

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. [REDACTED]

STATE OF NORTH CAROLINA
v.
[REDACTED]
Defendant.

)
) 2017 JUL 33 A 10: 50
) DURHAM MOTION FOR INDIVIDUAL
) VOIR DIRE
) BY [Signature] ON SENSITIVE SUBJECTS
)
)
)

NOW COMES the defendant, [REDACTED], by and through counsel, and hereby respectfully requests this Court to allow counsel to voir dire the prospective jurors individually, separate, and apart each from the other, and to sequester the jurors from the courtroom during the voir dire when jurors are being questioned about certain, sensitive subjects. Counsel specifically requests individual voir dire for questions concerning race. This motion should be granted based on Mr. [REDACTED] right to due process and to an impartial jury as guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution, Article I, §§ 19, 23, and 24 of the North Carolina Constitution, and *Rosales-Lopez v. United States*, 451 U.S. 182, 192 (1981), *State v. Conner*, 335 N.C. 618, 629 (1994), and *Morgan v. Illinois*, 504 U.S. 719, 729–30 (1992).

The Defendant in this case is African American. Based on discovery provided, counsel believes the alleged victims in this matter are [REDACTED]. [REDACTED] are described by several witnesses as “light-skinned” and both are described as “white” in the Durham Police Department report. The U.S. Supreme Court has held that courts must allow voir dire questions concerning possible racial prejudice against a defendant when the defendant is charged with a violent crime and the defendant and the victim are of different racial or ethnic groups. *Rosales-Lopez v. United States*, 451 U.S. 182, 192 (1981).

Discussing racial views and biases is a difficult task for any person. In order to obtain an open and honest discussion regarding a potential juror's racial bias, it is necessary to have individual, sequestered voir dire. Individual voir dire will help ensure each potential juror's honesty and candor regarding prior knowledge and current opinions about certain, sensitive subjects within this case. Moreover, individual voir dire will aid in minimizing the circumstances in which prospective jurors are exposed to potentially disqualifying, prejudicial information. Counsel will thereby be better suited to intelligently exercise preemptory challenges and challenges for cause in the instance of individual voir dire. *See, e.g., State v. Wiley*, 355 N.C. 592 (2002) (The two purposes of voir dire are to help counsel determine whether a basis for challenge for cause exists and to assist counsel in intelligently exercising preemptory challenges.).

WHEREFORE, Defendant prays that the Court order individual voir dire for certain, sensitive subjects, specifically race. Defendant requests that each prospective juror be examined separately and privately when asked about these subjects. Such a procedure is necessary to ensure the Defendant's rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution, and Article I, §§ 19, 23, and 24 of the North Carolina Constitution.

Respectfully submitted this the 2nd day of August, 2017.

Johanna Jennings
Johanna Jennings
Staff Attorney
Center for Death Penalty Litigation
123 W. Main Street, Suite 700
Durham, NC 27701
(919) 956-9545, ext. 123

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned attorney served a copy of the foregoing Motion on the State of North Carolina by hand delivery to the District Attorney's Office:

▪ Assistant District Attorney [REDACTED]
Durham County District Attorney's Office
501 South Dillard St., 8th Floor
Durham, NC 27701

This the 2nd day of August, 2017.

Johanna Jennings

Johanna Jennings
Staff Attorney
Center for Death Penalty Litigation
123 W. Main Street, Suite 700
Durham, NC 27701
(919) 956-9545, ext. 123