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Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Marcus Lee Robinson v. Colorado, No. 19-1218

Dear Mr. Harris:

Under Rule 32.3 of the Rules of this Court, the respondent in this case requests permission to lodge non-record material with your office.

The non-record material is a six-page police report. It includes a statement from the perceiving witness to a sexual assault, who told the report's author that she could see the details of the assault in a darkened room because of the disparate skin tones of the alleged victim, a white woman, and the perpetrator, Marcus Robinson, an African-American man. The report was provided to Mr. Robinson's trial attorney in pretrial discovery, but it was not mentioned at trial.

The prosecutor who tried Mr. Robinson for the assault made an opening statement in which she predicted that the perceiving witness would testify that the disparate skin tones of the parties enabled her to see a completed sexual assault. But the witness did not testify as anticipated. Because defense counsel chose not to object to the prosecutor's remarks, no record about the basis for those remarks was made.

The police report should be considered by the Court in evaluating the merits of Mr. Robinson's petition for a writ of certiorari, which characterizes the prosecutor's comments as nothing but a blatant appeal to racial prejudice and (in a novel argument that seeks to recast the plain-error standard of review) asserts that

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the government should bear the burden of showing the comments did not affect the jury's verdict.

The police report suggests that the prosecutor had a good faith basis for her comments. It will provide the Court with a full understanding of the context in which her comments were made. This is particularly important here, given Mr. Robinson's assumption that there was no legitimate basis for the prosecutor's remarks, and his novel argument that the government should bear the burden of proving harmlessness beyond a reasonable doubt.

Sincerely,

Doyle Baker
Senior Deputy District Attorney

cc: Stuart Banner, Counsel for Marcus Lee Robinson