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Jury Selection and Batson Motions: A Quick-Reference Trial Guide for South Carolina Criminal Defense Attorneys

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A Quick-Reference Trial Guide
for
South Carolina Criminal Defense Attorneys



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This quick-reference guide is general in nature and is for informational purposes only. It is not intended to be relied upon as legal advice or as a substitute for proper legal research. In the event of any conflict, real or apparent, between this guide and any applicable law, rule, or other governing authority, that authority will control.

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JURY SELECTION BASICS

HOW MANY STRIKES DO WE GET?

Peremptory Challenges in Criminal Cases

GENERAL SESSIONS COURT

Main Jury Strikes

OFFENSE	DEFENSE	STATE
Armed Robbery	10	5
Arson	10	5
Breach of Trust (when punishable as for grand larceny, perjury, or forgery)	10	5
Burglary	10	5
Criminal Sexual Conduct	10	5
Grand Larceny	10	5
Murder	10	5
Manslaughter	10	5
All Other Offenses	5	5

§14-7-1110 SC Code of Laws 1976, as amended

What if co-defendants are tried together?

CLASS OF OFFENSE	ALL DEFENDANTS COMBINED	STATE
Felony	Not more than 20	10
Misdemeanor	Not more than 10	5

§14-7-1110 SC Code of Laws 1976, as amended

Alternate Strikes

	DEFENSE	STATE
For Each Alternate Juror	2	1

§14-7-1120 SC Code of Laws 1976, as amended

MAGISTRATES COURT

ALL JURY-TRIAL CASES	DEFENSE	STATE
Main Jury Strikes	6	6
Alternate Juror Strikes	4	4

§22-2-100 SC Code of Laws 1976, as amended

BATSON MOTION QUICK REFERENCE

LEGAL BASIS FOR BATSON: EQUAL PROTECTION CLAUSE

THEORY: JUROR'S RIGHT TO SERVE

GENERAL RULES:

- 1. Peremptory strikes may not be used in a discriminatory manner.**
- 2. Treat every juror strike as a strike for cause.**
- 3. Race and Gender are protected classes.**
- 4. This rule applies to both the State and the Defense**
- 5. No challenge is peremptory**

PROCEDURE:

SELECTING THE JURY

STRIKE REASONING MUST BE LEGITIMATE AND CONSISTENT.

A. WHEN YOU STRIKE A JUROR

1. HAVE A REASON FOR DOING SO THAT IS NOT PROTECTED AND
2. APPLY THAT REASON CONSISTENTLY.

B. PAY CLOSE ATTENTION TO THE STATE'S STRIKES

1. DO THEY APPEAR TO STRIKE JURORS BASED ON RACE/GENDER?
2. DO THEY PRESENT JURORS SIMILAR TO THOSE THEY STRIKE EXCEPT FOR RACE/SEX?

PRIMA FACIE CASE FOR DISCRIMINATION

PRETEXT – EXAMPLE - SIMILARLY SITUATED JURORS:

- a) Party strikes a juror.
- b) Batson motion challenges strike.
- c) Party attempts to justify strike because excused juror has small children.
- d) **HOWEVER**, before Party exhausted their strikes, they seated other jurors with small children who were of a different race/gender.
- e) Therefore, the attempted justification is invalid.

BATSON CHALLENGE - MAKING THE OBJECTION:

JURY IS SELECTED

JUDGE THEN ASKS, "Are there any matters pertaining to the selection of the jury?"

DO NOT SAY ANYTHING THAT MAY TAINT THE JURY OR THE JURY PANEL!

IF YOU WISH TO RAISE A BATSON CHALLENGE, JUST SAY "Yes, Your Honor."

IF THE STATE SAYS THEY HAVE A MATTER, WAIT FOR THE JUDGE.

NOTE: (If the Judge fails to ask the question, you must object BEFORE the jury is sworn. "Your Honor, we have a matter of law.")

(THE JUDGE MAY SUMMON COUNSEL TO THE BENCH TO CONFIRM THE NATURE OF THE MATTER.)

THE JUDGE SHOULD EXCUSE ALL SELECTED AND POTENTIAL JURORS FROM THE COURTROOM BEFORE CONTINUING.

BURDEN: The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike. *State v. Haigler*, 334 S.C. 623, 629 (1999).

PRESENTING THE OBJECTION

1. Objecting Party, “Your Honor, we request that the State/Defense be required to state race/gender-neutral reasons* for the use of their strikes.”
2. The party required to comply must then set forth facially-neutral reasons for striking each juror. The reason must be objectively discernable so the court can evaluate it. *State v. Giles*, 407 S.C. 14, 22 (2014).
3. The reason offered will be deemed race-neutral unless a discriminatory intent is inherent in the proponent's explanation
4. The objecting party must then show that the reasons given are pretext and not their real reason – Similarly-Situated Jurors test. *State v. Cochran*, 369 S.C. 308, 315 (Ct. App. 2006).

WHAT HAPPENS IF THE MOTION IS GRANTED?

- Judge will Start *Voir Dire*/Jury Selection from scratch.
- If an improperly-struck juror is called by the clerk, the party that previously struck the juror must seat the juror.

***VALID REASONS FOR STRIKES**

- Demeanor, tone, or facial expression. *State v. Wilder*, 306 S.C.535, 413 S.E.2d 323 (1991).
- The potential juror was a recipient of a prior strike. *Sumpter v. State*, 312 S.C. 221,439 S.E.2d 842 (1994).
- Prior jury service. *State v. Casey*, 325 S.C.447, 481 S.E.2d 169 (Ct. App. 1997).
- Prior criminal conviction. *Id.*
- Possible criminal record. *State v. Martinez*, 294 S.C. 72, 362 S.E.2d 641 (1987).
- Prior prosecution by that particular Solicitor's office. *State v. Dyar*, 317 S.C. 77, 452 S.E.2d 603.
- Acquaintance with the trial judge. *State v. Adams*, 322 S.C. 114, 470 S.E.2d 366 (1996).
- Relationship or personal knowledge of the attorney. *State v. Ford*, 334 S.C. 59,512 S.E.2d 500 (1999).
- Relationship with law enforcement or pro-law enforcement attitude. *Id.*
- Knowledge of or personal association with defendant. *State v. Johnson*, 302 S.C. 243,395 S.E.2d 167 (1990).
- Unemployment. *State v. Green*, 306 S.C. 94, 409 S.E.2d 167 (1991).
- Place or type of employment. *State v. Ford*, 334 S.C. 59, 512 S.E.2d 500 (1999).
- "General instability." *State v. Robinson*, 305 S.C. 469, 409 S.E.2d 404 (1991).
- Racial prejudice has long been held to be a valid basis for striking a juror for cause. *State v. Cochran*, 631 S.E.2d 294 (S.C. Ct. App. 2006).
- Juror could not read or write well in complicated case. *State v. Garris*, 714 S.E.2d 888 (2011).
- Closeness in age to the parties. *State v. Garris*, 714 S.E.2d 888 (2011).
- Same background as the parties, education, work, socio-economic, etc. For being late. *State v. Wilder*, 413 S.E.2d 323 (1991).
- Teacher because of background of "acting as disciplinarian". *State v. Rogers*, 405 S.C. 520 (2013).

Invalid Reasons for Strikes

- Desire to seat other potential jurors who have not yet been presented: *State v. Hicks*, 330 S.C. 207, 210 (1998); *State v. Grandy*, 306 S.C. 224 (1991).
- Generalization about an entire group/Political Affiliation: *Payton v. Kearsse*, 329 S.C. 51 (1998)(redneck); *Foster v. Spartanburg Hospital Systems*, 314 S.C. 282 (Ct. App. 1999)(democrat).
- Racial Stereotypes/Potential juror who "shucked and jived" to the microphone: *State v. Tomlin*, 299 S.C. 294, 299 (1989); cf. *State v. Rogers*, 405 S.C. 520 (Ct. App. 2013)(okay to stereotype, but not racially)
- Vague objection that the jurors "were not right for the jury": *State v. Giles*, 407 S.C. 14 (2015)
- Third Party Told You To Strike: *State v. Marble*, 311 S.C. 23 (1992)(Investigator)