Case Brief: *State v. Hobbs*[*]

INTRODUCTION

It is no secret that North Carolina courts fall drastically behind other states in regard to addressing racial discrimination in jury selection. The historic U.S. Supreme Court ruling in *Batson v. Kentucky*[1] prohibited the use of race-based peremptory challenges in 1986,[2] but North Carolina courts have continued to ignore and misapply the proper standard from that case. Notably, North Carolina remains the only state in the Fourth Circuit—and the South as a whole—whose appellate courts have found only one substantive *Batson* violation, despite having faced the issue over one hundred times.[3] The Supreme Court of North Carolina issued a recent opinion on the matter in *State v. Hobbs*[4] on May 1, 2020. This case represents the first time in ten years that the high court has heard a *Batson* challenge.[5]

It is well established that a *Batson* challenge requires the trial court to conduct a three-step inquiry.[6] First, the defendant must make a prima facie case of discriminatory intent; second, the State must offer a race-neutral justification for the challenge; and third, the trial court must determine if the defendant has proven purposeful discrimination.[7] In *Hobbs*, the Supreme Court of North Carolina addressed problems with the lower courts' review and decisions on steps one and three. *Hobbs* is an important case for North Carolina trial judges and attorneys because: (1) it emphasizes that the burden of proving a prima facie case is lower than that which is applied by North Carolina courts, (2) it clarifies the standard of review for district and appellate courts when reviewing

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

2. *Id.* at 89 (holding that prosecutors may not use peremptory challenges to remove prospective jurors on the basis of race).

3. *See* Daniel R. Pollitt & Brittany P. Warren, *Thirty Years of Disappointment: North Carolina's Remarkable Appellate* Batson *Record*, 94 N.C. L. REV. 1957, 1961–62, 1983–84, 1984 n.167 (2016).

4. 374 N.C. 345, 841 S.E.2d 492 (2020).

5. Emily Coward, *What Does It Take To Succeed on a* Batson *Claim in North Carolina?*, N.C. CRIM. L.: UNC SCH. GOV'T BLOG (Feb. 18, 2020, 3:30 PM), https://nccriminallaw.sog.unc.edu/what-does-it-take-to-succeed-on-a-batson-claim-in-north-carolina/ [https://perma.cc/M88S-UVM9]. *State v. Bennett*, 374 N.C. 579, 843 S.E.2d 222 (2020), heard the same month as *Hobbs*, also raised a *Batson* challenge. *Id* at 580–81, 843 S.E.2d at 224.

6. *See, e.g.*, *Batson*, 476 U.S. at 96–98 (detailing the three-part process for evaluating claims that a prosecutor used peremptory challenges in a racially discriminatory manner); Snyder v. Louisiana, 552 U.S. 472, 476–77 (2008) ("*Batson* provides a three-step process for a trial court to use in adjudicating a claim that a peremptory challenge was based on race . . . ."); Miller–El v. Cockrell, 537 U.S. 322, 328–329 (2003) (applying the three-part process established in *Batson*).

7. *Snyder*, 522 U.S. at 476–77.

Batson claims, and (3) it provides additional instruction and awareness to prosecutors when using peremptory strikes.

FACTS OF THE CASE

Defendant Cedric Theodis Hobbs is an African American male who was indicted for nine felonies, including the murder of Kyle Harris, a White, nineteen-year-old college student.[8] During jury selection in his capital trial, Hobbs objected multiple times to the State's use of peremptory challenges to disqualify jurors, claiming the challenges were used in a racially discriminatory manner.[9] At the time of Hobbs's final objection, the State had used eight out of its allotted eleven peremptory challenges against Black jurors, accepting eight and excusing eight Black jurors (50%), while accepting twenty and excusing two White jurors (10%).[10] The jury found Hobbs guilty and he was sentenced to life imprisonment without parole.[11]

Hobbs appealed on the basis that the district court should have granted three of his peremptory challenge objections.[12] The North Carolina Court of Appeals unanimously rejected these arguments and found that Hobbs received a fair trial, free from prejudicial error and race-based jury discrimination.[13] The Supreme Court of North Carolina reversed and remanded the case to the trial court for a new *Batson* hearing.[14]

LEGAL ISSUES AND OUTCOME

Legal Issue 1: The Correct Standard for Showing a Prima Facie Case of Discrimination

The first *Batson* objection at issue was made during the third round of jury selection after the State excused two Black jurors.[15] To satisfy the first step of the *Batson* inquiry, Hobbs argued that the following factors established a prima facie case of discrimination: the disproportionate ratio of Black to White jurors excused; the fact that he, the defendant, was a Black male accused of robbing multiple White males and killing a White victim; the similarities of the answers between excused Black jurors and accepted non-Black jurors; and the ongoing

8. *Hobbs*, 374 N.C. at 346–47, 841 S.E.2d at 495–46.

9. *Id.* at 346, 841 S.E.2d at 495.

10. *Id.*

11. *Id.* at 346–47, 841 S.E.2d at 495.

12. *Id.* at 347, 841 S.E.2d at 495. Hobbs also appealed the decision based on another issue concerning an alleged error in a jury instruction regarding his mental capacity, which is not relevant to this Case Brief. *Id.*

13. *Id.*

14. *Id.* at 347, 841 S.E.2d at 495–96.

15. *Id.* at 348, 841 S.E.2d at 496.

history of racial discrimination in Cumberland County.[16] The trial court determined that Hobbs failed to establish a prima facie case.[17]

This led to a mootness issue on appeal,[18] but more importantly, the trial court's handling of the *Batson* hearing and the North Carolina Court of Appeals' review of the same drew attention to one of the biggest errors made by North Carolina courts when reviewing *Batson* objections: the bar for showing a prima facie case of discrimination is *much* lower than what state courts have applied in the past. The *Hobbs* court emphasized this standard, noting that establishing a prima facie case of discrimination is "not intended to be a high hurdle for defendants to cross."[19]

The opinion stated that "the burden on a defendant at this stage is one of production, not persuasion."[20] This burden does not require the defendant to persuade the court conclusively that the alleged discrimination has occurred. Rather, the defendant "need only provide evidence supporting an inference discrimination has occurred."[21] This standard is in line with both the U.S. Supreme Court's instructions[22] and prior language in the cases from the Supreme Court of North Carolina.[23] Specifically, the *Hobbs* opinion quoted an opinion of the U.S. Supreme Court, instructing that "[i]t is not until the *third* step [of the *Batson* analysis] that the persuasiveness of the justification becomes relevant."[24] This rule is constantly misapplied by North Carolina courts, which continually discard *Batson* claims at the first step after finding no prima facie case of discrimination.[25]

The Supreme Court of North Carolina held that neither the North Carolina Court of Appeals nor the trial court was correct in proceeding past step one to fully examine all evidence necessary as to whether Hobbs proved

16. *Id.*

17. *Id.* However, instead of ending the analysis there as it should have, the trial court proceeded to step two of the *Batson* inquiry and asked the State to explain its use of peremptory strikes against the two excused Black jurors "for the purposes of the record" and allowed Hobbs to respond. *Id.* The trial court described this exchange as "a full hearing on the defendant's *Batson* claim" and ruled that the State's peremptory strikes were not made on the basis of race. *Id.*

18. *Id.* at 354, 841 S.E.2d at 499.

19. *Id.* at 350, 841 S.E.2d at 497 (citing State v. Waring, 364 N.C. 443, 478, 701 S.E.2d 615, 638 (2010)).

20. *Id.* at 351, 841 S.E.2d at 498.

21. *Id.*

22. *See* Johnson v. California, 545 U.S. 162, 169–70 (2005) (explaining how to do a *Batson* analysis).

23. *See, e.g.*, *Hobbs*, 374 N.C. at 352, 841 S.E.2d at 498 (first citing State v. Quick, 341 N.C. 141, 144, 462 S.E.2d 186, 188 (1995); and then citing State v. Porter, 326 N.C. 489, 497, 391 S.E.2d 144, 150 (1990)).

24. *Id.* (citing Johnson v. California, 545 U.S. 162, 171 (2005)).

25. *See* Pollitt & Warren, *supra* note 3, at 1965 (finding that all levels of North Carolina courts routinely misapply step one of the *Batson* analysis).

purposeful discrimination, and thus the issue was remanded to the trial court for a new *Batson* hearing.[26]

Legal Issue 2: Proving Discrimination

Hobbs made another *Batson* objection during the fourth round of jury selection after the State used a peremptory challenge to strike another Black, male juror.[27] At that point, the State had used eight out of eleven peremptory challenges against Black jurors.[28] On this objection, the trial court determined that Hobbs had satisfied the burden of showing a prima facie case of discrimination.[29] The State produced the requisite race-neutral reasons for the excusal, Hobbs responded, and the trial court—without properly explaining the reasoning behind its decision—ultimately concluded that the challenge had not been based on race.[30] The North Carolina Court of Appeals affirmed the trial court, holding that Hobbs had failed to prove purposeful racial discrimination.[31]

The Supreme Court of North Carolina again held that the trial court had not fully and correctly considered Hobbs's argument of purposeful discrimination.[32] In considering each of Hobbs's *Batson* objections, the court points to three overarching legal errors within the trial court's analysis:[33]

1. The trial court improperly considered the peremptory challenges of Hobbs and factored those challenges into its decision.[34] This was error because the underlying interrogation should be focused on the State's motivations alone.[35]

2. The trial court did not explain how it weighed the totality of the circumstances surrounding the State's alleged use of race-based peremptory challenges, specifically the historical evidence of the State's use of discriminatory peremptory strikes in the jurisdiction.[36]

3. The trial court misapplied the established standard of review by focusing on whether the prosecutor asked White and Black jurors different questions, as opposed to examining the similarities between the answers given by the responding jurors.[37]

26. *Hobbs*, 374 N.C. at 356, 841 S.E.2d at 501.
27. *Id.* at 348, 841 S.E.2d at 496.
28. *Id.*
29. *Id.*
30. *Id.* at 348–49, 841 S.E.2d at 496.
31. *Id.* at 349, 841 S.E.2d at 496–97.
32. *Id.* at 356, 841 S.E.2d at 501.
33. *Id.* at 357, 841 S.E.2d at 502.
34. *Id.*
35. *Id.* (citing Miller-El v. Dretke, 545 U.S. 231, 245 n.4 (2005)).
36. *Id.* at 358, 841 S.E.2d at 502.
37. *Id.*

The North Carolina Court of Appeals also failed to weigh all of Hobbs's evidence related to his second objection, "instead basing its conclusion on the fact that the reasons articulated by the State have, in other cases, been accepted as race-neutral."[38] The Supreme Court of North Carolina directed the trial court on remand to conduct a new *Batson* hearing, with specific instructions to engage in a comparative juror analysis and consider Hobbs's evidence of historical discrimination.[39]

HISTORY AND CONTEXT

In the past decade, North Carolina's questionable *Batson* rulings and the corresponding prosecutorial racial discrimination in jury selection have gained national attention. The statistics surrounding this phenomenon suggest that racial discrimination in state jury selection has been, and still is, rampant. In 2010, researchers found that of the 150 prisoners on North Carolina's death row, thirty were sentenced to death by all-White juries.[40] A 2012 study of North Carolina capital cases between 1990 and 2010 found that prosecutors struck Black jurors at 2.48 times the rate they struck other jurors.[41] The same study also found that North Carolina prosecutors struck 52.6% of eligible Black jurors and only 25.7% of all other eligible jurors in capital trials.[42] The likelihood of this disparity occurring in jury selection for race-neutral reasons is less than one in ten trillion.[43] A similar study of noncapital cases in 2018 found the same jury selection disparities, which showed that prosecutors removed Black jurors at twice the rate as they removed White jurors.[44]

The existence of these studies makes it particularly concerning that the trial court in *Hobbs* did not appropriately weigh the historical evidence of jury discrimination in the state and jurisdiction. However, if the trial court was exclusively looking at North Carolina's appellate record of near to uniform failure to reverse on the basis of *Batson* violations, it could easily conclude that history of racial discrimination in state jury selection is nonexistent. While relying on this pattern of nonreversal makes trial judges' jobs much easier,

38. *Id.* at 359, 841 S.E.2d at 503. The North Carolina Court of Appeals did not review Hobbs's arguments of purposeful discrimination for the first two jurors because it ended the analysis after finding that Hobbs did not establish a prima facie case of discrimination. *Id.* at 357, 841 S.E.2d at 501.

39. *Id.* at 360, 841 S.E.2d at 503–04.

40. *See* 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, 2110 n.356 (2010).

41. *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, 1553, 1557 n.101 (2012).

42. *Id.* at 1548.

43. Order Granting Motion for Appropriate Relief at 58, State v. Robinson, No. 91-CRS-23143 (N.C. Super. Ct. Apr. 20, 2012); Pollitt & Warren, *supra* note 3, at 1964.

44. Ronald F. Wright, Kami Chavis & Gregory S. Parks, *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, 2018 U. ILL. L. REV. 1407, 1426 (2018).

abiding by the proper standard requires facing the unfortunate fact that the issue of jury discrimination is still rampant in North Carolina.

POTENTIAL IMPACT

Hobbs is just one example of the way trial courts in North Carolina have continued to conduct surface-level *Batson* inquiries for the past thirty-four years. *The Hobbs* decision clarifies the rule and standard of review for courts when conducting the three-step *Batson* inquiry and later reviewing the record on appeal. *The Hobbs* decision also recognizes the ongoing error North Carolina trial courts make when they seem to unquestionably accept the State's race-neutral reasons as valid without taking a step back to examine whether the reasons are pretextual. This increased awareness and clearer standard of review may also motivate prosecutors to be more selective with their peremptory strikes and be prepared to explain the strikes they do make with more than a pretextual explanation.

Further, by clarifying that the bar for establishing a prima facie case of discrimination is lower than precedent suggests, the Supreme Court of North Carolina effectively addressed the prior misapplication of step one, which previously "impos[ed] . . . far too onerous a burden of proof on defendants at *Batson*'s first step."[45] Ideally, this portion of the *Hobbs* decision will lead trial courts to acknowledge the existence of substantive *Batson* violations instead of dismissing the objections for failure to establish a prima facie case under an incorrectly high standard.

With its holding in *Hobbs*, the Supreme Court of North Carolina took "an important first step toward addressing jury discrimination"[46] as was urged in an amicus brief submitted by civil organizations including, inter alia, the North Carolina branches of the NAACP, the Association of Black Lawyers, and the ACLU.[47] This decision certainly does not rectify North Carolina's troubling *Batson* record, but it is a promising move that may well motivate positive change to combat the ongoing epidemic of discriminatory, race-based jury selection in state courts.

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45. Pollitt & Warren, *supra* note 3, at 1965.

46. Brief of Amici Curiae Coalition of State and National Criminal Justice and Civil Rights Advocates at 12, State v. Hobbs, 374 N.C. 345, 841 S.E.2d 492 (2020) (No. 263PA18).

47. *See id.* at app. For a complete list of supporting organizations and statements of interest of amici curiae, see *id.*

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