

## **Landmark Racial Justice Act Hearing Could Clear NC's Death Row**

Hasson Bacote was sentenced to death in a Johnston County courtroom in April 2009. As a Black man in a deeply segregated county with a history of racial terror, Bacote's fate was all but sealed well before the jury issued his death sentence. Under our current death penalty statute, every one of the eight Black capital defendants who have faced Johnston County juries has received a death sentence. Bacote was no exception. Now, his case is moving forward under North Carolina's Racial Justice Act (RJA), which allows capital defendants to challenge their death sentences on the basis that race was a significant factor in decisions to seek or impose the death penalty. A hearing will begin Feb. 26 in Johnston County Superior Court and force those watching to grapple with the stark reality that race plays an outsized role in the administration of the death penalty.

Bacote's will be the first RJA case heard since 2020, when the N.C. Supreme Court ruled that, despite the Act's 2013 repeal, all claims brought under the RJA remain valid. His case will decide key questions about the scope and application of the Act and pave the way for others on North Carolina's death row. Bacote will be the first defendant to present a trove of social science and historical evidence linking the death sentences of Black men to a pattern of racial terror and intimidation. Bacote will also present powerful statistical evidence of discrimination in the death penalty.

Bacote was just 21 when he was charged with the crime that led to his death sentence, the shooting of 18-year-old Anthony Surles during a robbery. The crime was the culmination of a childhood marked by poverty, trauma, and neglect. After surviving a traumatic birth and prolonged hospital stay as a newborn, Bacote was abandoned by his parents at an early age. At seven years old, after witnessing his maternal aunt die, Bacote entered foster care where he was subjected to physical and sexual abuse. Later, he was separated from his older brother, the only stable figure in his life. All of these are reasons why juries often choose life over death. But in the rural eastern North Carolina courtroom where the judge and every lawyer was white -- and where the prosecutor struck qualified Black jurors at three times the rate of whites, creating a heavily white jury from a diverse jury pool -- Bacote received no mercy.

Nor did it matter that—as even the prosecution conceded—there was no evidence that the murder of Surles was premeditated or deliberate. The prosecution charged Bacote and a codefendant, Jeff Evans, with attempting to rob five young adults, including Surles, in a trailer. Witnesses testified that Anthony Surles fled the trailer during the robbery and Bacote fired a single shot in his direction. None of the witnesses nor Bacote realized Surles had

been shot until they went outside and found him collapsed on the ground. Ten white and two Black jurors convicted Bacote of felony murder and sentenced him to death. Felony murder is a legal doctrine that holds defendants responsible for deaths that occur during the course of committing other violent felonies. In some states, felony murders are not eligible for the death penalty. Bacote is one of just 11 people sentenced to death in North Carolina for a crime that involved no planning or forethought. All 11 are men of color and one was Henry McCollum, who was exonerated after spending more than 30 years on death row. Bacote is the only person for whom the prosecution did not at least seek a conviction for something other than felony murder in a capital case.

In February 2024, Bacote will present statistical evidence of racial disparities in the prosecutor's use of peremptory strikes in capital cases in North Carolina and in Johnston County, as well as racial disparities in capital sentencing in Johnston County. This type of proof – while key to rooting out racism in the criminal punishment system – is not typically considered in criminal cases. However, the 2009 RJA allowed people on death row to present evidence of systemic bias that infected their sentences. North Carolina's RJA was the first statute of its kind to allow a person's death sentence to be vacated without requiring proof of intentional discrimination. As a result of the law, studies uncovered statewide patterns of enormous racial disparities in jury selection and sentencing. Two prior RJA hearings were held under the statute in 2012, resulting in life sentences for four defendants based on the trial court's finding of statewide discrimination. Those prior decisions were ultimately vacated, meaning that Bacote's case could be the first RJA case with precedential effect.

Among those who will provide expert witness testimony is attorney Bryan Stevenson, the founder of the Legacy Museum and the National Memorial for Peace and Justice in Montgomery, AL, who will attest to the history of racial discrimination in jury selection, as well as evidence of racial bias in Johnston County courtrooms and Bacote's own case. Social psychologist Dr. Samuel Sommers will explain how implicit racial biases are measurable and affect everything from jury selection to jury deliberations.

Historical experts Dr. Crystal Sanders, a historian born and raised in Johnston County, and Dr. Seth Kotch will detail the racist history of Johnston County and North Carolina as a whole. Johnston County was the site of at least six lynchings between the end of Reconstruction and the beginning of World War I. Through the 1970s, KKK billboards greeted drivers with messages like, "Welcome to Klan country. Love it or leave it." In the 1980s, Smithfield police officers shot and killed a Black man after he called to report the theft of his family's television. The officer who fired the shot went on to become a state capitol police officer and a Johnston County magistrate. Today, the county remains deeply

segregated. Though Black residents make up 19 percent of the population, the county has never elected a Black sheriff, district attorney, or county commissioner. The current sheriff has publicly voiced anti-immigrant slurs and remained in office with no challengers. Recently, county commissioners withheld millions in funding from the public schools until they adopted a policy that teachers can be fired if they teach about systemic racism.

The ACLU's Capital Punishment Project, the Center for Death Penalty Litigation, and the NAACP's Legal Defense Fund represents Bacote. Attorneys expect the hearing to last two to three weeks.