

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. __ CRS ____

STATE OF NORTH CAROLINA

v.

)
) **DEFENDANT'S MOTION**
) **TO DISTRIBUTE**
) **JUROR QUESTIONNAIRE AND TO**
) **NOTE RACE AND GENDER OF**
) **EVERY POTENTIAL JUROR**
) **EXAMINED IN THIS CASE**

DEFENDANT

COMES NOW the Defendant, _____, by and through counsel, pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution and Article I, Section 19 and 26 of the North Carolina Constitution and respectfully moves the Court to allow the Defendant to distribute the one of the proposed attached questionnaires to be answered by jurors who have been called for jury duty at the time of the Defendant's trial and prior to any voir dire of those jurors. In support of this motion, the Defendant shows unto the Court:

1. The attached questionnaire (Exhibit A) would simplify the questioning of jurors, as well as save valuable court time by eliminating the necessity of questioning jurors concerning basic factual information.
2. A defendant may not protect his rights under *Batson v. Kentucky*, 476 U.S. 79 (1986) and *J. E. B. v. Alabama ex rel. T. B.*, 511 U.S. 127 (1994), in the absence of a clear record of the race and gender of each juror examined during voir dire. See *State v. Mitchell*, 321 N.C. 650 (1988); *State v. Brogden*, 329 N.C. 534 (1991).
3. A questionnaire is less intrusive and more efficient than asking each juror to identify his or her race and gender in open court and consequently is the best

method of establishing a clear record. *See State v. Payne*, 327 N.C. 194, 199, 394 S.E.2d 158, 160 (1990) (inappropriate to have court reporter note race of potential jurors; an individual's race "is not always easily discernible, and the potential for error by a court reporter acting alone is great").

4. Further, the questionnaire would enable both the State and the Defendant to focus their voir dire of prospective jurors on any issues raised by the questionnaire regarding a juror's qualifications to serve in this particular case.
5. At a minimum, the defendant requests the distribution of the attached questionnaire (Exhibit B) in order to record the race and gender of each prospective juror.
6. If a juror neglects to fill in his or her race, Defendant requests that the Court make inquiry of the juror as to his or her race and gender prior to either party questioning that juror.
7. In the alternative, should the Court decide not to have a questionnaire, Defendant requests that the Court inquire as to the race and gender of every juror prior to the questioning of that juror by either party.

Respectfully submitted, this the ____ day of _____.

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that Defendant's Motion to Distribute Juror Questionnaire has been duly served by first class mail upon _____, Office of District Attorney, _____, by placing a copy in an envelope addressed as stated above and by placing the envelope in a depository maintained by the United States Postal Service.

This the ____ day of _____.

COUNSEL FOR DEFENDANT