Report on Jury Selection Study
STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Barbara O’Brien & Catherine M. Grosso
Associate Professors of Law
March 8, 2016

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I. Introduction

This report documents the design, methodology, analysis, and results for a study on the exercise of peremptory challenges during jury selection in trials of all defendants for which Solicitor Scarlett Wilson served as lead prosecutor and for which materials were available.\(^1\) The study examined how the state exercised peremptory challenges in criminal cases to assess whether potential jurors’ race played any role in those decisions. The primary investigators for the study are Barbara O’Brien and Catherine Grosso. Both are associate professors of law at Michigan State University College of Law.

II. Study Design

Our goal was to design and conduct a study that would rigorously analyze the role of race in the exercise of peremptory challenges in cases prosecuted by Solicitor Wilson. This study coded and analyzed race and strike information for all qualified venire members in the study. This report presents the methodology, analysis, and results.

Several earlier jury selection studies informed our study design. The most important among these included a study examining strike decisions over a 17-year period in 317 Philadelphia County, Pennsylvania, capital murder trials\(^2\) and our study of the exercise of peremptory challenges during jury selection in trials of all defendants on death row in North Carolina as of July 1, 2010.\(^3\)

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1 Attorneys for Mr. Dickerson reviewed the Clerk of Court records in Charleston County to identify the universe of jury trials in which Solicitor Scarlett Wilson served as lead attorney during her tenure at the Ninth Circuit Solicitor’s Office. They identified 12 cases in addition to Mr. Dickerson’s eligible for inclusion in the study. They then subpoenaed all available jury information for these trials from Solicitor Wilson. A copy of the subpoena/FOIA request is attached as Appendix A. Solicitor Wilson’s attorneys informed Mr. Dickerson’s attorneys that they could not locate the case file for State v. Ivory Coker and Ronald Coulter. Additionally, Mr. Wilson’s attorney informed Mr. Dickerson’s attorneys that they could not locate the jury lists for Michael Dunham or Jemol Brown. Bradley Lindsey committed suicide shortly after being incarcerated, and so there was no transcript of his case available. Additionally, Ethan Mack pleaded guilty during trial, and he was sentenced to a concurrent term of years for a sentence he was already serving. The Court of Appeals informed Mr. Dickerson’s counsel that he did not appeal this case and thus there is no transcript of the voir dire in existence. These cases could not be included in the study. Jury information in Mr. Dickerson’s case was obtained by separate litigation.


A. Study Population

This study examined jury selection in 9 cases, for a total of 10 jury selection proceedings. For each proceeding we sought to include every venire member who faced peremptory challenges as part of jury selection. For the purposes of this report a “venire member” includes anyone who was subjected to voir dire questioning and not excused for cause, including alternates.

Each proceeding involved an average of 27.4 venire members eligible to be struck by the state, producing a database of 274 state strike decisions. (See Appendix B for the complete database.) Of these, 150 (54.7%) were women, and 124 (45.3%) were men. The venire members’ racial composition was as follows: white (193, 70.4%); black (78, 28.5%); Asian (1, 0.4%); and unknown (2, 0.7%).

B. Data Collection

We created an electronic and paper case file for each proceeding in the study. The case file contains the primary data for every coding decision. The materials in the case file typically include some combination of juror lists, individual juror questionnaires, and attorneys’ or clerks’ notes. Each case file also includes an electronic copy of the jury selection transcript and the jury summons list, when available.

C. Overview of Database Development

Staff attorneys completed all coding and data entry at Michigan State University College of Law in East Lansing, Michigan, under the direct supervision of the primary investigators. As set forth more fully below, staff attorneys received detailed training on each step of the coding and data entry process. A total of three staff attorneys worked on this project.

i. Development of Data Collection Instruments

Data collection instruments (DCIs) are forms that staff attorneys completed based on the primary documents and transcripts. We created two data collection instruments for coding data in this study: (1) South Carolina (County of Charleston) Defendant Level Data Collection Instrument, Jury Selection Study (6 November 2015) (“D-Level DCI”), and (2) South Carolina (County of Charleston) Venire Member Level Data Collection Instrument, Jury Selection Study (17 November 2015) (“VM-Level DCI”). (See Appendix C for both DCIs.)

4 Jalal Beyah’s case had two jury selection proceedings. After the jury was selected, the judge granted the defendant’s Batson motion and jury selection started anew. Beyah Trial Tr. 61. We have coded and analyzed both jury selection proceedings in this case. We consider Beyah’s case to be two proceedings.
The D-Level DCI collected information about the proceeding generally, including the number of peremptory challenges used by each side, and the name of the judge and attorneys involved in the proceeding.

Questions 1-7 of the VM-Level DCI documented basic procedural information specific to each venire member.

Question 5 of the VM-Level DCI required the staff attorney to determine strike eligibility for each potential juror. “Strike eligibility” refers to which party or parties had the chance to exercise a peremptory strike against a particular venire member. For instance, if the prosecution struck someone before the defense had a chance to strike that person, that juror would be strike eligible to the prosecution only. Likewise, if a party had exhausted its peremptory challenges by the time it reached a potential juror, the failure to strike reveals nothing about how that party exercised its discretion. That juror would therefore be coded as not eligible to be struck by that party. This determination refines the analysis of strike decisions to examine only those instances in which that party actually had a choice to pass or strike a juror, and excludes those when the decision was out of the party’s hands.

Questions 8-22 of the VM-Level DCI documented basic demographic information specific to each venire member.

Question 12 documents the race of the venire member. Staff attorneys completed this question using the race information provided in Charleston County summons lists for most of the 287 venire members (74.9%, 215/287). When that information was not available from the summons lists, staff attorneys relied on notes in the jury lists or questionnaires (13.6%, 39/287), or on information contained in the transcript (10.9%, 31/287). We are missing race information for 2 venire members (0.7%, 2/287).

D. Steps for Ensuring Accuracy of Data

We took several steps to minimize coding errors. We also developed systematic procedures to catch and correct errors in coding and data entry.

To ensure reliability, we instituted double coding procedures for all coding in this study. Under these procedures, two different staff attorneys separately coded strike information for each venire member to ensure accuracy and intercoder reliability. The first staff attorney identified all

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5 The Clerk of Court informed Mr. Dickerson’s attorneys that the office does not have the juror lists for the remaining cases because of records retention policies. See S.C. App. Ct. Rule 607(i).
potential jurors and assigned each juror a study identification number. This attorney completed the D-Level DCI and the VM-Level DCI. A second staff attorney used the list of jurors provided by the first to code a second VM-Level DCI for each juror. Other than the list of potential jurors created by the first staff attorney, the second staff attorney did not have access to the first staff attorney’s codes. A staff attorney then compared and reviewed their codes for consistency and noted any discrepancy, which a primary investigator reviewed and resolved.

To minimize data entry errors, a primary investigator created a Microsoft Excel spreadsheet with data validation restrictions in place to allow us to transfer the data that staff attorneys coded on paper DCIs into a machine-readable format. The data entry fields accepted only valid responses in order to minimize errors. For instance, if an item on the DCI allowed for only three possible responses (0 = No, 1 = Yes, and 9 = Unknown), then entering anything other than 0, 1, or 9 would be rejected and the person entering the data would be prompted to re-enter an acceptable value for that question. Although this mechanism could not prevent all data entry errors (e.g., it could not catch a staff attorney’s misspelling of a venire member’s name), it provided one line of defense against human error.

We used several other methods to catch and correct other errors in coding or data entry. Using the SPSS statistical program, we could identify instances where inconsistencies in data indicated possible errors and established a process for review and, where appropriate, correction.6

III. Analysis and Results

This report presents unadjusted racial disparities in prosecutorial strikes. Throughout this section, we report the disparities observed as well as a measure of the likelihood that the finding would occur as a result of chance. This measure, called a $p$-value, reflects the probability of observing a disparity of a given magnitude simply by luck of the draw. The lower the $p$-value, the lower the chance that an observed disparity was due merely to chance. The $p$-values for the racial disparities observed in this study are consistently well below the standard scientific

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6 For example, we could identify all instances in which it appeared that a party exercised fewer than the peremptory strikes usually allotted to determine whether there was an error or if the party failed to use all strikes.
benchmarks for reliability.\textsuperscript{7} (See Appendix D for a Codebook defining each variable used in the analyses.)

The database includes information about 287 venire members. Of those, 274 (95.5\%) were eligible to be struck by the state. We analyzed prosecutorial strike patterns for only those venire members who were eligible to be struck by the state.

Among state strike-eligible venire members, the overwhelming majority were either white (193/274, 70.4\%) or black (78/274, 28.5\%); just 1 (0.4\%) was of another race.\textsuperscript{8} As of the writing of this report, we are missing race information for 2 (0.7\%, 2/274) venire members who were eligible to be struck by the state.

The analyses below compare strike decisions relating to 271 black or white state strike-eligible venire members. Table 1 presents the comparative strike rates for each of the 10 cases in the study. As a preliminary matter, Table 1, Line 7, shows the strike rates in Mr. Dickerson's case. The state struck 50\% of eligible black venire members (4/8) and 4.6\% of eligible white venire members (1/22). This is a difference of 45.5 percentage points in the strike rates (50.0 - 4.6) and a ratio between the strike rates of 10.9 (50.0/4.6). This disparity is statistically significant (p < 0.02). The numbers in Mr. Dickerson's case are consistent and stronger than the overall strike pattern reported below.

Prosecutors exercised peremptory challenges at a significantly higher rate against black venire members than against other venire members. Across all strike-eligible venire members in the study, prosecutors struck 38.5\% (30/78) of eligible black venire members, compared to only 5.7\% (11/193) of eligible white venire members. This disparity reflects a difference of 32.8 percentage points in the strike rates (38.5 - 5.7) and a ratio between strike rates of 6.75 (38.5/5.7). This difference is statistically significant: $p < .001$. Put differently, there is less than a one in one thousand chance that we would observe a disparity of this magnitude if the jury selection process were actually race neutral.\textsuperscript{9} (See Table 2.)

The average rate per case at which prosecutors struck eligible black venire members is significantly higher than the rate at which they struck other eligible venire members. The

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\textsuperscript{8} For the sake of simplicity, the analysis we present below examines strikes against black potential jurors with those against white potential jurors.

\textsuperscript{9} Several different chi square tests (Pearson Chi-Square, Continuity Correction, Likelihood Ratio, Fischer's Exact Test, and Linear-by-Linear Association) were used to calculate the $p$-values, and the results were consistent regardless of the test used.
analysis presented above (and in Table 2) examines strikes across all venire members in the study, pooled across cases. To assess whether the effect is robust, we also compared the strike rates calculated for each proceeding, so that each represents one data point. Of the 10 proceedings we analyzed, prosecutors struck an average of 36.1% of eligible black venire members, compared to only 4.9% of all other eligible venire members. This disparity reflects a difference of 31.2 percentage points in the strike rates (36.1 – 4.9) and a ratio between strike rates of 7.4 (36.1/4.9). This difference is statistically significant, $p < .001$. (See Table 3.)

IV. Summary of Findings

We have documented the strike decisions and race for 271 potential black or white jurors eligible to be struck by the state in 10 proceedings from 2004 to 2013. In every analysis that we performed, race was a significant factor in prosecutorial decisions to exercise peremptory challenges in jury selection in these proceedings. Regardless of how one looks at the data, a robust and substantial disparity in the exercise of prosecutorial strikes against black venire members compared to others persists.

A statistically significant disparity persists at a magnitude of more than six to one whether calculated by looking at all strike decisions pooled across cases (a disparity of 6.75 to 1, 38.5/5.7), or by comparing the mean strike rates for each case (a disparity of 7.4 to 1, 36.1/4.9).

The effect of race was statistically significant at the level of $p < .001$. Thus, for each of these analyses, the chances that we would see a disparity of that magnitude in a race-neutral jury selection system is less than one in one thousand. The robustness of our findings of racial disparities across a variety of analyses provides powerful evidence that race was a substantial factor in prosecutorial strike decisions in the 10 proceedings in Charleston County.
TABLE 1
Rates of State Strikes for Cases in Study

<table>
<thead>
<tr>
<th>Defendant</th>
<th>Year</th>
<th>Mean Strike Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Black Qualified Venire Members</td>
</tr>
<tr>
<td>1. Michael Barnes</td>
<td>2006</td>
<td>40.0% (2/5)</td>
</tr>
<tr>
<td>2. Jalal F. Beyah (first jury selection)</td>
<td>2004</td>
<td>55.6% (5/9)</td>
</tr>
<tr>
<td>3. Jalal F. Beyah (second jury selection)</td>
<td>2004</td>
<td>37.5% (3/8)</td>
</tr>
<tr>
<td>4. Colin J. Broughton</td>
<td>2009</td>
<td>50.0% (4/8)</td>
</tr>
<tr>
<td>5. Ryan P. Deleston</td>
<td>2013</td>
<td>33.3% (3/9)</td>
</tr>
<tr>
<td>6. Dominic M. Derricotte</td>
<td>2008</td>
<td>37.5% (3/8)</td>
</tr>
<tr>
<td>7. William O. Dickerson</td>
<td>2009</td>
<td>50.0% (4/8)</td>
</tr>
<tr>
<td>8. Lemar T. Mack</td>
<td>2008</td>
<td>0% (0/2)</td>
</tr>
<tr>
<td>9. Michael G. Shine</td>
<td>2007</td>
<td>27.3% (3/11)</td>
</tr>
<tr>
<td>10. Brandon J. Simmons</td>
<td>2010</td>
<td>30.0% (3/10)</td>
</tr>
<tr>
<td>Totals</td>
<td>2010</td>
<td>38.5% (30/78)</td>
</tr>
</tbody>
</table>

TABLE 2
Prosecutorial Peremptory Strike Patterns
( Strikes against venire members aggregated across cases)

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Black Venire Members</td>
<td>White Venire Members</td>
<td>Total</td>
</tr>
<tr>
<td>1. Passed</td>
<td>61.5% (48)</td>
<td>94.3% (182)</td>
<td>85.0% (230)</td>
</tr>
<tr>
<td>2. Struck</td>
<td>38.5% (30)</td>
<td>5.7% (11)</td>
<td>15.1% (41)</td>
</tr>
<tr>
<td>3. Total</td>
<td>100% (78)</td>
<td>100% (193)</td>
<td>100% (271)</td>
</tr>
</tbody>
</table>

*Chi square tests (Pearson Chi-Square, Continuity Correction, Likelihood Ratio, Fischer's Exact Test, and Linear-by-Linear Association) indicate that these differences in strike rates are significant at p < .001.

TABLE 3
Average Rates of State Strikes
(Average of strike rates calculated in individual cases and number of proceedings averaged)

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Average Strike Rate</td>
<td>Number of Proceedings</td>
</tr>
<tr>
<td>1. Strike Rates Against Black Qualified Venire Members</td>
<td>36.1%</td>
<td>10</td>
</tr>
<tr>
<td>2. Strike Rates Against White Qualified Venire Members</td>
<td>4.9%</td>
<td>10</td>
</tr>
</tbody>
</table>

*A paired-sample t-test indicates that this difference in strike rates is significant at p < .001.
Appendix A
August 27, 2015

CERTIFIED MAIL – RETURN RECEIPT

The Honorable Scarlett A. Wilson
Solicitor for the Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401

Re: William O. Dickerson, v. State
Case Number: 2012-CP-10-3216

Dear Solicitor Wilson:

Enclosed for service, please find a subpoena for certain records from various cases that are listed in the attachment to the subpoena. You may comply by providing the records by email or US Mail. I could also arrange for the records to be picked up at your office.

In addition to discovery under the South Carolina Rules of Civil Procedure, please consider this request to be a request for records pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, et. seq.

By copy of this letter to Ms. Brown, I am providing notice of this subpoena to opposing counsel.

Thank you for your attention to this matter.

With kindest regards, I am

Yours very truly,

E. Charles Grose, Jr.

cc: Elizabeth A. Franklin-Best, Esquire (via email only)
    Melody J. Brown, Esquire (via US Mail)
STATE OF SOUTH CAROLINA
ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF CHARLESTON

William O. Dickerson, #6030, Plaintiff

v.

State of South Carolina, Defendant

SUBPOENA IN A CIVIL CASE
Case Number: 2012-CP-10-3216
Pending in Charleston County

TO: The Honorable Scarlett A. Wilson, Solicitor of the Ninth Judicial Circuit
☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

<table>
<thead>
<tr>
<th>PLACE OF TESTIMONY</th>
<th>COURTROOM</th>
</tr>
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<tbody>
<tr>
<td>DATE AND TIME</td>
<td>AM</td>
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</table>

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

<table>
<thead>
<tr>
<th>PLACE OF DEPOSITION</th>
<th>DATE AND TIME</th>
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X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:
Please see the attachment.

<table>
<thead>
<tr>
<th>PLACE</th>
<th>DATE AND TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charleston County Solicitor’s Office</td>
<td>Friday September 11, 2015, at 2:00 PM</td>
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☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

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<th>PREMISES</th>
<th>DATE AND TIME</th>
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</table>

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(c)(1) HAS BEEN GIVEN TO ALL PARTIES.

[Signature]
August 27, 2015
E. Charles Grose, Jr.

[Address]
404 Main Street, Greenwood SC, 29646, 864-538-4466, Attorney for the Applicant.

Clerk of Court/Issuing Officer’s Signature
[Signature]
Date
Print Name

Pro Se Litigant’s Name, Address and Telephone Number:

SCCA 254 (05/2015)
Dickerson

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)
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O’Brien & Grosso Report
PROOF OF SERVICE

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DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on:

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney’s fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert’s opinion or information not describing specific events or occurrences in dispute and resulting from the expert’s study made not at the request of any party, or

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Dickerson

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

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(III) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties In Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

SCCA 254 (05/2015)

Dickerson

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

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O'Brien & Grosso Report
Attachment

To: The Honorable Scarlett A. Wilson, Solicitor of the Ninth Judicial Circuit

For each of the cases listed below, you are instructed to produce the incident report, complete and accurate copies of the jury list(s) prepared by the Clerk of Court, your juror strike sheet, all information created or assembled about all potential jurors (regardless of whether it was prepared by you or by someone else and given to you), and your notes made during the roll call of jurors, juror qualification, voir dire, and jury selection.

List of Cases

1. State v. Ivory Croker and Ronald Coulter, 2002-GS-10-2441
4. State v. Michael Dunham, 2005-GS-10-8285 (Tried 2/13/06)
5. State v. Michael Jeter, 2005-GS-10-8240 (Tried 3/20/06)
7. State v. Dominic Derricotte, 2007-GS-10-3281, -84 (Tried 1/7/08)
10. State v. Ryan Delesto (Tried 10/7/13)
11. State v. Brandon Simmons, 2010-GS-10-4574 (Tried 12/13/10)
Appendix B

Please see electronic file.
Appendix C
SOUTH CAROLINA (COUNTY OF CHARLESTON)
JURY SELECTION STUDY
Defendant Level Data Collection Instrument
Version: 6 November 2015

Please fill in the blanks as legibly as possible in capital letters with a sharp dark pencil. For the questions that present multiple answer options, please circle the number of the single most appropriate answer unless otherwise instructed.

I. Identifying and Procedural Information

1. Defendant Study ID Number: V1001 [_________ _______ ______]

2. Defendant's Name:

[V1002] Last

[V1003] First

[V1004] MI

3. Date of Offense V1007 _____ / _____ / ______ YEAR

4. Date of Indictment V1008 _____ / _____ / ______ YEAR

5. Date of Guilt Verdict or Plea V1009 _____ / _____ / ______ YEAR

6. Date Sentence Imposed V1010 _____ / _____ / ______ YEAR

7. Defendant's Date of Birth V1011 _____ / _____ / ______ YEAR

8. Defendant's Age at Date of Offense (circle one) V1012

0 = Under 17

1 = 17

2 = 18-29

3 = 30-59

4 = 60+

9 = Unknown

9. Defendant's Sex (circle one) V1013

0 = Female

1 = Male

9 = Unknown

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10. Race/Ethnicity of Defendant (circle one)  

1 = White/Caucasian  
2 = Black/African American  
3 = Asian/Asian American  
4 = Pacific Islander  
5 = Latino/Hispanic  
6 = Native American  
7 = Other (specify)  
8 = Mixed (self-reported)  
9 = Unknown  

Source of information:  

11. List all of the Charges in Indictment (circle one)  

a.  

b.  

c.  

d.  

e.  

f.  

g.  

h.  

i.  

j.  

12. List all of the Charges of which Defendant was Convicted: (enter “none” if appropriate)  

a.  

b.  

c.  

d.  

e.  

f.  

g.  

h.  

i.  

j.  

13. Does this case have more than one decedent victim? (circle one)  

0 = No  
1 = Yes  

14. Number of Decedent Victim(s) (circle one)  

1 = One  
2 = Two  
3 = Three  
4 = Four or more  
5 = Five  
6 = Six or more  
7 = Unknown
15. Juror Decedent Victim One Race/Ethnicity (circle one)

1 = White/Caucasian
2 = Black/African American
3 = Asian/Asian American
4 = Pacific Islander
5 = Latino/Hispanic
6 = Native American
7 = Other (specify) _______________________
8 = Mixed (self-reported) ___________________
9 = Unknown

Source of information: ____________________________________________________________

16. Decedent Victim One Sex (circle one)

0 = Female
1 = Male
9 = Unknown

17. Decedent Victim One Age (circle one)

0 = Infant (Under 2)
1 = Child (2-17)
2 = Young Adult (18-29)
3 = Adult (30-59)
4 = Older Adult (60+)

Begin Decedent Victim Two

18. Decedent Victim Two Name

LAST [V1024] ____________________________ ____________________________

FIRST [V1025] ____________________________ MI [V1026] ______________________

19. Decedent Victim Two Race/Ethnicity (circle one)

1 = White/Caucasian
2 = Black/African American
3 = Asian/Asian American
4 = Pacific Islander
5 = Latino/Hispanic
6 = Native American
7 = Other (specify) ______________________
8 = Mixed (self-reported)
9 = Unknown

Source of information: ____________________________________________________________

20. Decedent Victim Two Sex (circle one)

0 = Female
1 = Male
9 = Unknown

21. Decedent Victim Two Age (circle one)

0 = Infant (Under 2)
1 = Child (2-17)
2 = Young Adult (18-29)
3 = Adult (30-59)
4 = Older Adult (60+)
II. Jury Selection Data

22. How many peremptory strikes did the prosecution have in this case? V1011

23. How many peremptory strikes did the defense have in this case? V1012

24. Number of Jurors in the Venire
   \textit{If unknown code 99.} V1005

25. Number of Jurors Excused for Cause
   \textit{If unknown code 99.} V1006

26. Number of Peremptory Challenges Used by the State
   \textit{If unknown code 99.} V1007

27. Number of Peremptory Challenges Used by the Defense
   \textit{If unknown code 99.} V1008

28. Number of Venire Members Not Reached During Voir Dire
   \textit{If unknown code 99.} V1009

29. Which parties exhausted their peremptory challenges? (circle one) V1010

\begin{itemize}
\item 0 = Neither side exhausted peremptory challenges
\item 3 = Both sides exhausted peremptory challenges
\item 1 = Only the State exhausted peremptory challenges
\item 2 = Only the defense exhausted peremptory challenges
\item 9 = Unknown
\end{itemize}

Coder’s Name

\begin{itemize}
\item [V1030] Last
\item [V1031] First
\item [V1032] MI
\end{itemize}

Date Coded V1033 / /___
\begin{itemize}
\item MM
\item DD
\item YEAR
\end{itemize}
Please fill in the blanks as legibly as possible in capital letters with a sharp dark pencil. For the questions that present multiple answer options, please circle the number of the single most appropriate answer. Otherwise, follow the instructions provided.

I. IDENTIFYING INFORMATION

1. Venire Member’s Study Identification Number V2002 _____________________________

2. Defendant’s Name

______________________________ ________________________________
LAST [V2003]

______________________________ ________________________________
FIRST [V2004] MI [V2005]

3. Venire Member’s Name

______________________________ ________________________________
LAST [V2011]

______________________________ ________________________________
FIRST [V2012] MI [V2013]

II. CHALLENGES TO VENIRE MEMBER

4. Excused for Cause (circle one) V2006

0 = No ___________________________ 1 = Yes ___________________________ 9 = Unknown ___________________________

5. Peremptory strike eligibility¹ (circle one) V2007

1 = Both Defense & State 2 = State 3 = Defense 4 = Neither 9 = Unknown

6. Peremptory Challenge by State (circle one) V2008

0 = No ___________________________ 1 = Yes ___________________________ 9 = Unknown ___________________________

¹ A venire member is “strike eligible” to a party when that party has the choice to either accept the juror or exercise a peremptory challenge against them. The State and Defense take turns going first in jury selection. Pay attention as to who went first and whether or not that party passed.

For instance, if the State goes first and strikes a juror before the Defense has a chance to strike or accept that juror, code that juror’s strike eligibility as “State.” If the Defense had gone first and used a strike, the juror’s strike eligibility would be “Defense.” If the State accepts a juror and the Defense then strikes or passes on them, code that juror’s strike eligibility as “Both Defense and State.” Likewise, if the Defense passes the juror to the State, that juror’s strike eligibility is “Both Defense and State.”

Availability of strikes also impacts eligibility. If one party has exhausted its strikes, the juror is not strike eligible to that party. Once both have exhausted, a juror would be strike eligible to neither.
7. Peremptory Challenge by Defense (circle one)  
0 = No  
1 = Yes  
9 = Unknown  

III. VENIRE MEMBER CHARACTERISTICS

8. What was this venire member's ultimate status? (circle one)  
0 = Neither seated on the jury nor selected as alternate  
1 = Seated on the jury  
2 = Selected as an alternate  
9 = Unknown  

9. Number of seat to which venire member was called for questioning. *If unknown code 99.*  

10. Venire Member's Gender (circle one)  
0 = Female  
1 = Male  
9 = Unknown  

11. Source of information for Gender (circle one)  
1 = Indicated Explicitly  
2 = Inferred from other information (e.g., name)  
9 = Gender unknown  

12. Venire Member's Race (circle one)  
1 = White/Caucasian  
2 = Black/African American  
3 = Asian/Asian American  
4 = Pacific Islander  
5 = Latino/Hispanic  
6 = Native American  
7 = Other (specify)  
8 = Mixed (self-reported)  
9 = Mixed (self-reported)  

13. Please indicate the source of information for race. Choose the lowest number that applies, even if a subsequent foil is also applicable (circle one)  
1 = Juror summons list  
2 = Noted by court or counsel in transcript and no dispute about characterization  
3 = Noted on a jury chart or in counsel's notes and verified by another source.  
4 = N/A because race is unknown  

14. Please indicate proper age range (circle one)  
1 = 19 or younger  
2 = 20-35  
3 = 36-50  
4 = 51-75  
5 = Over 75  
9 = Unknown  

15. Marital Status (circle one)  
1 = Married  
3 = Separated or divorced  
5 = Living unmarried with a significant other
2 = Single 4 = Widowed 9 = Unknown

16. Children (circle one) V2021
0 = Does not have children 1 = Has children 9 = Unknown

17. Belongs to a religious organization (circle one) V2022
0 = No 1 = Yes 9 = Unknown

18. Education (circle highest level of education obtained) V2023
1 = Attended grade school 4 = Attended college 6 = Attended graduate school
2 = Attended high school (9-12) 5 = College graduate 7 = Other
3 = High school graduate 9 = Unknown
(including GED)

19. Has served in military (circle one) V2024
0 = No 1 = Yes 9 = Unknown

**Employment Information:** Use the code from Employment Code Appendix that provides the most detailed information. Use the more general code (i.e., 10, 20, etc.) only if more precise information is unavailable. If the *venire member* or spouse has more than one job, choose the one at which he or she spends the most time or otherwise indicates is primary.

20. Venire Member’s Employment (enter code from list in Employment Code Appendix) V2025
   *If unknown code 99.*

21. Spouse’s Employment (enter code from list in Employment Code Appendix) V2026
   *If unknown code 99. If not applicable, code 88.*

22. Descriptive Characteristics: Enter the code from the Descriptive Characteristics Appendix for whichever characteristics apply in the slots V2027 through V2036, as needed. Use the code that provides the most detailed information possible. Use the more general code (e.g., 100, 200) only if more precise information is unavailable.

V2027 __ __ __ __ __ __ __ __ V2031 __ __ __ __ __ __ __ __ V2035 __ __ __ __ __ __ __ __
V2028 __ __ __ __ __ __ __ __ V2032 __ __ __ __ __ __ __ __ V2036 __ __ __ __ __ __ __ __
V2029 __ __ __ __ __ __ __ __ V2033 __ __ __ __ __ __ __ __ 8888 = No factors apply (enter in V2027, leave rest blank)
V2030 __ __ __ __ __ __ __ __ V2034 __ __ __ __ __ __ __ __ 9999 = Responses unknown (enter in V2027, leave rest blank)

24. Venire Member Questioned for V2037
1 = Both guilt and penalty phase 2 = Guilt phase only 3 = Penalty phase only 8 = Not capital

**South Carolina (County of Charleston) Jury Selection Study**
*Juror Level Data Collection Instrument*
Dickerson
O’Brien & Grosso Report
<table>
<thead>
<tr>
<th>Variable Label</th>
<th>Ques. No.</th>
<th>Variable No.</th>
<th>Coding Instruction or Recoding Syntax</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Age</td>
<td>14</td>
<td>2019</td>
<td>1 = 19 or younger; 2 = 20-35; 3 = 36-50; 4 = 51-75; 5 = Over 75; 9 = unknown</td>
<td>VM's age</td>
</tr>
<tr>
<td>2. Black</td>
<td>12</td>
<td>2019</td>
<td>RECODE V2018 ('Black/African American='1) ('White/Caucasian'='0) (MISSING='SYSMIS) INTO Black.</td>
<td>Recodes V2018 into Black or all others.</td>
</tr>
<tr>
<td>3. BlackEligible</td>
<td>5, 12</td>
<td>2019</td>
<td>IF (Black=1 &amp; StateEligible=1) BlackEligibleState=1. IF (Black=9</td>
<td>StateEligible=9) BlackEligibleState=9. IF (Black=0 &amp; (StateEligible =0</td>
</tr>
<tr>
<td>4. BlackEligibleSum</td>
<td>5, 12</td>
<td>2019</td>
<td>/BlackEligibleState_sum=SUM(BlackEligibleState)</td>
<td>Sum of black VMs eligible to be struck by the state in that case.</td>
</tr>
<tr>
<td>5. Children</td>
<td>16</td>
<td>2021</td>
<td>0 = no children, 1 = children, 9 = unknown</td>
<td>VM has children</td>
</tr>
<tr>
<td>6. CoderFirst</td>
<td>NA</td>
<td>2039</td>
<td></td>
<td>Coder's first name</td>
</tr>
<tr>
<td>7. CoderLast</td>
<td>NA</td>
<td>2038</td>
<td></td>
<td>Coder's last name</td>
</tr>
<tr>
<td>8. CoderMiddle</td>
<td>NA</td>
<td>2040</td>
<td></td>
<td>Coder's middle initial</td>
</tr>
<tr>
<td>9. StudyID</td>
<td>1 (D-level DCI)</td>
<td>1001</td>
<td>Study Identification Number</td>
<td>Identification number assigned case.</td>
</tr>
<tr>
<td>10. DateCoded</td>
<td>NA</td>
<td>2041</td>
<td></td>
<td>Date coded</td>
</tr>
<tr>
<td>11. DefEligible</td>
<td>5</td>
<td>2027</td>
<td>RECODE V2007 (SYSMIS=9) (9=9) (4=0) (3=1) (1=1) (2=0) INTO DefEligible.</td>
<td>Indicates whether VM was strike eligible to defense.</td>
</tr>
<tr>
<td>12. Descriptive1</td>
<td>23</td>
<td>2027</td>
<td></td>
<td>Descriptive information about individual VMs. Coders instructed to enter missing (9999) code unless more data become available. (Applies to V's 2027-2036.)</td>
</tr>
<tr>
<td>13. Descriptive2</td>
<td>23</td>
<td>2028</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Descriptive3</td>
<td>23</td>
<td>2029</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Descriptive4</td>
<td>23</td>
<td>2030</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Descriptive5</td>
<td>23</td>
<td>2031</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Descriptive6</td>
<td>23</td>
<td>2032</td>
<td></td>
<td></td>
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<tr>
<td>18. Descriptive7</td>
<td>23</td>
<td>2033</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19. Descriptive8</td>
<td>23</td>
<td>2034</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20. Descriptive9</td>
<td>23</td>
<td>2035</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21. Descriptive10</td>
<td>23</td>
<td>2036</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22. DFirst</td>
<td>3</td>
<td>2004</td>
<td></td>
<td>Defendant's first name</td>
</tr>
<tr>
<td>23. DLast</td>
<td>3</td>
<td>2003</td>
<td></td>
<td>Defendant's last name</td>
</tr>
<tr>
<td>24. DMiddle</td>
<td>3</td>
<td>2005</td>
<td></td>
<td>Defendant's middle initial</td>
</tr>
<tr>
<td>25. Education</td>
<td>18</td>
<td>2023</td>
<td>1 = Attended grade school, 2 = Attended high school (9-12), 3 = High school graduate, 4 = Attended college, 5 = College graduate, 6 = Attended graduate school, 7 = Other, 9 = Unknown</td>
<td>Highest level of education VM achieved.</td>
</tr>
<tr>
<td>26. Employment</td>
<td>21</td>
<td>2025</td>
<td></td>
<td>Employment of VM, Coders instructed to enter missing (9999) code unless more data become available.</td>
</tr>
<tr>
<td>27. Excused</td>
<td>4</td>
<td>2006</td>
<td>0 = No; 1 = Yes; 9 = Unknown</td>
<td>VM excused for cause (for data cleaning purposes only)</td>
</tr>
<tr>
<td>28. Gender</td>
<td>10</td>
<td>2016</td>
<td>0 = Female, 1 = Male, 9 = Unknown</td>
<td>VM's gender</td>
</tr>
<tr>
<td>29. GenderSource</td>
<td>11</td>
<td>2017</td>
<td>1 = Indicated explicitly, 2 = Inferred from other information (e.g., name), 9 = Gender unknown</td>
<td>Source of information for gender</td>
</tr>
<tr>
<td>30. Marital</td>
<td>15</td>
<td>2020</td>
<td>1 = Married, 2 = Single, 3 = Separated/divorced, 4 = Widowed, 5 = Living with significant other, 9 = Unknown</td>
<td>VM's marital status</td>
</tr>
<tr>
<td>31. Military</td>
<td>19</td>
<td>2024</td>
<td>0 = No; 1 = Yes; 9 = Unknown</td>
<td>VM has served in military</td>
</tr>
<tr>
<td>32. N_Break</td>
<td>NA</td>
<td></td>
<td></td>
<td>Calculated by SPSS to reflect the number of VMs in a case.</td>
</tr>
<tr>
<td>Variable Label</td>
<td>Ques. No.</td>
<td>Variable No.</td>
<td>Coding Instruction or Recoding Syntax</td>
<td>Explanation</td>
</tr>
<tr>
<td>----------------</td>
<td>----------</td>
<td>--------------</td>
<td>---------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>QuestionedFor</td>
<td>33</td>
<td>24 2037</td>
<td>1 = Both guilty and penalty phase, 2 = Guilt phase only, 3 = Penalty phase only; 8 = Not Capital</td>
<td>Phase for which VM was questioned.</td>
</tr>
<tr>
<td>Race</td>
<td>34</td>
<td>12 2018</td>
<td>1 = White/Caucasian, 2 = Black/African American, 3 = Asian/Asian American, 4 = Pacific Islander, 5 = Latino/Hispanic, 6 = Native American, 7 = Other (specify), 8 = Mixed (self-reported), 9 = Unknown</td>
<td>VM's race</td>
</tr>
<tr>
<td>RateProsStruckBlacks</td>
<td>35</td>
<td>5, 6, 12</td>
<td>COMPUTE RateProsStruckBlacks=StrikeBlack_sum / BlackEligibleState_sum.</td>
<td>Rate state struck eligible black jurors; calculated by dividing sum of black VMs state struck by sum of black VMs eligible to be struck</td>
</tr>
<tr>
<td>RateProsStruckWhites</td>
<td>36</td>
<td>5, 6, 12</td>
<td>COMPUTE RateProsStruckWhites=StrikeWhite_sum / WhiteEligibleState_sum.</td>
<td>Same as above but using sums for whites</td>
</tr>
<tr>
<td>ReligiousOrg</td>
<td>37</td>
<td>17 2022</td>
<td>0 = No; 1 = Yes; 9 = Unknown</td>
<td>VM belongs to religious organization</td>
</tr>
<tr>
<td>Seat</td>
<td>38</td>
<td>9 2015</td>
<td>Number of seat to which VM was called for questioning. If unknown code 99.</td>
<td>Indicates source of information for race. Coders instructed to choose lowest number that applied, even if a subsequent fail also applied (such as when multiple sources of race information were available).</td>
</tr>
<tr>
<td>RaceSource</td>
<td>39</td>
<td>13 2045</td>
<td>1 = Juror summons list, 2 = Noted by court or counsel in transcript and no dispute about characterization, 3 = Noted on a jury chart or in counsel’s notes and verified by another source, 8 = N/A because race is unknown</td>
<td>RaceSource indicates source of information for race. Coders instructed to choose lowest number that applied, even if a subsequent fail also applied (such as when multiple sources of race information were available).</td>
</tr>
<tr>
<td>StateEligible</td>
<td>40</td>
<td>17 2007</td>
<td>RECODE V2007 (SYSMIS=9) 0(=9) 1(=1) 2(=2) 3(=3) 4(=4) INTO StateEligible.</td>
<td>Recodes StrikeEligible to indicate whether VM was strike eligible to state</td>
</tr>
<tr>
<td>Status</td>
<td>41</td>
<td>8 2014</td>
<td>0 = Neither seated on jury nor selected as alternate; 1 = Seated on jury; 2 = Selected as alternate; 9 = Unknown</td>
<td>VM’s ultimate status</td>
</tr>
<tr>
<td>StrikeBlack</td>
<td>42</td>
<td>6, 12</td>
<td>IF (Black=1 &amp; V2028 = 1) StrikeBlack=1. IF (Black=9</td>
<td>V2028 = 9) StrikeBlack=9. IF (Black=0 &amp; V2028 = 0) StrikeBlack=0.</td>
</tr>
<tr>
<td>StrikeBlack_sum</td>
<td>43</td>
<td>6, 12</td>
<td>AGGREGATE /OUTFILE=** MODE=ADDVARIABLES /BREAK=StudyID/StrikeBlack_sum=SUM(StrikeBlack) /N_BREAK=N.</td>
<td>Computes sum of black VMs state struck in that case.</td>
</tr>
<tr>
<td>StrikeState</td>
<td>44</td>
<td>6 2008</td>
<td>0 = No; 1 = Yes; 9 = Unknown</td>
<td>VM was struck by state.</td>
</tr>
<tr>
<td>StrikeWhite</td>
<td>45</td>
<td>6, 12</td>
<td>IF (White=1 &amp; V2028 = 1) StrikeWhite=1. IF (White=9</td>
<td>V2028 = 9) StrikeWhite=9. IF (White=0 &amp; (V2028 = 0) V2028 = 1) StrikeWhite=0. IF (White=0</td>
</tr>
<tr>
<td>StrikeWhite_sum</td>
<td>46</td>
<td>6, 12</td>
<td>/StrikeWhite_sum=SUM(StrikeWhite)</td>
<td>Sum of white VMs struck by state.</td>
</tr>
<tr>
<td>VMFirst</td>
<td>47</td>
<td>3 2012</td>
<td></td>
<td>VM's first name.</td>
</tr>
<tr>
<td>VMLast</td>
<td>48</td>
<td>3 2011</td>
<td></td>
<td>VM’s last name.</td>
</tr>
<tr>
<td>VMMiddle</td>
<td>49</td>
<td>3 2013</td>
<td></td>
<td>VM’s middle initial.</td>
</tr>
<tr>
<td>VMStudyID</td>
<td>50</td>
<td>1 2002</td>
<td>Venire Member’s Study Identification Number</td>
<td>Unique identifier of VM</td>
</tr>
<tr>
<td>White</td>
<td>51</td>
<td>12 2025</td>
<td>RECODE V2018 (Black/African American=0) (White/Caucasian=1) (MISSING=SYSMIS) INTO White. VARIABLE LABELS White ‘White’.</td>
<td>Recodes V2018 into White or all others.</td>
</tr>
<tr>
<td>WhiteEligibleState</td>
<td>52</td>
<td>5, 12</td>
<td>IF (White=1 &amp; StateEligible=1) WhiteEligibleState=1. IF (White=9</td>
<td>StateEligible=9) WhiteEligibleState=9. IF (White=0 &amp; (StateEligible=0) StateEligible=1) WhiteEligibleState=0. IF ((White=0</td>
</tr>
<tr>
<td>WhiteEligibleState_sum</td>
<td>53</td>
<td>5, 12</td>
<td>AGGREGATE /OUTFILE=** MODE=ADDVARIABLES /BREAK=CSStudyID/WhiteEligibleState_sum=SUM(WhiteEligibleState)</td>
<td>Sum of white VMs eligible to be struck by the state in that case.</td>
</tr>
</tbody>
</table>