STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

 SUPERIOR COURT DIVISION

COUNTY OF WAKE FILE NO. XXXXXXXXXXXXXXX

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STATE OF NORTH CAROLINA )

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v. )

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XXXXXXXXXXXXXX )

 Defendant. )

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**request that perspective jurors be shown a video about implicit bias**

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NOW COMES Defendant, XXXXXXXXXXXX, by and through undersigned counsel, and respectfully moves this Court that perspective jurors be shown a video about implicit bias as part of their juror orientation. Showing such a video would help ensure that Defendant receives a fair and impartial jury whose decisions would not be overly influenced by racial bias. The showing of a video about implicit bias would further protect Defendant’s right to due process and to be free from cruel and unusual punishment. This Court should require the showing of this type of video pursuant to the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I §§ 19, 23, 24 and 27 of the North Carolina Constitution.

Defendant is [describe defendant identity]. One of the victims in this case, XXXXXXXXX, is White. There is a long history of racial discrimination and disparities in the criminal justice system in this country and in this state. This problem persists today. *See* Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010). There are many reasons why racial discrimination and disparity persists in our criminal justice system, but one of the reasons is implicit bias among jurors.

Implicit biases are attitudes and stereotypes that people are not aware of, but that can influence their thoughts and behavior. These biases result from the brain’s natural tendency to categorize stimuli into various categories or “schemas.” All people rely on schemas to help sort the vast amount of information facing them each day, and schemas often involve stereotypes. As scholar john powell puts it, “[w]e cannot live without schemas. Having biases and stereotypes does not make us racist, it makes us human.” Research suggests that people may not be aware of their own biases. In fact, an implicit bias may conflict with a consciously held belief. For example, an employer may believe in equal opportunity hiring, but pass over a Black applicant for a job based on lack of relevant experience without realizing that White applicants with similar experience levels have not been eliminated.

Alyson A. Grine and Emily Coward, Recognizing and Addressing Issues of Race in Criminal Cases, University of North Carolina School of Government, Chapter One, “Recognizing and Addressing Issues of Race in Criminal Cases,” page 1-6 (Sept. 2014).

 Scientific demonstrate what most of us in the criminal justice system realize: Implicit bias can influence jurors’ decision. *Id*. At 1-6-7. While there is no way to absolutely eliminate implicate bias from all jurors, there are steps that can be taken to mitigate its effect on the jurors’ decisions.

Research shows that implicit biases are malleable. When the subject of race is addressed explicitly, people tend to correct for their implicit biases and act in accordance with more objective standards. For example, jury studies show that when racial considerations are relevant and are explicitly brought to the attention of the jury, White jurors tend to treat Black and White defendants similarly. Thus, the act of addressing race during voir dire may counteract its influence in jury deliberations. However, when race is present as a factor but not highlighted, White jurors tend to treat Black defendants more harshly. Further, suppressing or denying prejudiced thoughts can actually increase prejudice rather than eradicate it. These studies suggest that raising relevant issues of race in criminal trials may cause implicit Raising Issues of Race in North Carolina Criminal Cases Ch. 1: Recognizing and Addressing Issues of Race in Criminal Cases (Sept. 2014) 1-8 biases to recede. Conversely, failing to raise issues of race may exacerbate bias or at least leave it in place.

*Id*. At 1-7-8.

One of the most efficient and effective ways to address implicit bias among jurors would be to show the jurors a video about the issue during their orientation. This has been the approach adopted by the federal court in the Western District of Washington. Perspective jurors in that district are shown this video. <http://www.wawd.uscourts.gov/jury/unconscious-bias>. This video features three actors in the criminal justice system: a federal judge, a prosecutor with the United States Attorney’s office, and an attorney who started his career as a criminal defense attorney. The video defines the concept of implicit bias, helps jurors identify their own biases, and offers instructions to jurors on how to reduce the influence of these biases on their decisions. The video is clearly insightful, neutral, and could be effective. Certainly, the showing of such video would not be prejudicial to either side in a criminal case.

As a means of combatting the implicit bias that potential jurors’ undoubtedly have, this Court should direct that a video about implicit bias be shown to potential jurors during their orientation. It might be ideal to show them such a video that was produced locally. Undersigned counsel, however, is unaware of any such video that has been produced locally. But the video that is being shown in federal court in Washington would certainly be appropriate for Wake County. The participants in the video may live on nation’s west coast, but what they talk about is universal. There is no reason why this video cannot be as effective in Raleigh as it is in Seattle and Tacoma.

Respectfully submitted, this the day of November 2018.

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Jonathan E. Broun Edd K. Roberts III

Senior Staff Attorney Attorney at Law

North Carolina Prisoner Legal Services Roberts Law Office, PA

N.C. State Bar No. 18108 N.C. State Bar No. 29418

1110 Wake Forest Road 5 West Hargett St., Suite 1100

Raleigh, NC 27611 Raleigh, NC 27601

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing **Motion** by first class mail or by hand delivery upon:

 Kathryn Pomeroy and David Saacks

 Assistant District Attorney

 Office of the District Attorney

 10th Prosecutorial District

 P.O. Box 31

 Raleigh, NC 27602

 This the \_\_\_ day of November, 2018.

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 Jonathan E. Broun