

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
09 CRS 000000

STATE OF NORTH CAROLINA, )  
)  
vs. ) MOTION FOR COURT TO NOTE  
) RACE OF ALL POTENTIAL JURORS  
JOHN Q. DOE, ) EXAMINED FOR SELECTION  
)  
)  
Defendant. )

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NOW COMES the Defendant, *John Q. Doe*, by and through the undersigned counsel, Maitri “Mike” Klinkosum, Attorney at Law, and hereby moves this Honorable Court, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Article 1 §§ 19 and 23 of the North Carolina Constitution, *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), and *Powers v. Ohio*, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d. 411 (1991), to adopt a procedure in the trial of these matters, which will ensure that the race of every potential juror be examined to perfect any future appellate record. In support of the foregoing Motion, the Defendant would show unto the Court as follows:

1. The Defendant is charged with one count each of Attempted Murder, Assault with a Deadly Weapon with Intent to Kill Inflicting Serious Injury, and First-Degree Arson.
2. Should this matter proceed to trial, in order to have the record accurately reflect the proceedings in this case and in order to perfect any future appellate record in this case, it is absolutely essential that the race of every potential juror be noted for the record. A record of the race of every juror is necessary to preserve the defendant’s rights under the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution, Article I, §§ 19, 24 and 27 of the North Carolina Constitution, *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) and *Powers v. Ohio*, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d. 411 (1991).
3. The North Carolina Supreme Court has said that a record must be made of all potential jurors’ race in order for appellate courts to properly review any *Batson* claims. See *State v. Mitchell*, 321 N.C. 650 (1988) and *State v. Brogden*, 329 N.C. 534 (1991).
4. Statements from defense counsel as to the race of the jurors is not

sufficient and the North Carolina Supreme Court has expressly disapproved of the practice of having the court reporter attempt to record the race of every juror. *Brogden*. The most reliable source concerning the race of any juror is the juror himself/herself.

5. In order to properly record the race of potential jurors, the Defendant would propose the following statement and inquiry to prospective jurors:

**Ladies and Gentlemen, as part of the Court's preliminary questions to you, in addition to asking to state your name and where you reside, the Court will ask you to provide us with the race and/or ethnic background with which you identify yourself. We do this for statistical purposes and, because the record of the jury selection proceedings is in written form only, without having you identify your race and/or ethnic background there will no record of that to which we can refer later if need be.**

**WHEREFORE**, the Defendant respectfully prays unto this Honorable Court for the following relief:

1. That every potential juror be asked to identify his/her race/ethnic background. In order to provide an accurate record, this procedure must include every juror, including those excused for hardship by the court, for cause at the request of either party, by use of peremptory by either party and those jurors who actually are selected to serve;
2. The defendant requests that jurors race be asked his or her race as part the court's preliminary inquiry of the potential jurors at the beginning of jury selection; and
3. For such other and further relief to which the Defendant may be entitled and which the Court may deem just and proper.

This the 21<sup>st</sup> day of October 2009.

By: \_\_\_\_\_  
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**Certificate of Service**

This shall certify that a copy of the foregoing *Motion for Court to Note Race of All Potential Jurors Examined for Selection* was this day served upon the District Attorney by the following method:

- \_\_\_\_\_ depositing a copy hereof in a postpaid wrapper in a post office or official depository under the exclusive care, custody, and control of the United States Postal Service, properly addressed to Office of the District Attorney at the following address:
- by personally serving the Office of the District Attorney via hand delivery (*ADA Melanie A. Shekita*);
- \_\_\_\_\_ by transmitting a copy via facsimile transmittal to the Office of the District Attorney; and/or
- \_\_\_\_\_ by depositing a copy in the box for the Office of the District Attorney maintained by the Clerk of Superior Court.

This the 21<sup>st</sup> day of October, 2010.

By: \_\_\_\_\_  
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