

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 FOR**
) **COMPLETE RECORDATION**
) **OF ALL PRETRIAL AND TRIAL**
) **PROCEEDINGS**
)

NOW COMES the Defendant, and respectfully moves the Court for an order directing the Court Reporter to take down and record all hearings on motions, all bench conferences, all jury voir dire, opening statements, closing arguments, all testimony and each and every proceeding involved in pretrial and trial proceedings in the above-numbered case.

Such complete recordation is required under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article I, §§ 19, 23, 24, and 27 of the North Carolina Constitution and N.C. Gen. Stat. § 15A-1241. In the absence of complete recordation, unrecorded errors may not be preserved for appeal. Indeed, failure to request complete recordation may constitute ineffective assistance of counsel.

In *State v. Campbell*, 272 N.C. App. 554, 846 S.E.2d 804 (2020), defense counsel explicitly declined to request recordation of jury selection. During the course of voir dire, the prosecutor exercised three of four peremptory strikes against African Americans, and defense counsel made an objection under *Batson v. Kentucky*, 476 U.S. 79 (1986), which was overruled. On appeal, the Court of Appeals noted that “if a defendant anticipates making a *Batson* discrimination argument, it is extremely difficult to prevail on such grounds without a transcript of jury selection,” *Campbell*, 272 N.C. App. at 558, 846

S.E.2d at 807, and held:

From the transcript of the hearing, we... do not know the victim's race, the race of key witnesses, questions and statements of the prosecutor that tend to support or refute a discriminatory intent, or the State's acceptance rate of potential African American jurors. Finally, we see nothing in the record from which we can ascertain the final racial composition of the jury....

Without more information ... defendant has not shown us that the trial court erred in its finding that no *prima facie* showing had been made. Therefore, we uphold the trial court's ruling on the merits of defendant's *Batson* claim.

Id. at 563-64, 846 S.E.2d at 810-11. The Court concluded by "urgently" counseling

Defendants to request recordation:

Defendants are entitled to have their *Batson* claims and the trial court's rulings thereon subjected to appellate scrutiny. To do so, it is incumbent on counsel to preserve a record from which the reviewing court can analyze the *Quick* factors. **Thus, we urgently suggest that all criminal defense counsel follow the better practice and request verbatim transcription of jury selection.**

Id. at 565, 846 S.E.2d at 811 (emphasis added).

In order to properly preserve all potential trial errors for any appellate proceedings and to ensure Defendant receives effective assistance of counsel, Defendant requests complete recordation of these proceedings.

Respectfully submitted, this the ____ day of _____.

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that Defendant's Motion for Complete Recordation Of All Pretrial and Trial Proceedings 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