

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
07 CRS 1855-56; 07 CRS 51499

STATE OF NORTH CAROLINA )  
 )  
 v. )  
 )  
 HASSON JAMAAL BACOTE, )  
 )  
 Defendant. )

**SECOND DISCOVERY ORDER GRANTING DEFENDANT'S  
REQUEST FOR STATEWIDE DISCOVERY**

THIS MATTER came before the Honorable Wayland Sermons, Superior Court Judge, presiding, on 22 November 2021 via WebEx, by and with consent of the parties on defendant's motions for discovery filed on 16 March 2021 and 18 March 2021, specifically his request for statewide discovery. Defendant was represented by his counsel, Lauren Johnson, Santino Colcman, Henderson Hill, Cassandra Stubbs, Tye Hunter, Shelagh Kenney and Jay Ferguson. The State was represented by Special Deputy Attorney General Jonathan Babb. Special Deputy Attorney General Nick Vlahos and Assistant Attorney General Marissa Jensen were also present on behalf of the State. The Honorable Susan Doyle and Assistant District Attorneys Jason Waller and Thomas Harvey were present on behalf of the Johnston County District Attorney's Office. The Court heard the arguments of counsel and considered the written and oral arguments made by counsel.

Based upon consideration of the request for discovery in this case and the arguments of counsel, the Court makes the following:

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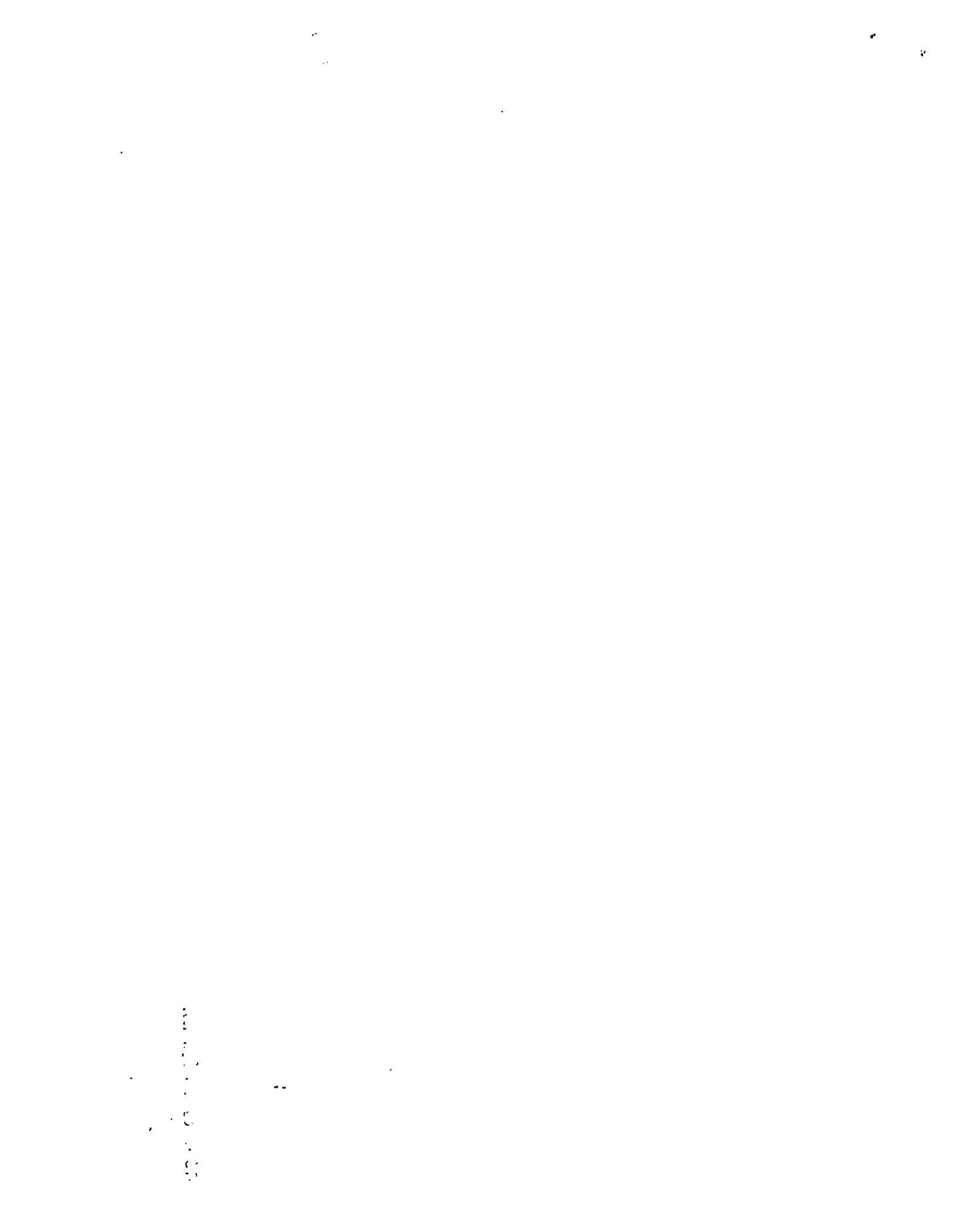
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**FINDINGS OF FACT**

1. Defendant was convicted after trial by jury of first-degree murder on 7 April 2009.
2. On 9 April 2009, after a capital sentencing proceeding and in accordance with the jury's recommendation, the trial court sentenced Defendant to death for the first-degree murder conviction. Defendant gave notice of appeal.
3. On 10 August 2010, Defendant filed his original Motion for Appropriate Relief ("MAR") under the Racial Justice Act ("RJA"). The North Carolina General Assembly amended the RJA in 2012 and Defendant filed an Amended MAR ("AMAR") on 31 August 2012.
4. In preparation for the anticipated hearing on the Defendant's jury selection RJA claim, on 18 March 2021, the Defendant filed an amended discovery motion regarding Defendant's RJA jury selection claims to the Court. Paragraph 9 of the motion included a request for statewide discovery of three categories of materials:

Documents relevant to Mr. Bacote's claim based on statewide discriminatory conduct in the exercise of peremptory strikes, as authorized by the original RJA. This request includes the following materials from all capital cases where death sentences were imposed on or after January 1, 1980, to the present day: (a) State jury selection work product, as described above in Discovery Request #7; (b) jury selection policies or trainings, as described above in Discovery Request #1, from the district attorneys' offices where the cases arose; (c) all known Batson violations, as described above in Discovery Request #5, from the district attorneys' offices where the cases arose.
5. On 16 July 2021, the Court entered a discovery order and took this request for statewide discovery under advisement.

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6. The Court requested the parties to file a memorandum setting forth their respective positions regarding this request with the Court and the parties each served such memoranda on 15 November 2021.

7. The matter was set for hearing via WebEx, with the consent of the parties, before the undersigned Superior Court Judge on 22 November 2021.

**CONCLUSIONS OF LAW**

1. That this matter and these parties are properly before this Court.
2. This Court has the inherent authority, in its discretion, to compel disclosure of relevant facts regarding a post-trial motion and may order such disclosure prior to a hearing on such motion. State v. Taylor, 327 N.C. 147, 393 S.E.2d 801 (1990).
3. That, since the litigation of Defendant's RJA Claims is before this Court, it has the inherent authority to order discovery in this matter. State v. Buckner, 351 N.C. 401, 527 S.E.2d 307 (2000).
4. Defendant's request for statewide discovery should be allowed and the motion should be granted.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

1. The State shall provide to Defendant the following materials, to the extent they exist and are in the possession of the State, within a reasonable period of time:
  - a. Any information and materials regarding any policies or training, from January 1, 1980 until April 9, 2011 from any prosecuting attorneys regarding the use of preemptory strikes in jury selection, including but not limited to:

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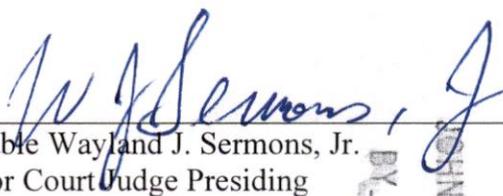
- i. Copies of CLEs or other training programs or policies such as handouts, binders, notes, as well as DVDs and CDs provided at trainings attended by North Carolina prosecuting attorneys, maintained by prosecuting attorneys, or available to such prosecuting attorneys;
  - ii. Copies of any training materials received by any prosecutor regarding Batson v. Kentucky and/or its progeny; and
  - iii. Any information about any program designed to address prosecutors' conduct of jury selection or to eliminate race as a factor in the use of peremptory strikes in jury selection.
- b. Any information in the possession of the State regarding Batson challenges made in North Carolina from when Batson was decided in 1986 until April 9, 2011 from all capital cases where death sentences were imposed:
- i. Identification of any instance where a North Carolina prosecutor was found to have violated Batson v. Kentucky; and
  - ii. Identification of any disciplinary action or remedial measure of any North Carolina prosecutor for violating Batson v. Kentucky or for engaging in any other improper conduct relating to jury selection.
- c. A list of all murder cases in North Carolina that resulted in a death sentence since January 1, 1980 until April 9, 2011; and for each such case, the State shall produce:

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- i. All jury selection materials in possession of the State, including but not limited to copies of handwritten jury selection notes, questionnaires (including questionnaires with any markings made by a prosecutor), seating charts, strike lists, ACIS reports and/or criminal record searches reviewed, prepared by, and/or used by any member of the prosecution team;
  - ii. All copies of the jury summons list reviewed and/or used by any member of the prosecution team prior to trial and/or during jury selection; and
  - iii. Notes regarding potential jurors, including interviews with law enforcement or other community members regarding the summons list.
2. The State, at its election, may either produce this discovery through the Attorney General consistent with the ongoing process, or the District Attorneys in North Carolina may make available the aforementioned discovery items for inspection, copying and/or scanning by defense counsel or their agents.

This the 13<sup>th</sup> day of December, 2021.

  
\_\_\_\_\_  
Honorable Wayland J. Sermons, Jr.  
Superior Court Judge Presiding

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