

**STATE OF NORTH CAROLINA
WAKE COUNTY**

**IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
11 CRS**

STATE OF NORTH CAROLINA

v.

AUBREY LEE STEPHENS

**STATE'S MOTION TO CLOSE
COURTROOM DURING CHILD'S
TESTIMONY**

NOW COMES the State of North Carolina, by and through the Undersigned Assistant District Attorney, Melanie A. Shekita, pursuant to North Carolina General Statute § 15-166 and MOVES this COURT to enter an Order to close the courtroom during the testimony of C.B. In support of the Motion, the State offers the following:

1. That North Carolina General Statute § 15-166 provides that in certain sex offense cases, the trial judge “may, during the testimony of the prosecutrix, exclude from the courtroom all persons except the officers of the court, the defendant and those engaged in the trial of the case.”;
2. That the testifying witness is C.B., a minor child with a date of birth of March 31, 1999;
3. That C.B. was eleven years old when these events occurred, and is currently thirteen years of age;
4. That the defendant was her elementary bus school driver;
5. That keeping out bystanders and those not related to the case will allow a thirteen year old child to testify about sensitive sexual matters without undue distraction;
6. That North Carolina Appellate Courts have allowed closure in cases involving both minor children and adults when testifying in sexual assault cases¹;
7. That after the testimony of C.B., the State has no objection to the Court’s reopening of the courtroom to other parties;
8. That the closure is not broader than necessary to achieve the interest of undistracted testimony of a minor child;
9. That the defendant will not be inhibited from presenting a defense on his behalf with the exclusion of those people who are not “engaged in the trial of the case”;
10. That there is no undue prejudice to the defendant; and
11. That is in the interests of justice the court room be closed only during the testimony of C.B.

Respectfully submitted this the 14th day of January 2013.

Melanie A. Shekita
Assistant District Attorney

¹ See State v. Burney, 302 N.C. 539 (1981), and State v. Jenkins, 115 N.C. App. 520 (1994) (although the Court of Appeals granted a new trial due to the fact that the proper findings in closing the Courtroom were not made, among other errors).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THE ABOVE Motion in the above captioned case upon the defendant, by and through his attorney, Duncan McMillan, via Hand Delivery and electronic Mail.

Respectfully submitted this the 14th day of January 2013.

Melanie A. Shekita
Assistant District Attorney
10th Judicial District