

BATSON CHECKLIST

INFORMATION NEEDED TO MAKE A BATSON DETERMINATION

1. Take note of the apparent race and sex of each juror as each juror is called into the jury box.
2. Take note of the apparent race and sex of each attorney in the case, the defendant, the judge and as many of the potential witnesses as possible.
3. Keep track of each peremptory challenge exercised by each side, noting apparent race and sex of the jurors excused.
4. Keep track of each challenge for cause allowed, noting the apparent race and sex of the jurors excused.
5. Keep track of the apparent race and sex of the jurors for which no challenge has been exercised.
6. Pay attention to the answers given by potential jurors to questions asked by the attorneys so as to form an impression as to the legitimacy of any racially neutral reasons for exercising peremptory challenges.
7. Take note of any questions posed by the attorneys tending to indicate any pattern of racial motivation for exercise of peremptory challenges.
8. Taking into consideration each of the factors listed above, look for any pattern that might point toward purposeful discrimination.
9. During any *Batson* hearing, make note of the reasons given by Prosecutor (or Defense Attorney) for the exercise of a peremptory challenge.

PROCEDURE FOR DETERMINING *BATSON* OBJECTION

1. Ask objecting party to state the basis for *Batson* objection
2. Allow opposing counsel to respond to the objection
3. Initial ruling must determine:
 - a. Whether objecting party has established a *Batson* issue (is there sufficient evidence of a “protected class”? *Do not take judicial notice of race of individuals in question, do not rely on court reporter to note race of individuals*).
 - b. Whether objecting party has established a prima facie case that the peremptory challenge was exercised on the basis of race or gender.
4. If there is a prima facie showing, allow opposing counsel an opportunity to provide racially neutral reasons for the exercise of the peremptory challenge. *YOU WILL NOT SWEAR WITNESSES OR RECEIVE EVIDENCE ON THESE POINTS, BUT YOU WILL MAKE DETERMINATIONS OF CREDIBILITY OF COUNSEL AS THEY MAKE THEIR STATEMENTS.*
5. Allow an opportunity for rebuttal by objecting party.
6. Make your determination, using the attached Sample *Batson* order.

SAMPLE BATSON ORDER

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. ____ CRS _____

STATE OF NORTH CAROLINA

VS.

_____,
Defendant

This matter was heard in open Court upon the State's attempt to exercise a peremptory challenge as to potential juror number ____, Mr./Ms. _____, and an objection made thereto by the Defendant pursuant to the decision of *Batson v. Kentucky* and related cases. The hearing was conducted in open court and at all times the Defendant was present and represented by counsel.

Upon indication by counsel of the *Batson* issue, all further proceedings on this issue were conducted in open court but outside the presence of all jurors.

Under the procedure followed, the Defendant first was allowed to articulate the reasons for the *Batson* objection for purposes of determining whether or not a prima facie showing of racial discrimination had been made. The State then was given an opportunity to express any racially neutral reasons for its exercise of the peremptory challenge. The Defendant then was given an opportunity rebut any or all of the reasons enunciated by the State for the exercise of the challenge.

Based upon the presentations of counsel as described above, the Court makes the following **FINDINGS OF FACT**:

1. The Court has observed the manner and appearance of counsel and jurors during voir dire and has made all relevant determinations of credibility for purposes of this Order.

2. In making these Findings of Fact, the undersigned has made determinations as to the race of various individuals. As to jurors, any findings of race are based upon statements provided by the jurors themselves in questionnaires. As to the parties, lawyers and witnesses, findings of race are based upon statements of counsel, stipulations of counsel and the lack of objections to observations of the undersigned noted at the time of announcement of this Order.

3. The Defendant in this case is **(black/white)** _____; the alleged victim in this case **is/was (black/white)** _____; the key witnesses in this case are **(black/white)** _____.

4. As of the time that the State attempted to exercise this peremptory challenge, _____ jurors had been accepted by the State, of which _____ are white and _____ are black.

5. As of the time that the State attempted to exercise this peremptory challenge, the State has exercised _____ prior peremptory challenges, of which _____ were of persons of the African American race.

6. Statements and questions of the State which tend to support an inference of discrimination in the jury selection process are:

7. Statements and questions of the State which tend to refute an inference of discrimination in the jury selection process are:

8. The State **has/has not** repeatedly used peremptory challenges against blacks so as to tend to establish a pattern of strikes against blacks in the venire.

9. The State **has/has not** used a disproportionate number of peremptory challenges to strike black jurors in this case.

10. The State's acceptance rate of potential black jurors does/does not indicate the likelihood of discrimination in the jury selection process.

11. The Defendant **has/has not** made a prima facie showing of discrimination in the jury selection process.

12. Because the Defendant has not made a prima facie showing of discrimination, no further findings are necessary.

OR

12. Upon the establishment of a prima facie showing of discrimination, the Court proceeded with consideration of the racially neutral reasons offered by the State for the attempt to exercise a peremptory challenge. The reasons offered by the State were as follows:

OR

12. In the exercise of discretion, the Court proceeds with consideration of racially neutral reasons for exercise of the peremptory challenge without first determining whether or not a prima facie case of discrimination has been shown. The reasons offered by the State were as follows:

13. The Defendant then was offered an opportunity to rebut the reasons offered by the State and, in such rebuttal, stated:

14. This Court **finds/does not find** the prosecutor to be credible in stating racially neutral reasons for the exercise of the peremptory challenge.

15. In response to such reasons stated by the prosecutor, Defense counsel **has/has not** shown that the prosecutor's explanations are pretextual.

16. Based upon consideration of presentations made by both sides and taking into account the various arguments presented, the Defendant **has/has not** proven purposeful discrimination in the jury selection process in this case.

Based upon the foregoing findings of fact, the Court concludes as Matters of Law:

1. No determination has been made as to the presence or absence of sufficient racially neutral reasons for the State's exercise of a peremptory challenge as to this juror, as the Defendant has failed to make out a prima facie showing of discrimination in the jury selection process.

OR

1. Notwithstanding the fact that the Defendant has failed to make out a prima facie showing of racial discrimination in the jury selection process, the Court has, in the exercise of discretion, elected to proceed with consideration of racially neutral reasons provided by the State in connection with its attempt to exercise of this peremptory challenge.

OR

1. Because the Defendant has made out a prima facie showing of racial discrimination in this jury selection process, the Court next proceeds with consideration of the racially neutral reasons offered by the State for the exercise of this peremptory challenge.

2. The racially neutral reasons stated by the prosecutor for the exercise of this peremptory challenge are:

3. The above stated reasons, taken in their totality and in connection with all of the Findings of Fact hereinbefore stated, **do/do not** constitute a sufficient racially neutral basis for the exercise of a peremptory challenge as to this juror.

IT IS THEREFORE ORDERED that the Defendant's objection to the State's exercise of a peremptory challenge as to potential juror number ____, Mr./Ms. _____, is **overruled/sustained** and the peremptory challenge is **allowed/denied**.

This Order is entered in open court, this the ____ day of _____, 199_.

Superior Court Judge

NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 99 CVS 3239

ALFRED E. FORD, ADMINISTRATOR)
Of the Estate of GERALDINE LORETTA)
FORD, deceased,)
Plaintiff)

vs.)

Batson Order

ROBERT C. RUPPENTHAL, M.D.)
And THE NALLE CLINIC, INC.,)
Defendants)

This matter was heard in open Court upon the Plaintiff's attempt to exercise a peremptory challenge as to potential juror number 11, Mr. William Bellamy, and an objection made thereto by the Defendant pursuant to the decision of *Batson v. Kentucky* and related cases. The hearing was conducted in open court and at all times both parties were present and represented by counsel.

Upon indication by counsel of the *Batson* issue, all further proceedings on this issue were conducted in open court but outside the presence of all jurors.

Under the procedure followed, the Defendant first was allowed to articulate the reasons for the *Batson* objection for purposes of determining whether or not a prima facie showing of racial discrimination had been made. The Plaintiff then was given an opportunity to express any racially neutral reasons for its exercise of the peremptory challenge. The Defendant then was given an opportunity rebut any or all of the reasons enunciated by the Plaintiff for the exercise of the challenge.

Based upon the presentations of counsel as described above, the Court makes the following **FINDINGS OF FACT**:

1. The Court has observed the manner and appearance of counsel and jurors during voir dire and has made all relevant determinations of credibility for purposes of this Order.
2. In making these Findings of Fact, the undersigned has made determinations as to the race of various individuals. As to jurors, any findings of race are based upon statements provided by the jurors themselves in questionnaires. As to the parties, lawyers and witnesses, findings of race are based upon statements of counsel, stipulations of counsel and the lack of objections to observations of the undersigned noted at the time of announcement of this Order.
3. The Defendant in this case is **white**; the Plaintiff in this case is **black**. Plaintiff is represented by two counsel, one of which is white and one of which is black. Defendant's counsel is white.
4. As of the time that the Plaintiff attempted to exercise this peremptory challenge, 10 jurors had been accepted by both parties, of which 8 are white and 2 are black.

5. As of the time that the Plaintiff attempted to exercise this peremptory challenge, the Plaintiff had exercised 7 prior peremptory challenges, all of which were of persons of the white race.

6. Statements and questions of the Plaintiff which tend to refute an inference of discrimination in the jury selection process are:

- a. The potential juror expressed some concern over the number of lawsuits he considered to be filed frivolously.
- b. The potential juror, who works for Microsoft, stated that his company had been sued hundreds of times and that 99.9% of those lawsuits were frivolous.
- c. The potential juror commented that physicians could not be expected to be perfect in their treatment of patients.

7. The Plaintiff **has** repeatedly used peremptory challenges against whites so as to tend to establish a pattern of strikes against whites in the venire.

9. The Plaintiff **has** used a disproportionate number of peremptory challenges to strike white jurors in this case.

10. The Plaintiff acceptance rate of potential white jurors does not indicate the likelihood of discrimination in the jury selection process.

11. The Defendant **has** made a prima facie showing of discrimination in the jury selection process.

12. Upon the establishment of a prima facie showing of discrimination, the Court proceeded with consideration of the racially neutral reasons offered by the State for the attempt to exercise a peremptory challenge. The reasons offered by the State were as follows:

- a. The potential juror expressed some concern over the number of lawsuits he considered to be filed frivolously.
- b. The potential juror, who works for Microsoft, stated that his company had been sued hundreds of times and that 99.9% of those lawsuits were frivolous.
- c. The potential juror commented that physicians could not be expected to be perfect in their treatment of patients.

13. The Defendant then was offered an opportunity to rebut the reasons offered by the State and, in such rebuttal, stated:

Defendant contended that the reasons given by Plaintiff's counsel were pretextual, saying that responses given by this potential juror were no different in substance than those given by many of the other jurors who were accepted by both parties.

14. This Court **finds** the Plaintiff's counsel to be credible in stating racially neutral reasons for the exercise of the peremptory challenge.

15. In response to such reasons stated by Plaintiff's counsel, Defendant **has not** shown that Plaintiff's counsel's explanations are pretextual.

16. Based upon consideration of presentations made by both sides and taking into account the various arguments presented, the Defendant **has not** proven purposeful discrimination in the jury selection process in this case.

Based upon the foregoing findings of fact, the Court concludes as Matters of Law:

1. Because the Defendant has made out a prima facie showing of racial discrimination in this jury selection process, the Court next proceeds with consideration of the racially neutral reasons offered by the Plaintiff for the exercise of this peremptory challenge.

2. The racially neutral reasons stated by the prosecutor for the exercise of this peremptory challenge are:

- a. The potential juror expressed some concern over the number of lawsuits he considered to be filed frivolously.
- b. The potential juror, who works for Microsoft, stated that his company had been sued hundreds of times and that 99.9% of those lawsuits were frivolous.
- c. The potential juror commented that physicians could not be expected to be perfect in their treatment of patients.

3. The above stated reasons, taken in their totality and in connection with all of the Findings of Fact hereinbefore stated, **do** constitute a sufficient racially neutral basis for the exercise of a peremptory challenge as to this juror.

IT IS THEREFORE ORDERED that the Defendant's objection to the State's exercise of a peremptory challenge as to potential juror number 11, Mr. William Bellamy, is **overruled** and the peremptory challenge is **allowed**.

This Order is entered in open court, this the 19th day of September, 2001.

Superior Court Judge

