STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

LEE COUNTY SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA FILE NO. 14 CRS 50673, 50675

 V.

PIERRE AMERSON

**MOTION TO REMOVE CONFEDERATE SYMBOLS AND MEMORIALS FROM THE COURTHOUSE WHERE TRIAL IS SCHEDULED**

The defendant, by and through counsel, hereby moves this Court to provide a setting for his trial that does not contain images that could be interpreted as glorifying, memorializing or otherwise endorsing the efforts of those who fought on behalf of the confederate cause or its principles. In making this motion, the Defendant relies upon the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, Sections 19, 23 and 27 of the North Carolina Constitution.

 In support of this motion, counsel states:

 1. The Defendant stands currently charged with first degree murder. The State is seeking the death penalty. The possibility of a death sentence imposes an extraordinary burden upon the Court, the State and the Defense to ensure the fairness, accuracy and reliability of the trial and any subsequent sentencing hearing. “The fundamental respect for humanity underlying the Eighth Amendment’s prohibition against cruel and unusual punishment gives rise to a special “need for reliability in the determination that death is the appropriate punishment” in any capital case.” Johnson v Mississippi, 486 U.S. 578, 584 (1988) (citations omitted). It is well established that when a defendant’s life is at stake, a court must be “particularly sensitive to insure that every safeguard is observed.” Gregg v Georgia, 428 U.S. 153, 187 (1976). This heightened standard of reliability in a capital case is an acknowledgement that “death is different.” Ford v Wainwright, 477 U.S. 399, 411 (1986).

Death, in its finality, differs more from life imprisonment than a 100 year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Woodson v North Carolina, 428 U.S. 280, 305 (1976).

2. The United States Supreme Court has repeatedly emphasized the principle that because of the exceptional and irrevocable nature of the death penalty, “extraordinary measures” are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. Eddings v Oklahoma, 455 U.S. 104, 118 (1982) (O’Connor, J., concurring); see also, Beck v Alabama, 447 U.S. 625, 637-38 (1980); Lockett v Ohio, 438 U.S. 586, 604 (1978); Gardner v Florida, 430 U.S. 349, 357-58 (1977).

3. The Defendant’s trial is set to begin on September 3, 2019 in the Lee County Courthouse. At the entrance to the courthouse, there is a large monument featuring a bronze bas-relief portrait of confederate general Robert E. Lee for whom Lee County was named. The bas-relief is attached to a free standing red brick wall like structure, approximately eleven feet wide and seven feet tall. A history of Lee’s life appears on the bronze plaque attached to the wall.[[1]](#footnote-2)

 Inside the courthouse lobby, there is a painting and plaque describing Lee.

4. The appearance of justice is a necessary component of the decorum and integrity of the courtroom that the Court has a duty preserve. See Deck v Missouri, 544 U.S. 622, 631 (2007) (finding shackling unconstitutional based upon its impact on the dignity and decorum of judicial proceedings). As the Court stated in Estes v Texas, 381 U.S. 532, 561 (1965)

[T]he courtroom in Anglo-American jurisprudence is more than a location with seats for a judge, jury, witnesses, defendant, prosecutor, defense counsel and public observers; the setting that the courtroom provides is itself an important element in the constitutional conception of trial, contributing a dignity essential to “the integrity of the trial” process.

5 The message being sent by the presence of Confederate symbols and icons can have a powerful influence on jurors, witnesses, family and citizens. While the defense is certain that the Court will do its best to prevent any overt racial animus or bias from entering into the proceedings, neither the parties nor the public can be assured that the judicial process has not been infected with improper influences due to the presence of symbols of racial bias in the courthouse.

6. This Court has a duty and obligation to ensure that the proceedings are fair and impartial both in reality and perception. See North Carolina Code of Judicial Conduct (1973).

7. Courts have long acknowledged the importance of symbolism and appearance in the courtroom. This is obvious from the symbols universally deemed appropriate to represent the highest ideals for a court of justice to maintain.[[2]](#footnote-3)

8. The display of a Confederate icon gives the inference of racial bias against African-Americans. By analogy, the Fourth Circuit Court of Appeals has held that the display of the confederate flag gives the inference of racial bias.

It is the sincerely held view of many Americans, of all races, that the confederate flag is a symbol of racial separation and oppression. And, unfortunately, as uncomfortable as it is to admit, there are still those today who affirm allegiance to the confederate flag precisely because, for them, that flag is identified with racial separation. Because there are citizens who not only continue to hold separatist views, but who revere the confederate flag precisely for its symbolism of those views, it is not an irrational inference that one who displays the confederate flag may harbor racial bias against African-Americans.

United States v Blanding, 250 F. 3d 858, 861 (4th Cir. 2001).

Like the confederate flag, General Robert E. Lee is a confederate icon that many people revere for the express reason that he represents the southern way of life and the ideology that promotes racial bias. In a 2019 interview by WRAL anchor David Crabtree, Robert W. Lee, the great-great-great-great nephew of Robert E. Lee, referred to confederate monuments as “idols of white supremacy”.

THEREFORE, for the reasons set out above, and those to be argued at hearing on this motion, the Defendant, through counsel, moves this Court to order that the trial in this matter proceed in a courthouse that is free from symbols, displays and portraits that could be perceived as supporting or endorsing the confederate cause.

This the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2019.

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Stephen C. Freedman Emilia Beskind

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ATTORNEYS FOR THE DEFENDANT

**CERTIFICATE OF SERVICE**

I certify that I served a copy of the foregoing Motion was delivered by US mail to the Office of the District Attorney.

 This the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 2019.

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 Stephen Freedman

1. https://docsouth.unc.edu/commland/monument/654/ [↑](#footnote-ref-2)
2. The official seal of North Carolina is a circle 2¼ inches in diameter that features the robe-covered figures of "Liberty" and "Plenty" in its center. Around the outside border of the seal are the phrases "The Great Seal of the State of North Carolina" and Esse Quam Videri, the state motto, meaning "to be rather than to seem." [↑](#footnote-ref-3)