STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SUPERIOR COURT DIVISION

Case Number:

STATE OF NORTH CAROLINA )

) **MOTION FOR**

v. ) **COMPLETE RECORDATION**

)

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)

NOW COMES the Defendant, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and respectfully moves this Court pursuant to N.C. Gen. Stat. § 15A-1241(b), the Fourteenth Amendment to the United States Constitution, and Article I, § 19 of the North Carolina Constitution for complete recordation of the proceedings, and in support of his motion states:

1. North Carolina provides for an appeal of right from a criminal conviction entered after a plea of not guilty. § 15A-1444(a). Thus, “the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution.” *State v. Berryman*, 360 N.C. 209, 213, 624 S.E.2d 350, 354 (2006) (quoting *Evitts v. Lucey*, 469 U.S. 387, 393, 105 S. Ct. 830, 83 L. Ed. 2d 821, 827-28 (1985)).
2. In order to preserve errors for appellate review, a party must make a timely motion, request, or objection and obtain a ruling. N.C. R. App. Pro. 10(a)(1). Our appellate rules place the burden on the appellant “to commence settlement of the record on appeal, including providing a verbatim transcript if available.” *Berryman*, 360 N.C. at 216, 624 S.E.2d at 356. In the absence of a verbatim transcript, an appellant must still compile his record on appeal “to the extent possible” and provide a statement of the facts and asserted errors at trial. *State v. Neely*, 21 N.C. App. 439, 440-41, 204 S.E.2d 531 (1974).
3. “Elementary consideration for efficient and just administration of the legal processes involved in the adjudication of a lawsuit, criminal or civil, requires that an appellate court have in the record before it a complete account of the action by the trial court of which the appellant complains.” *State v. Williams*, 274 N.C. 328, 333, 163 S.E.2d 353, 357 (1968). In the modern era, the record of proceedings should be a verbatim transcript. Our Court of Appeals has stated:

The benefits of the availability of a transcript of the first trial, to the State as well as the defendant, are manifest. No longer should the appellate courts be called upon to consider the casuistic arguments advanced to justify the absence of what has come to be a common tool in preparation for an appeal or retrial.

*State v. Jackson*, 59 N.C. App. 615, 618, 297 S.E.2d 610, 612 (1982) (quoting *State v. McNeill*, 33 N.C. App. 317, 323, 235 S.E.2d 274, 277-78 (1977)).

1. Absent a transcript, a defendant may lose his right to appellate review. *See, e.g., Hicks v. Alford*, 156 N.C. App. 384, 389-90, 576 S.E.2d 410, 414 (2003) (“Without the transcript, we are unable to review plaintiff’s argument that the trial court erred in making findings of fact that are unsupported by the evidence.”); *Pharr v. Worley*, 124 N.C. App. 136, 139, 479 S.E.2d 32, 34 (1997) (holding that an appellate court will not engage in speculation when the appellant has not provided a transcript of the relevant trial testimony).
2. When bench conferences, jury selection, and closing argument are unrecorded, the defendant may be unable to preserve errors arising during those proceedings despite objections on the record. *See, e.g., State v. Shelman*, 159 N.C. App. 300, 310-11, 584 S.E.2d 88, 96 (2003) (holding that there was insufficient evidence to review defendant’s claim of racially discriminatory jury selection in the absence of a transcript); *Jackson v. Housing Authority of High Point*, 321 N.C. 584, 364 S.E.2d 416 (1998) (same); *State v. Price*, 344 N.C. 583, 593-94, 476 S.E.2d 317, 323 (1996) (holding that review of alleged improper argument was limited to defendant’s attempted reconstruction when argument was unrecorded); *Williams*,274 N.C. at 333, 163 S.E.2d at 357 (rejecting the defendant’s argument based on denial of a motion to strike and declining to “assume error by the trial judge” when the trial court’s ruling followed an unrecorded bench conference).
3. In Superior Court cases, North Carolina law requires that the Court Reporter record all proceedings except (1) jury selection in noncapital cases, (2) opening statements and closing arguments, and (3) arguments of counsel on questions of law. § 15A-1241(a). However, in order to preserve the parties’ right to full appellate review, the excepted portions of the trial “must be recorded” upon the motion of any party or the trial court. § 15A-1241(b).
4. Defendant does not wish to waive his statutory or constitutional rights to appellate review of errors that may occur during any phase of this trial.

WHEREFORE, Defendant respectfully moves this Court to have the Court Reporter record all phases of the proceedings in the matter, including pre-trial hearings, *voir dire* (including jury *voir dire*), motions hearings, bench conferences, opening statements, and closing arguments.

Respectfully submitted, this the \_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_.

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Assistant Public Defender

*Attorney for the Defendant*

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing Motion for Complete Recordation on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Assistant District Attorney, \_\_\_\_\_ Judicial District, by hand delivery, this the \_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_.

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Assistant Public Defender

*Attorney for the Defendant*