

Good morning Chairman Burke, committee members. My name is Kristin Bryant. I have been an attorney for 14 years and I am also a member of the Reynoldsburg City Council.

I am before you today because racism is a blight in our nation, a stain from hundreds of years of oppression, including slavery and Jim Crow tactics. Due to recent events, I have reflected on many situations where I have observed racism and the consequences of it in everyday life, particularly in my law practice.

While I have many, many stories I could share with you where racism is exhibited in our legal system, I decided to pick the most egregious one.

Mr. Battle and the Terrible, Horrible, No Good, Very Bad Day

On January 2, 2002, Andre Battle was an ordinary citizen, albeit one with a prior record acquired as a teenager some two decades earlier. He had a job working in the mornings and nights as a personal attendant to Attorney John Liebold, a quadriplegic who lived and worked at 3002 North High Street in Columbus. He also worked during the day as a licensed barber at a shop located at 1503 North Fourth Street not far from the Ohio State University campus.

For Mr. Battle, January 2, 2002, was a day like any other. He attended to Mr. Liebold early in the morning, helping him get out of bed and ready for his day's work before heading to the barber shop for a few hours. Mr. Battle spent the afternoon moving into an apartment being provided to him by Mr. Liebold so he could be close by in the event he were needed at a moment's notice.

After cleaning and moving some of his belongings into his new apartment, Mr. Battle went to check on his father in Gahanna who was suffering from bone cancer and going through chemotherapy. Mr. Battle then returned to the barber shop around 8:00 p.m. where he waited for Mr. Liebold to call and let him know he was ready for his assistance in getting ready for bed.

Mr. Battle spent about an hour and a half with Mr. Liebold then he left around 10:30 p.m. to go to the eastside of Columbus where he stopped at a bar to spend a little time with his friend,

Heather Hill. At around 11:20 p.m. he returned to his old apartment on Refugee Road and made a phone call to friend, Kristin Bryant. He also made a call to another friend, Waheed Al-Fez-Bey, to firm up some plans to get together and play video games. He then received a phone call from Heather Hill just after midnight on January 3, 2002.

Shortly after hanging up from speaking with Ms. Hill, Mr. Battle received another phone call between 12:30 and 12:45 a.m. from Lanuella Slaughter, a friend of a friend, telling him she was worried about her boyfriend, Jack McCague, because he was really high and out running around in the cold. Ms. Slaughter told Mr. Battle she would pay him if he would go pick up her boyfriend and bring him home to her. When Mr. Battle agreed to go pick up McCague, Ms. Slaughter told him to go to the apartments then known as the Club at Eagle's Pointe just off Brice Road and pull into the parking lot and that McCague would find him.

Mr. Battle drove from Refugee Road over to the apartment complex and parked his car. McCague did not come to the car immediately so Mr. Battle turned off the car to wait. Shortly after 1:20 a.m., McCague came out of nowhere and got into Mr. Battle's car and ordered him to drive. Startled, Mr. Battle turned on the car and began to pull out of the complex but he forgot to turn on his headlights and was immediately blocked in by police cars.

The police removed Mr. Battle and McCague from the car and brought in two individuals to look at them under a spotlight. The two individuals were Ravinda Reddy and Jawad Ali, store clerks from a Dairy Mart located at 6042 Channingway Boulevard that was robbed at 1:00 a.m.

The witnesses identified McCague as one of the perpetrators who had robbed the store with a second perpetrator. The witnesses did not identify Mr. Battle from the robbery but he was arrested and taken downtown. On January 10, 2002, Mr. Battle was served with a 29 count indictment that accused him of being involved in the robbery.

Mr. Battle Received Ineffective Assistance of Trial Counsel

Mr. Battle disclosed his alibi witnesses to trial counsel, whom he retained in July 2002, as well as his prior appointed counsel. He also urged both attorneys to pull his telephone records. Neither attorney pulled Mr. Battle's phone records nor did they investigate his witnesses. Mr. Battle's prior appointed counsel did file a motion for the State to reveal the details of any plea bargains entered into by Mr. Battle's co-defendant, McCague; however, nothing was ever disclosed to the defense in spite of the fact that McCague did enter into a plea deal and he testified against Mr. Battle at trial.

Mr. Battle's trial counsel neglected to subpoena any witnesses on Mr. Battle's behalf and he failed to file a notice of alibi or any reciprocal discovery. In fact, trial counsel advised Mr. Battle that the State would have to dismiss the case against him because the clerks were of Middle Eastern descent and there was no chance that they would go anywhere near a government building due to post-9/11 societal attitudes. Therefore, trial counsel started Mr. Battle's trial on December 9, 2002 without ever speaking to any of Mr. Battle's witnesses.

At trial both clerks appeared and testified. Mr. Reddy testified that he was preparing to close at 1:00 a.m. as "a black guy" rushed into the store to rob it and he ran out of the store and asked a white man for help. The white man was identified as Mr. Battle's co-defendant, McCague. McCague brandished a handgun and forced Mr. Reddy back into the store.

Mr. Reddy called 911 for help as soon as the offenders left the store. Mr. Battle and McCague were detained and arrested, some twenty to thirty minutes after the crime in the immediate area. Police transported Mr. Reddy and Mr. Ali to a location near the store and requested that they identify the two men, one black and one white.

Mr. Reddy identified the white man, McCague, as the man that pulled a gun on him and forced him back into the store. Mr. Reddy could not identify the black man. Mr. Ali could not identify the black man either. Because the clerks could not identify Mr. Battle as the black man involved in the robbery, McCague was the State's main witness to convince the jury to convict Mr. Battle.

The height, weight and clothing description of the "black guy" the clerks provided did not match Mr. Battle's height, weight or the clothing he was wearing that evening. Additionally, both clerks testified that the "black guy" wore a black "monkey cap." The State elicited testimony from McCague that he wore a camouflage mask and when he was shown a toboggan which was olive green in color and had no eye holes, he testified that the toboggan was worn by Mr. Battle that evening. No evidence recovered by the police and used at trial resembled anything that could be described as a black "monkey cap."

McCague testified at trial in a detailed account of how he and Mr. Battle were together all evening from approximately 8:30 p.m. on January 2, 2002 until the time of their arrest at approximately 1:20 a.m. on January 3, 2002. McCague testified that the two of them were alone during this period planning the robbery, gathering guns and driving around.

McCague testified that they parked the car by Rachel's, a show girls club on Brice Road. In order for them to walk from the club to the Dairy Mart they would have been required to walk across the street in a northbound direction. The investigating officer, Robert Sagle, testified that when the suspects left the Dairy Mart they ran westbound. McCague also testified that he ran to get to their car which was parked at an apartment complex to the west of the Dairy Mart.

McCague further testified that he was high on Ecstasy during the night of the robbery and that he had to be taken to Mount Carmel East after his arrest because he was "pretty messed up."

He also admitted that he had engaged in nearly a hundred breaking and enterings to fund his drug habit. McCague identified photographs of Mr. Battle at trial but stated that he “didn’t recognize the coat because he put it on when he was in the car.” If Mr. Battle was indeed the “black guy” involved in the robbery, the two store clerks could have easily identified Mr. Battle as he was arrested that night wearing a bright Carolina blue long-sleeve polo shirt.

The store clerks also testified that they searched the day after the robbery for personal items that the police failed to recover. Further, Officer Sagle testified that the guns and bag that contained the money and the clerk’s personal items recovered from Mr. Battle’s vehicle were located on the floor board of the passenger seat and between the passenger seat and the passenger door.

All of these points and inconsistencies in McCague’s testimony suggest that there was a third party who was “the black guy” who actually robbed the store with McCague. McCague and the unknown third party parked beside the club and parted ways after they performed the robbery. McCague then got into Mr. Battle’s car, concealing the weapons and contraband from Mr. Battle by hiding them between the passenger seat and passenger door.

Mr. Battle had several credible witnesses that were ready, willing and able to testify as to his activities and whereabouts throughout the course of the evening and his trial counsel permitted McCague to implicate Mr. Battle in this crime without providing him with a defense. Trial counsel should have called Attorney Liebold, Heather Hill, Kristin Bryant, Waheed Al-Fez-Bey and Lanuella Slaughter to testify at trial but he failed to talk to any of them.

Attorney Liebold, Heather Hill and Kristin Bryant were easily contacted by appellate counsel and provided affidavits for Mr. Battle’s post-conviction petition as well as Jason Tatum, who stated that on January 2, 2002, the night of the alleged incident, Mr. Battle came into the

barber shop at 1503 North Fourth Street in Columbus at 8:00 p.m. Mr. Tatum further recalled that Mr. Battle stayed until 9:00 p.m. when he received a call from an attorney requesting Mr. Battle attend to the attorney's personal needs. Mr. Tatum also indicated that Mr. Battle's trial attorney never contacted him. Mr. Tatum's account contradicted McCague, who testified that during that time, Mr. Battle was talking to McCague's girlfriend in person.

In addition, McCague testified that he was living with Paula Wells. On January 4, 2002, Wells filed a police report that her .45 caliber gun was stolen from her residence. At trial, McCague testified that the guns the police found him with were from another location. Had Mr. Battle's trial counsel made any attempt to contact Ms. Wells, she could have testified as a rebuttal witness and she could have cast further doubt on McCague's veracity.

During trial counsel's cross-examination of McCague, counsel attempted to demonstrate that McCague's timeline of Mr. Battle's whereabouts during the day were wrong; however, because trial counsel failed to file a notice of alibi or reciprocal discovery, he was not allowed to share this information with the jury. McCague's testimony went unchallenged in spite of the significant available credible evidence Mr. Battle's trial counsel was clearly aware of. McCague had virtually no credibility and his testimony was littered with inconsistencies that would have been exposed by Mr. Battle's alibi witnesses had trial counsel made any effort whatsoever to defend Mr. Battle.

Rather than call credible witnesses to testify on Mr. Battle's behalf, trial counsel simply showed the surveillance video from the Dairy Mart as his defense. Unfortunately, it was a video that was in black and white and recorded at such a high rate of speed that the naked eye was prevented from detecting who was in the store. Mr. Battle requested his counsel obtain video enhancement from the video of the robbery but he failed to do that too. The technology existed

at the time of the robbery to produce an enlarged still photo of the offender to determine whether Mr. Battle really was the black man who committed the crime but counsel did not do that either.

McCague testified that he was taking drugs the evening of the incident to the extent that he had to be taken to the hospital and that he did not even know that Mr. Battle was with him until the police suggested his involvement. Further, McCague did not recognize the clothing Mr. Battle allegedly wore during the commission of the robbery even though the coloring of his shirt should have been memorable. The evidence against Mr. Battle was nothing more than McCague's inconsistent testimony motivated by a plea deal which required his testimony. Unlike McCague, if Mr. Battle's alibi witnesses would have testified, they would have had no motive to lie.

Mr. Battle supplied the names, addresses and telephone numbers of multiple alibi witnesses to his trial counsel well in advance of trial, yet his trial counsel did nothing. There are serious questions as to Mr. Battle's guilt but the jury never heard the evidence that supports the proposition that Mr. Battle was not involved in the robbery. Mr. Battle would likely have been acquitted if his alibi witnesses had testified because they would have directly contradicted McCague's testimony.

Mr. Battle's alibi witnesses were easily accessible and trial counsel never did any sort of investigation to contact them or determine whether their testimony would be favorable to Mr. Battle. This conduct and lack of preparation was not a reasonable defense strategy and it cost Mr. Battle his freedom.

The Punishment Does Not Fit the Crime

The trial court imposed three nine year sentences for aggravated robbery because there were three victims: Mr. Reddy, Mr. Ali and the Dairy Mart. The trial court ordered that Mr. Battle serve those sentences consecutively after serving a mandatory three year sentence for a

firearm specification for a total sentence of thirty years. Meanwhile, McCague received one five year sentence for aggravated robbery to follow his mandatory three year firearm specification sentence and he was released from prison on December 27, 2009.

Mr. Battle filed an appeal to the Tenth District Court of Appeals who remanded the case to the trial court for re-sentencing because the trial court imposed consecutive sentences without stating its reasoning on the record which was required by statute. On November 21, 2003, the trial court held a re-sentencing hearing and imposed the exact same sentence. Mr. Battle again appealed and his case was sent back to the trial court for a third sentencing because the facts of Mr. Battle's case did not support the trial court's reasoning for consecutive sentences.

While waiting for a third sentencing hearing, the State appealed to the Ohio Supreme Court and Mr. Battle became a casualty of the *Foster*¹ decision. On July 21, 2006, the trial court held its third sentencing hearing. Mr. Battle filed a pre-sentence memorandum outlining a number of cases similar to his with lesser sentences. The trial court ignored the case comparison and gave him the same thirty (30) year sentence.

Mr. Battle again appealed to the Tenth Appellate District as well as the Ohio Supreme Court and he filed a federal habeas petition with the U.S. District Court, Southern District of Ohio. Mr. Battle also filed for judicial release after the statute was modified by the state legislature in an effort to thin out Ohio's prison population; however, the trial court denied his request because despite the changes to the statute, Mr. Battle remains ineligible for judicial release due to his prior conviction as a teenager twenty-nine years ago.

¹ *State v. Foster* (2006), 109 Ohio St.3d 1 found O.R.C. 2929.14(E)(4) unconstitutional, which resulted in trial courts no longer having to justify their imposition of consecutive prison terms by engaging in certain fact finding requirements.

If the trial court had followed the law regarding sentencing at the time of Mr. Battle's conviction in 2002, he would have been released by 2015 at the latest. The maximum sentence Mr. Battle could have received would have been thirteen years: ten years for the first degree felony of aggravated robbery plus an additional three years for the firearm specification. This maximum sentence also falls within the range suggested by the Ohio Parole Board Guidelines Manual. Instead, Mr. Battle became a casualty of the *Foster* "remedy" because **the trial court failed to properly sentence him two times**, necessitating two appeals.

One need look no further than to Mr. Battle's very own co-defendant, Jack McCague, to find significant inconsistency in sentencing. McCague was sentenced to eight years and was released on December 27, 2009, nearly three years ago, while Mr. Battle still has twenty years remaining on his sentence. McCague testified against Mr. Battle and admitted to planning the robbery, as well as committing over one hundred burglaries, robberies and breaking and enterings to fund his drug habit. McCague had a prior record and held a gun on both clerks, cocking the hammer while it was pointed at one of them.

In spite of the *Foster* decision, the trial court was still required by statute to impose a sentence that is **consistent with sentences imposed for similar crimes by similar offenders**. Mr. Battle's presentence memorandum for his third sentencing outlined several essentially similar convenience store robbery cases. Most had multiple counts of aggravated robbery and kidnapping with multiple victims and guns or other weapons used in the commission of the offenses.

Many of the cases presented had victims who sustained serious injury as opposed the victims in Mr. Battle's case. Only one case had a thirty year sentence and the offender had stabbed one victim and another victim was permanently injured. In Mr. Battle's case one clerk

testified that he did not require any medical treatment. The other clerk testified he put ice on his jaw and took some pain medicine. Both were back at the scene the next day looking for personal items that the police failed to recover.

Two of the cases outlined in Mr. Battle's presentence memorandum imposed twenty-three year sentences and one imposed a twenty-one year sentence. In those cases, one victim was a child, a store clerk was shot and killed, and another clerk survived a shot in the chest. These kinds of aggravating circumstances are notably absent from Mr. Battle's case. In reviewing similar offenses committed by similar offenders, it is clear that a substantial number of robberies that resulted in much more serious consequences than Mr. Battle's case warranted much lesser sentences from the courts. In spite of this, the trial court ignored the statute and the facts surrounding Mr. Battle's case and imposed a grossly disproportionate sentence in comparison to his co-defendant, McCague.

Mr. Battle was sentenced to a total aggregate sentence of thirty years for three counts of aggravated robbery and a gun specification arising from a *single incident* while McCague received an eight year sentence. Both received three year gun specification sentences; however, McCague, a self-confessed career criminal, received a five year aggravated robbery sentence while Mr. Battle received a twenty-seven year aggravated robbery sentence. **There is nothing in the facts of this case to justify Mr. Battle receiving a sentence more than five times longer than his co-defendant.**

The trial court clearly disregarded the requirement that a sentence be consistent with sentences imposed for similar crimes committed by similar offenders by imposing the same thirty year sentence all three times Mr. Battle was sentenced. Mr. Battle and McCague were

more than similar offenders who committed similar crimes. They were codefendants in the same exact case for the same exact crime in front of the same exact judge.

There was nothing close to consistency or proportionality in Mr. Battle's sentence, particularly in light of the sentence McCague received. A defendant receiving a sentence **in excess of five times** the sentence imposed on his more culpable codefendant is quite clearly unusual unless you take into account the most likely reason: racism.

Failed Clemency Request

There was a legitimate concern regarding whether or not Mr. Battle was even guilty of the crime of which he was convicted due to the obvious ineffective assistance of his trial counsel. Nonetheless, whether Mr. Battle did or did not commit the crime, more than a decade of incarceration should be sufficient to pay for the crime.

Even if you did not believe in Mr. Battle's innocence, you must see that there was a grave problem with his sentence. Mr. Battle most likely would have been released from custody by 2015 if the trial court had imposed a sentence that complied with Ohio sentencing laws when he was convicted back in 2002. Instead, the sentencing laws were improperly applied to Mr. Battle and not just once, but twice before he finally became a casualty of the *Foster* decision and racism in his third sentencing. Mr. Battle has served more than ten years in prison with another twenty remaining while an individual who actually did commit the crime began enjoying his freedom in 2009.

The Ohio legislature engaged in a significant modification of the sentencing and judicial release laws in 2011 in an effort to reduce the ever increasing Ohio prison population and alleviate the economic burden of excessive sentences such as this on our taxpayers. In spite of these overhauls, Mr. Battle remained ineligible to have his lengthy and overly burdensome

sentence reduced due to his prior conviction as a teenager in 1983, which made clemency his only avenue for relief.

Mr. Battle exhibited good behavior throughout his incarceration. He has routinely had his security status lowered at his annual reviews and he lived in honors dormitories when the space was available. During his incarceration, Mr. Battle served as an assistant to the barber school instructor, he served as both a referee and a coach for various institutional athletics programs and he has mentored inmates under the age of 21 to show them how to be better citizens within the institution.

Finally, a Way Home

In the spring of 2017, I was able to successfully schedule a polygraph for Mr. Battle to occur at London Correctional Institution. Upon completion, the polygrapher stated that he passed with flying colors and opined that had a polygraph been administered in 2002, it likely would have been even clearer that Mr. Battle had been telling the truth all along.

I shared the results with the assistant prosecutor assigned to the case. Some months later, the prosecutor agreed to support a motion for judicial release if Mr. Battle passed one with the State Highway Patrol. In late October 2017, Mr. Battle was transported to Columbus for a second polygraph where once again he clearly and convincingly passed again.

In just a couple short weeks, Mr. Battle found himself standing before a new judge who immediately released him, and Mr. Battle went home after spending fifteen and a half years incarcerated for nothing.

Mr. Battle's conviction still stands, and he remains stained with that felony. There was no compensation for those lost years of his life. No compensation for his son who had to grow up without him. His health deteriorated during these years with what can only be referred to as

laughable health care. He had to have neck surgery and multiple ablations to his low and mid back which will ultimately lead to more surgeries. Today he still suffers terribly from PTSD and severe anxiety from having these years taken from him and surviving over fifteen years under the thumb of questionable corrections officers and a system designed to fail those in it. There is no doubt in my mind that Mr. Battle would not have been given such a long and disproportionate sentence if he were not a man of color.

Thank you for your consideration and time. I urge you to recognize the public health crisis and unjust and unfair legal system we face due to racism.