

Criminal Procedure

Jury Selection—*Batson* Issues

[Foster v. Chatman](#), 578 U.S. ____ (May 23, 2016). The Court reversed this capital murder case, finding that the State's "[t]wo peremptory strikes on the basis of race are two more than the Constitution allows." The defendant was convicted of capital murder and sentenced to death in a Georgia court. Jury selection proceeded in two phases: removals for cause and peremptory strikes. The first phase whittled the list of potential jurors down to 42 "qualified" prospective jurors. Five were black. Before the second phase began, one of the black jurors—Powell—informed the court that she had just learned that one of her close friends was related to the defendant; she was removed, leaving four black prospective jurors: Eddie Hood, Evelyn Hardge, Mary Turner, and Marilyn Garrett. The State exercised nine of its ten allotted peremptory strikes, removing all four of the remaining black prospective jurors. The defendant immediately lodged a *Batson* challenge. The trial court rejected the objection and empaneled the jury. The jury convicted the defendant and sentenced him to death. After the defendant unsuccessfully pursued his *Batson* claim in the Georgia courts, the U.S. Supreme Court granted certiorari. Before the Court, both parties agreed that the defendant demonstrated a prima facie case and that the prosecutor had offered race-neutral reasons for the strikes. The Court therefore addressed only *Batson's* third step, whether purposeful discrimination was shown. The defendant focused his claim on the strikes of two black prospective jurors, Marilyn Garrett and Eddie Hood. With respect Garrett, the prosecutor had told the trial court that Garrett was "listed" by the prosecution as "questionable" and its strike of her was a last-minute race-neutral decision. However, evidence uncovered after the trial showed this statement to be false; the evidence showed that the State had specifically identified Garrett in advance as a juror to strike. In fact, she was on a "definite NO's" list in the prosecution's file. The Court rejected attempts by the State "to explain away the contradiction between the 'definite NO's' list and [the prosecutor's] statements to the trial court as an example of a prosecutor merely 'misspeak[ing].'" Regarding Hood, the Court noted that "[a]s an initial matter the prosecution's principal reasons for the strike shifted over time, suggesting that those reasons may be pretextual." It further found that the State's asserted justifications for striking Hood "cannot be credited." In the end, the Court found that "the focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury."