 309 (1998), *vacated on other grounds*, 527 U.S. 1018 (1999).
28. *State v. Fletcher*, 348 N.C. 292, 500 S.E.2d 668 (1998).
29. *State v. Smith*, 347 N.C. 453, 496 S.E.2d 357 (1998).
30. *State v. Cummings*, 346 N.C. 291, 488 S.E.2d 550 (1997).
31. *State v. Robinson*, 346 N.C. 586, 488 S.E.2d 174 (1997).
32. *State v. Gaines*, 345 N.C. 647, 483 S.E.2d 396 (1997).
33. *State v. Barnes*, 345 N.C. 184, 481 S.E.2d 44 (1997).

34. *State v. Bond*, 345 N.C. 1, 478 S.E. 2d 163 (1996).
35. *State v. Harden*, 344 N.C. 542, 476 S.E.2d 658 (1996).
36. *State v. Norwood*, 344 N.C. 511, 476 S.E.2d 349 (1996).
37. *State v. Peterson*, 344 N.C. 172, 472 S.E.2d 730 (1996).
38. *State v. Womble*, 343 N.C. 667, 473 S.E.2d 291 (1996).
39. *State v. Lynch*, 343 N.C. 483, 471 S.E.2d 376 (1996).
40. *State v. Williams*, 343 N.C. 345, 471 S.E.2d 379 (1996).
41. *State v. Lyons*, 343 N.C. 1, 468 S.E.2d 204 (1996).
42. *State v. Floyd*, 343 N.C. 101, 468 S.E.2d 46 (1996).
43. *State v. Richardson*, 342 N.C. 772, 467 S.E.2d 685 (1996).
44. *State v. Best*, 342 N.C. 502, 467 S.E.2d 45 (1996).
45. *State v. Kandies*, 342 N.C. 419, 467 S.E.2d 67 (1996).
46. *State v. Walls*, 342 N.C. 1, 463 S.E.2d 738 (1995).
47. *State v. Quick*, 341 N.C. 141, 462 S.E.2d 186 (1995).
48. *State v. Gregory*, 340 N.C. 365, 459 S.E.2d 638 (1995).
49. *State v. Larrimore*, 340 N.C. 119, 456 S.E.2d 789 (1995).
50. *State v. Jones*, 339 N.C. 114, 451 S.E.2d 826 (1994).
51. *State v. Rouse*, 339 N.C. 59, 451 S.E.2d 543 (1994).
52. *State v. Williams*, 339 N.C. 1, 452 S.E.2d 245 (1994).
53. *State v. Spruill*, 338 N.C. 612, 452 S.E.2d 279 (1994).
54. *State v. Carter*, 338 N.C. 569, 451 S.E.2d 157 (1994).
55. *State v. Ross*, 338 N.C. 280, 449 S.E.2d 556 (1994).
56. *State v. Sexton*, 336 N.C. 321, 444 S.E.2d 879 (1994).
57. *State v. Robinson*, 336 N.C. 78, 443 S.E.2d 306 (1994).
58. *State v. Wiggins*, 334 N.C. 18, 431 S.E.2d 755 (1993).
59. *State v. Beach*, 333 N.C. 733, 430 S.E.2d 248 (1993).
60. *State v. Glenn*, 333 N.C. 296, 425 S.E.2d 688 (1993).
61. *State v. Robinson*, 330 N.C. 1, 409 S.E.2d 288 (1991).
62. *State v. Thomas*, 329 N.C. 423, 407 S.E.2d 141 (1991).
63. *State v. Smith*, 328 N.C. 99, 400 S.E.2d 712 (1991).
64. *State v. McNeill*, 326 N.C. 712, 392 S.E. 2d 78 (1990).
65. *State v. Porter*, 326 N.C. 489, 391 S.E.2d 144 (1990).
66. *State v. Davis*, 325 N.C. 607, 386 S.E.2d 418 (1989).
67. *State v. Allen*, 323 N.C. 208, 372 S.E.2d 855 (1988), *vacated on other grounds*, 494 U.S. 1021 (1990).
68. *State v. Crandell*, 322 N.C. 487, 369 S.E.2d 579 (1988).
69. *State v. Gray*, 322 N.C. 457, 368 S.E.2d 627 (1988).
70. *State v. Jackson*, 322 N.C. 251, 368 S.E.2d 838 (1988).
71. *State v. Holden*, 321 N.C. 125, 362 S.E.2d 513 (1987).

72. *State v. Abbott*, 320 N.C. 475, 358 S.E.2d 365 (1987).
73. *State v. Robbins*, 319 N.C. 465, 356 S.E.2d 279 (1987).
74. *State v. Belton*, 318 N.C. 141, 347 S.E.2d 755 (1986).

B. Table 2: North Carolina Court of Appeals Published Cases Adjudicating Batson *Claims on the Merits, 1986–2016*

1. *State v. Hurd*, __ N.C. App. __, 784 S.E.2d 528 (2016).
2. *State v. James*, 230 N.C. App. 346, 750 S.E.2d 851 (2013).
3. *State v. Mills*, 225 N.C. App. 773, 741 S.E.2d 427 (2013).
4. *State v. Pender*, 218 N.C. App. 233, 720 S.E.2d 836 (2012).
5. *State v. Carter*, 212 N.C. App. 516, 711 S.E.2d 515 (2011).
6. *State v. Headen*, 206 N.C. App. 109, 697 S.E.2d 407 (2010).
7. *State v. Wright*, 189 N.C. App. 346, 658 S.E.2d 60 (2008).
8. *State v. Carmon*, 169 N.C. App. 750, 611 S.E.2d 211 (2005).
9. *State v. McClain*, 169 N.C. App. 657, 610 S.E.2d 783 (2005).
10. *State v. Alvarez*, 168 N.C. App. 487, 608 S.E.2d 371 (2005).
11. *State v. Moore*, 167 N.C. App. 495, 606 S.E.2d 127 (2004).
12. *State v. Gattis*, 166 N.C. App. 1, 601 S.E.2d 205 (2004).
13. *State v. Matthews*, 162 N.C. App. 339, 595 S.E.2d 446 (2004).
14. *State v. Wiggins*, 159 N.C. App. 252, 584 S.E.2d 303 (2003).
15. *State v. Littlejohn*, 158 N.C. App. 628, 582 S.E.2d 301 (2003).
16. *State v. McCord*, 158 N.C. App. 693, 582 S.E.2d 33 (2003).
17. *State v. Mays*, 154 N.C. App. 572, 573 S.E.2d 202 (2002).
18. *State v. Cherry*, 141 N.C. App. 642, 541 S.E.2d 205 (2000).
19. *State v. McCord*, 140 N.C. App. 634, 538 S.E.2d 633 (2000).
20. *State v. McKeithen*, 140 N.C. App. 422, 537 S.E.2d 526 (2000).
21. *State v. Crockett*, 138 N.C. App. 109, 530 S.E.2d 359 (2000).
22. *State v. White*, 131 N.C. App. 734, 509 S.E.2d 462 (1998).
23. *State v. Cofield*, 129 N.C. App. 268, 498 S.E.2d 823 (1998).
24. *State v. Corpening*, 129 N.C. App. 60, 497 S.E.2d 303 (1998).
25. *State v. Caporasso*, 128 N.C. App. 236, 495 S.E.2d 157 (1998).
26. *State v. Sessoms*, 119 N.C. App. 1, 458 S.E.2d 200 (1995).
27. *State v. Floyd*, 115 N.C. App. 412, 445 S.E.2d 54 (1994).
28. *State v. Degree*, 114 N.C. App. 385, 442 S.E.2d 323 (1994).
29. *State v. Austin*, 111 N.C. App. 590, 432 S.E.2d 881 (1993).
30. *State v. Crummy*, 107 N.C. App. 305, 420 S.E.2d 448 (1992).
31. *State v. Mebane*, 106 N.C. App. 516, 418 S.E.2d 245 (1992).
32. *State v. Martin*, 105 N.C. App. 182, 412 S.E.2d 134 (1992).

33. *State v. Hall*, 104 N.C. App. 375, 410 S.E.2d 76 (1991).
34. *State v. Burge*, 100 N.C. App. 671, 397 S.E.2d 760 (1990).
35. *State v. McNeill*, 99 N.C. App. 235, 393 S.E.2d 123 (1990).
36. *State v. Melvin*, 99 N.C. App. 16, 392 S.E.2d 740 (1990).
37. *State v. Aytche*, 98 N.C. App. 358, 391 S.E.2d 43 (1990).
38. *State v. Robinson*, 97 N.C. App. 597, 389 S.E.2d 417 (1990).
39. *State v. Sanders*, 95 N.C. App. 494, 383 S.E.2d 409 (1989).
40. *State v. Batts*, 93 N.C. App. 404, 378 S.E. 2d 211 (1989).
41. *State v. Attmore*, 92 N.C. App. 385, 374 S.E.2d 649 (1988).
42. *State v. Cannon*, 92 N.C. App. 246, 374 S.E.2d 604 (1988), *rev'd on other grounds*, 326 N.C. 37, 387 S.E.2d 450 (1990).

C. Table 3: Supreme Court of North Carolina Published Cases Adjudicating Batson *Step One Claims, 1986–2016*

1. *State v. Waring*, 364 N.C. 443, 701 S.E.2d 615 (2010).
2. *State v. Maness*, 363 N.C. 261, 677 S.E.2d 796 (2009).
3. *State v. Taylor*, 362 N.C. 514, 669 S.E.2d 239 (2008).
4. *State v. Augustine*, 359 N.C. 709, 616 S.E.2d 515 (2005).
5. *State v. Chapman*, 359 N.C. 328, 611 S.E.2d 794 (2005).
6. *State v. Nicholson*, 355 N.C. 1, 558 S.E.2d 109 (2002).
7. *State v. Blakeney*, 352 N.C. 287, 531 S.E.2d 799 (2000).
8. *State v. Braxton*, 352 N.C. 158, 531 S.E.2d 428 (2000).
9. *State v. Lawrence*, 352 N.C. 1, 530 S.E.2d 807 (2000).
10. *State v. Smith*, 351 N.C. 251, 524 S.E.2d 28 (2000).
11. *State v. Locklear*, 349 N.C. 118, 505 S.E.2d 277 (1998).
12. *State v. Hoffman*, 348 N.C. 548, 500 S.E.2d 718 (1998).
13. *State v. Fletcher*, 348 N.C. 292, 500 S.E.2d 668 (1998).
14. *State v. Smith*, 347 N.C. 453, 496 S.E.2d 357 (1998).
15. *State v. Barnes*, 345 N.C. 184, 481 S.E.2d 44 (1997).
16. *State v. Norwood*, 344 N.C. 511, 476 S.E.2d 349 (1996).
17. *State v. Williams*, 343 N.C. 345, 471 S.E.2d 379 (1996).
18. *State v. Richardson*, 342 N.C. 772, 467 S.E.2d 685 (1996).
19. *State v. Walls*, 342 N.C. 1, 463 S.E.2d 738 (1995).
20. *State v. Quick*, 341 N.C. 141, 462 S.E.2d 186 (1995).
21. *State v. Gregory*, 340 N.C. 365, 459 S.E.2d 638 (1995).
22. *State v. Ross*, 338 N.C. 280, 449 S.E.2d 556 (1994).
23. *State v. Beach*, 333 N.C. 733, 430 S.E.2d 248 (1993).
24. *State v. Glenn*, 333 N.C. 296, 425 S.E.2d 688 (1993).

25. *State v. Davis*, 325 N.C. 607, 386 S.E.2d 418 (1989).
26. *State v. Allen*, 323 N.C. 208, 372 S.E.2d 855 (1988), *vacated on other grounds*, 494 U.S. 1021 (1990).
27. *State v. Crandell*, 322 N.C. 487, 369 S.E.2d 579 (1988).
28. *State v. Gray*, 322 N.C. 457, 368 S.E.2d 627 (1988).
29. *State v. Holden*, 321 N.C. 125, 362 S.E.2d 513 (1987).
30. *State v. Abbott*, 320 N.C. 475, 358 S.E.2d 365 (1987).
31. *State v. Robbins*, 319 N.C. 465, 356 S.E.2d 279 (1987).
32. *State v. Belton*, 318 N.C. 141, 347 S.E.2d 755 (1986).

D. Table 4: North Carolina Court of Appeals Published Cases Adjudicating Batson *Step One Claims, 1986–2016*

1. *State v. Mills*, 225 N.C. App. 773, 741 S.E.2d 427 (2013).
2. *State v. Carmon*, 169 N.C. App. 750, 611 S.E.2d 211 (2005).
3. *State v. Moore*, 167 N.C. App. 495, 606 S.E.2d 127 (2004).
4. *State v. Gattis*, 166 N.C. App. 1, 601 S.E.2d 205 (2004).
5. *State v. Mays*, 154 N.C. App. 572, 573 S.E.2d 202 (2002).
6. *State v. Cherry*, 141 N.C. App. 642, 541 S.E.2d 205 (2000).
7. *State v. McKeithen*, 140 N.C. App. 422, 537 S.E. 2d 526 (2000).
8. *State v. Crockett*, 138 N.C. App. 109, 530 S.E.2d 359 (2000).
9. *State v. Burge*, 100 N.C. App. 671, 397 S.E.2d 760 (1990).
10. *State v. McNeill*, 99 N.C. App. 235, 393 S.E.2d 123 (1990).
11. *State v. Aytche*, 98 N.C. App. 358, 391 S.E.2d 43 (1990).
12. *State v. Robinson*, 97 N.C. App. 597, 389 S.E.2d 417 (1990).
13. *State v. Batts*, 93 N.C. App. 404, 378 S.E.2d 211 (1989).
14. *State v. Attmore*, 92 N.C. App. 385, 374 S.E.2d 649 (1988).

E. Table 5: Supreme Court of North Carolina Published Cases Relying on Conjured Reasons in Adjudicating Batson *Step One Claims, 1986–2016*

1. *State v. Waring*, 364 N.C. 443, 701 S.E.2d 615 (2010).
2. *State v. Taylor*, 362 N.C. 514, 669 S.E.2d 239 (2008).
3. *State v. Augustine*, 359 N.C. 709, 616 S.E.2d 515 (2005).
4. *State v. Chapman*, 359 N.C. 328, 611 S.E.2d 794 (2005).
5. *State v. Nicholson*, 355 N.C. 1, 558 S.E.2d 109 (2002).
6. *State v. Lawrence*, 352 N.C. 1, 530 S.E.2d 807 (2000).
7. *State v. Hoffman*, 348 N.C. 548, 500 S.E.2d 718 (1998).

8. *State v. Fletcher*, 348 N.C. 292, 500 S.E.2d 668 (1998).
9. *State v. Smith*, 347 N.C. 453, 496 S.E.2d 357 (1998).
10. *State v. Barnes*, 345 N.C. 184, 481 S.E.2d 44 (1997).
11. *State v. Williams*, 343 N.C. 345, 471 S.E.2d 379 (1996).
12. *State v. Richardson*, 342 N.C. 772, 467 S.E.2d 685 (1996).
13. *State v. Quick*, 341 N.C. 141, 462 S.E.2d 186 (1995).
14. *State v. Gregory*, 340 N.C. 365, 459 S.E.2d 638 (1995).
15. *State v. Glenn*, 333 N.C. 296, 425 S.E.2d 688 (1993).
16. *State v. Davis*, 325 N.C. 607, 386 S.E.2d 418 (1989).
17. *State v. Robbins*, 319 N.C. 465, 356 S.E.2d 279 (1987).

F. Table 6: North Carolina Court of Appeals Published Cases Relying on Conjured Reasons in Adjudicating Batson *Step One Claims, 1986–2016*

1. *State v. Mills*, 225 N.C. App. 773, 741 S.E.2d 427 (2013).
2. *State v. Carmon*, 169 N.C. App. 750, 611 S.E.2d 211 (2005).
3. *State v. Moore*, 167 N.C. App. 495, 606 S.E.2d 127 (2004).
4. *State v. Cherry*, 141 N.C. App. 642, 541 S.E.2d 205 (2000).
5. *State v. McNeill*, 99 N.C. App. 235, 393 S.E.2d 123 (1990).
6. *State v. Aytche*, 98 N.C. App. 358, 391 S.E.2d 43 (1990).
7. *State v. Batts*, 93 N.C. App. 404, 378 S.E.2d 211 (1989).
8. *State v. Attmore*, 92 N.C. App. 385, 374 S.E.2d 649 (1988).

G. Table 7: Supreme Court of North Carolina Published Cases Adjudicating Batson *Step Three Claims, 1986–2016*

1. *State v. Waring*, 364 N.C. 443, 701 S.E.2d 615 (2010).
2. *State v. Maness*, 363 N.C. 261, 677 S.E.2d 796 (2009).
3. *State v. Bell*, 359 N.C. 1, 603 S.E.2d 93 (2004).
4. *State v. Tirado*, 358 N.C. 551, 599 S.E.2d 515 (2004).
5. *State v. Williams*, 355 N.C. 501, 565 S.E.2d 609 (2002).
6. *State v. Rogers*, 355 N.C. 420, 562 S.E.2d 859 (2002).
7. *State v. Nicholson*, 355 N.C. 1, 558 S.E.2d 109 (2002).
8. *State v. Fair*, 354 N.C. 131, 557 S.E.2d 508 (2001).
9. *State v. King*, 353 N.C. 457, 546 S.E.2d 575 (2001).
10. *State v. Hardy*, 353 N.C. 122, 540 S.E.2d 334 (2000).
11. *State v. Smith*, 352 N.C. 531, 532 S.E.2d 773 (2000).
12. *State v. Golphin*, 352 N.C. 364, 533 S.E.2d 168 (2000).

13. *State v. Thomas*, 350 N.C. 315, 514 S.E.2d 486 (1999).
14. *State v. White*, 349 N.C. 535, 508 S.E.2d 253 (1998).
15. *State v. Hoffman*, 349 N.C. 167, 505 S.E.2d 80 (1998).
16. *State v. Locklear*, 349 N.C. 118, 505 S.E.2d 277 (1998).
17. *State v. Bonnett*, 348 N.C. 417, 502 S.E.2d 563 (1998).
18. *State v. Lemons*, 348 N.C. 335, 501 S.E.2d 309 (1998), *rev'd on other grounds*, 527 U.S. 1018 (1999).
19. *State v. Fletcher*, 348 N.C. 292, 500 S.E.2d 668 (1998).
20. *State v. Cummings*, 346 N.C. 291, 488 S.E.2d 550 (1997).
21. *State v. Robinson*, 346 N.C. 586, 488 S.E.2d 174 (1997).
22. *State v. Gaines*, 345 N.C. 647, 483 S.E.2d 396 (1997).
23. *State v. Bond*, 345 N.C. 1, 478 S.E. 2d 163 (1996).
24. *State v. Harden*, 344 N.C. 542, 476 S.E.2d 658 (1996).
25. *State v. Peterson*, 344 N.C. 172, 472 S.E.2d 730 (1996).
26. *State v. Womble*, 343 N.C. 667, 473 S.E.2d 291 (1996).
27. *State v. Lynch*, 343 N.C. 483, 471 S.E.2d 376 (1996).
28. *State v. Lyons*, 343 N.C. 1, 468 S.E.2d 204 (1996).
29. *State v. Floyd*, 343 N.C. 101, 468 S.E.2d 46 (1996).
30. *State v. Best*, 342 N.C. 502, 467 S.E.2d 45 (1996).
31. *State v. Kandies*, 342 N.C. 419, 467 S.E.2d 67 (1996).
32. *State v. Larrimore*, 340 N.C. 119, 456 S.E.2d 789 (1995).
33. *State v. Jones*, 339 N.C. 114, 451 S.E.2d 826 (1994).
34. *State v. Rouse*, 339 N.C. 59, 451 S.E.2d 543 (1994).
35. *State v. Williams*, 339 N.C. 1, 452 S.E.2d 245 (1994).
36. *State v. Spruill*, 338 N.C. 612, 452 S.E.2d 279 (1994).
37. *State v. Carter*, 338 N.C. 569, 451 S.E.2d 157 (1994).
38. *State v. Sexton*, 336 N.C. 321, 444 S.E.2d 879 (1994).
39. *State v. Robinson*, 336 N.C. 78, 443 S.E.2d 306 (1994).
40. *State v. Wiggins*, 334 N.C. 18, 431 S.E.2d 755 (1993).
41. *State v. Robinson*, 330 N.C. 1, 409 S.E.2d 288 (1991).
42. *State v. Thomas*, 329 N.C. 423, 407 S.E.2d 141 (1991).
43. *State v. Smith*, 328 N.C. 99, 400 S.E.2d 712 (1991).
44. *State v. McNeill*, 326 N.C. 712, 392 S.E. 2d 78 (1990).
45. *State v. Porter*, 326 N.C. 489, 391 S.E.2d 144 (1990).
46. *State v. Jackson*, 322 N.C. 251, 368 S.E.2d 838 (1988).

H. Table 8: North Carolina Court of Appeals Published Cases Adjudicating Batson *Step Three Claims, 1986–2016*

1. *State v. James*, 230 N.C. App. 346, 750 S.E.2d 851 (2013).
2. *State v. Pender*, 218 N.C. App. 233, 720 S.E.2d 836 (2012).
3. *State v. Carter*, 212 N.C. App. 516, 711 S.E.2d 515 (2011).
4. *State v. Headen*, 206 N.C. App. 109, 697 S.E.2d 407 (2010).
5. *State v. Wright*, 189 N.C. App. 346, 658 S.E.2d 60 (2008).
6. *State v. McClain*, 169 N.C. App. 657, 610 S.E.2d 783 (2005).
7. *State v. Alvarez*, 168 N.C. App. 487, 608 S.E.2d 371 (2005).
8. *State v. Matthews*, 162 N.C. App. 339, 595 S.E.2d 446 (2004).
9. *State v. Wiggins*, 159 N.C. App. 252, 584 S.E.2d 303 (2003).
10. *State v. Littlejohn*, 158 N.C. App. 628, 582 S.E.2d 301 (2003).
11. *State v. McCord*, 158 N.C. App. 693, 582 S.E.2d 33 (2003).
12. *State v. McCord*, 140 N.C. App. 634, 538 S.E.2d 633 (2000).
13. *State v. White*, 131 N.C. App. 734, 509 S.E.2d 462 (1998).
14. *State v. Corpening*, 129 N.C. App. 60, 497 S.E.2d 303 (1998).
15. *State v. Caporasso*, 128 N.C. App. 236, 495 S.E.2d 157 (1998).
16. *State v. Sessoms*, 119 N.C. App. 1, 458 S.E.2d 200 (1995).
17. *State v. Floyd*, 115 N.C. App. 412, 445 S.E.2d 54 (1994).
18. *State v. Degree*, 114 N.C. App. 385, 442 S.E.2d 323 (1994).
19. *State v. Austin*, 111 N.C. App. 590, 432 S.E.2d 881 (1993).
20. *State v. Crummy*, 107 N.C. App. 305, 420 S.E.2d 448 (1992).
21. *State v. Mebane*, 106 N.C. App. 516, 418 S.E.2d 245 (1992).
22. *State v. Martin*, 105 N.C. App. 182, 412 S.E.2d 134 (1992).
23. *State v. Melvin*, 99 N.C. App. 16, 392 S.E.2d 740 (1990).
24. *State v. Sanders*, 95 N.C. App. 494, 383 S.E.2d 409 (1989).
25. *State v. Cannon*, 92 N.C. App. 246, 374 S.E.2d 604 (1988).

I. Table 9: Published Cases in the North Carolina Appellate Courts Rejecting Comparative Juror Analysis in Batson *Claims, 1986–2016*

1. *State v. Bell*, 359 N.C. 1, 603 S.E.2d 93 (2004).
2. *State v. Rogers*, 355 N.C. 420, 562 S.E.2d 859 (2002).
3. *State v. King*, 353 N.C. 457, 546 S.E.2d 575 (2001).
4. *State v. Lawrence*, 352 N.C. 1, 530 S.E.2d 807 (2000).
5. *State v. Thomas*, 350 N.C. 315, 514 S.E.2d 486 (1999).
6. *State v. Locklear*, 349 N.C. 118, 505 S.E.2d 277 (1998).
7. *State v. Fletcher*, 348 N.C. 292, 500 S.E.2d 668 (1998).

8. *State v. Peterson*, 344 N.C. 172, 472 S.E.2d 730 (1996).
9. *State v. Floyd*, 343 N.C. 101, 468 S.E.2d 46 (1996).
10. *State v. Barnes*, 345 N.C. 184, 481 S.E.2d 44 (1997).
11. *State v. Lyons*, 343 N.C. 1, 468 S.E.2d 204 (1996).
12. *State v. Kandies*, 342 N.C. 419, 467 S.E.2d 67 (1996).
13. *State v. Jones*, 339 N.C. 114, 451 S.E.2d 826 (1994).
14. *State v. Rouse*, 339 N.C. 59, 451 S.E.2d 543 (1994).
15. *State v. Williams*, 339 N.C. 1, 452 S.E.2d 245 (1994).
16. *State v. Robinson*, 330 N.C. 1, 409 S.E.2d 288 (1991).
17. *State v. Thomas*, 329 N.C. 423, 407 S.E.2d 141 (1991).
18. *State v. Smith*, 328 N.C. 99, 400 S.E.2d 712 (1991).
19. *State v. Porter*, 326 N.C. 489, 391 S.E.2d 144 (1990).
20. *State v. Jackson*, 322 N.C. 251, 368 S.E.2d 838 (1988).
21. *State v. Jame*s, 230 N.C. App. 346, 750 S.E.2d 851 (2013).
22. *State v. Carter*, 212 N.C. App. 516, 711 S.E.2d 515 (2011).
23. *State v. McClain*, 169 N.C. App. 657, 601 S.E.2d 783 (2005).
24. *State v. Matthews*, 162 N.C. App. 339, 595 S.E.2d 446 (2004).
25. *State v. Wiggins*, 159 N.C. App. 252, 584 S.E.2d 303 (2003).
26. *State v. Littlejohn*, 158 N.C. App. 628, 582 S.E.2d 301 (2003).
27. *State v. McCord*, 158 N.C. App. 693, 582 S.E.2d 33 (2003).

J. Table 10: Published Appellate Cases in Neighboring States Finding Substantive Batson *Violations, 1986–2016*

West Virginia

1. *State ex rel. Ballard v. Painter*, 582 S.E.2d 737 (W. Va. 2003).
2. *State v. Marrs*, 379 S.E.2d 497 (W. Va. 1989).

Maryland

1. *Ray-Simmons v. State*, 132 A.3d 275 (Md. 2016).
2. *Chew v. State*, 562 A.2d 1270 (Md. 1989).
3. *Tolbert v. State*, 553 A.2d 228 (Md. 1989).

Virginia

1. *Commonwealth v. Thompson*, 455 S.E.2d 206 (Va. 1995).
2. *Hill v. Berry*, 441 S.E.2d 6 (Va. 1994).
3. *Faison v. Hudson*, 417 S.E.2d 305 (Va. 1992).
4. *Hopkins v. Commonwealth*, 672 S.E.2d 890 (Va. Ct. App. 2009).

5. *Broady v. Commonwealth*, 429 S.E.2d 468 (Va. Ct. App. 1993).
6. *Jackson v. Commonwealth*, 380 S.E.2d 1 (Va. Ct. App. 1989).

South Carolina

1. *Robinson v. Bon Secours Saint Francis Health Sys., Inc.*, 675 S.E.2d 744 (S.C. 2009).
2. *McCrea v. Gheraibeh*, 669 S.E.2d 333 (S.C. 2008).
3. *State v. Marble*, 426 S.E.2d 744 (S.C. 1992).
4. *State v. Grate*, 423 S.E.2d 119 (S.C. 1992).
5. *State v. Adams*, 415 S.E.2d 402 (S.C. 1992).
6. *State v. Patterson*, 414 S.E.2d 155 (S.C. 1992).
7. *State v. Davis*, 411 S.E.2d 220 (S.C. 1991).
8. *State v. Grandy*, 411 S.E.2d 207 (S.C. 1991).
9. *Chavous v. Brown*, 409 S.E.2d 356 (S.C. 1991).
10. *State v. Tomlin*, 384 S.E.2d 707 (S.C. 1989).
11. *State v. Oglesby*, 379 S.E.2d 891 (S.C. 1989).
12. *State v. Stewart*, 775 S.E.2d 416 (S.C. Ct. App. 2015).
13. *Foster v. Spartanburg Hosp. Sys.*, 442 S.E.2d 624 (S.C. Ct. App. 1994).