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COMMENT:

## The Guide To Batson Challenges

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Batson challenges apply to both civil and criminal cases, and the same rules apply to all parties, regardless of whether they are white or black. Batson also applies to peremptory strikes based upon gender as well. Courts usually get overturned by not following the three step procedure outlined below. Once the Court reaches the third stage, then the Court will only be overturned if the decision was clearly erroneous.

### I. General Procedure

#### A. Prima Facie Case by Moving Party

Moving party must make out prima facie case of racial discrimination, e.g. overwhelming use of peremptory strikes to exclude jurors of one race.

#### B. Race-Neutral Reason Offered to Meet Burden of Production

The burden of production now shifts to the party that made the strikes; they must come forward with a race-neutral reason for the strikes. At this stage, all the party has to do is give a reason to meet the burden of production. Practically any reason will do to survive this step; the reason need not be persuasive or even plausible at this stage.

#### C. Court Weighs Evidence and Determines if Discrimination Motivated Strike

If a reason for the strike was given, it is now up to the moving party to prove purposeful discrimination. Race or gender must be the motivating factor in order for a Batson challenge to be upheld; however, such discriminatory intent need not be the only reason. The Court will now consider whether alleged race-neutral reason is persuasive or not, e.g. whether the supposed race-neutral reason is pretextual. The Court is allowed to consider the totality of the circumstances in making a ruling. The Court sits as the trier of fact at this stage, and the Court's findings regarding persuasiveness will not be overturned unless they are clearly erroneous. The Court may find that the reason that was tendered was not in fact the actual reason for striking the juror. The fact that counsel simply states that there was no discriminatory intent or that the strike was made in good faith is not sufficient. If the Court disbelieves the explanation given, that fact along with the prima facie case may be enough to uphold the Batson challenge. The Court can also consider if the explanation stated by counsel was applied equally in striking other jurors on the panel. The Court also is allowed to consider the demeanor of the attorney who originally made the strike, especially during the explanation of the race-neutral reason. Note, however, that the burden of persuasion never shifts from the party making the Batson challenge.

### II. Recent Cases

\*\*\*McKenzie v. State, A97A1566, 97 F.C.D.R. 2979\*\*\*

Chandler v. State, 266 Ga. 509 (1996)

Jackson v. State, 265 Ga. App. 897 (1995)

Purkett v. Elem, 514 U.S. 765, 131 L.E.2d 834 (1995)