

# Jury Management

Catherine Eagles  
January 2009



# Juries and Judges

- You are their only friend.
- You can impact their level of satisfaction with jury service and the court system.
- You will spend a lot of time with juries.
- You have a HUGE amount of discretion.

# Juries and Judges



We find the Defendant guilty, the lawyers tedious, and you arrogant.

# Juries and Judges

- Different Places, Different Procedures
- One Day, One Trial v. Service for the Week
- Jury Assembly Room v. the Courtroom

# General Jury Orientation at the Beginning of a Week

- Getting the Jury Oriented Well Makes Everything Run More Smoothly.
  - Helps them understand the process
  - Helps them understand their role
  - Minimizes requests for deferrals
- What do I say?
  - See Handouts and Bench Books

# Excuses & Deferrals

- Qualifications NCGS 9-3
  - Citizen and Resident of the County
  - Not Served w/in 2 years
  - 18 years or age or over
  - Physically and mentally competent
  - Hear\* and understand English
  - Felony Conviction/Citizenship Not Restored

\*It is in the statute, but ADA requires interpreter

# Excuses & Deferrals

- NCGS 9-6
  - (a) The General Assembly hereby declares the public policy of this State to be that jury service is the solemn obligation of all qualified citizens, and that excuses from the discharge of this responsibility should be granted only for reasons of compelling personal hardship or because requiring service would be contrary to the public welfare, health, or safety.
- State v. Neal, 346 NC 608, 619 (1998)(court has discretion to excuse prospective juror with health problems)

# Excuses and Deferrals

- Juror's Age - NCGS 9-6.1
- Logistical Issues
- Religious Objections to Service



# Juror No-Shows

- \$50 Fine – NCGS 9-13
- Ordering No-Shows To Come
- Contempt?

# Civil Case Orientation

- See Appendix to Bench Book
  - Pretrial and Trial Section
  - “Standard Remarks”

# Criminal Case Orientation

- See Appendix to Bench Book for “Standard Remarks”
  - Pretrial Section
  - Trial Section
- Also NCPJI/Criminal 100-20



# Jury Selection

- Do you ask any questions?
  - NCGS 9-15
- How much do you intervene in lawyer's questions?
- Juror Privacy
- Challenges for Cause
  - NCGS 9 - 15
- Transcribing Jury Selection

# Jury Selection

- Peremptory Challenges
- Civil Cases: 8 each side (NCGS 9-19)
  - Apportioning between antagonistic defendants
  - NCGS 9-20
- Criminal Cases: 6 each side (NCGS 15A-1217)
- Capital Cases: 14 each side (NCGS 15A-1217)

# Jury Selection

- Batson: What is the Law?
  - Batson v. Kentucky, 476 US (1986)
  - Powers v. Ohio, 499 US 400 (1991)
  - Miller-El v. Dretke, 545 US 231 (2005)
  - Rice v. Collins, 546 US 333 (2006)
  - Snyder v. Louisiana, 552 US \_\_\_\_, 128 SCt 1203 (2008)
  - State v. Wright, \_\_\_\_ NCApp \_\_\_\_, 658 SE2d 60 (2008)  
(finding clear error in trial judge's denial of Batson motion)
- Batson: Logistical Issues

# Jury Selection

- How Many Alternates?
  - Civil
    - May select up to 2 (NCGS 9-18(a))
  - Criminal – NCGS 15A Article 72
    - NCGS 15A-1215
    - Selection of Alternates Gives Parties more peremptory challenges: NCGS 15A-1217



# Instructions Upon Empanelling the Jury

- Bench Books Appendices
- Instructions at Opening Statement
  - Civil 100.10
  - No Criminal Equivalent

# During the Trial



# During the Trial



# During the Trial



# During the Trial

- Helping Jurors Do Their Job
  - Can they see and hear?
  - Can they ask questions?
    - State v. Howard, 320 N.C. 718, 725 (1987).



# During the Trial

- Helping Jurors Do Their Job
  - Can they take notes?
    - NCGS 15A-1228
    - NCPJI Civil 100.70
    - NCPJI Criminal 100.30
  - Do you explain Evidence Rulings?

# During the Trial

- Looking After Juror Comfort & Convenience
  - Taking Regular Breaks
  - Keeping them Informed of the Schedule
- Instructions at Recess
  - NCPJI 100.20
  - NCPJI 100.31



# During the Trial

- Taking Care for the Appearance of Impartiality
- A trial judge occupies an esteemed position whereby “jurors entertain great respect for [a judge's] opinion, and are easily influenced by any suggestion coming from him. As a consequence, he must abstain from conduct or language which tends to discredit or prejudice' any litigant in his courtroom.” McNeill v. Durham County ABC Bd., 322 NC 425, 429 (1988)

## During the trial

- N.C.G.S. § 15A-1222: The judge may not express during any stage of the trial, any opinion in the presence of the jury on any question of fact to be decided by the jury.

# During the Trial

- “The law imposes on the trial judge the duty of absolute impartiality. The trial judge also has the duty to supervise and control a defendant's trial . . . to ensure fair and impartial justice for both parties.” State v. Fleming, 350 N.C. 109, 126 (1999)

# During the trial

- “It is fundamental to our system of justice that each and every person charged with a crime be afforded the opportunity to be tried 'before an impartial judge and an unprejudiced jury in an atmosphere of judicial calm.’” State v. Larrimore, 340 N.C. 119, 154, (1995)
- “A remark by the court is not grounds for a new trial if, when considered in light of the circumstances under which it was made, it could not have prejudiced defendant's case.” State v. King, 311 NC 603, 618 (1984).
- Seminal Case: State v. Carter, 233 N.C. 581, 583 (1951).

# During the Trial

- I Wish That Hadn't Happened, or Putting the Genie Back in the Box
- Instructing the Jury to Disregard Evidence
  - Trial judge immediately upon objection instructed jury to disregard evidence of defendant's escape from prison while serving previous sentence for murder; no error in failing to order mistrial ex moro motu. State v. Prevatte, 356 NC 178, 253-254 (2002)

# During the Trial

- I Wish That Hadn't Happened, or Putting the Genie Back in the Box
- Instructing the Jury to Disregard Questions
  - “When the trial court sustains a defendant's objections to improper questions and instructs the jury to disregard such questions, any possible prejudice to the defendant is cured.” State v. Knight, 340 NC 531 (1995).

# During the Trial

- I Wish That Hadn't Happened, or Putting the Genie Back in the Box
- Instructing the Jury to Disregard Statement of Counsel
  - “Where the trial court immediately sustains the defendant's objection to a prosecutor's comment and instructs the jury to disregard the offending remark, the impropriety is cured.” State v. Garner, 340 NC 573, 593 (1995).

# During the Trial

- I Wish That Hadn't Happened, or Putting the Genie Back in the Box
- Instructing the Jury to Disregard Outbursts of Co-Defendant
  - No error in denying mistrial due to Co-defendant's outbursts. Judge removed members of jury from courtroom when outbursts occurred, then removed co-defendant when it became apparent such disruptions would continue, and admonished the jury to disregard whole matter, which jury unanimously indicated it would do. State v. McGuire, 297 N.C. 69 (1979).



# During the Trial

- Juror Misconduct

- State v. Pierce, 134 N.C. App. 148 (1999)
  - Juror held in contempt for conducting independent investigation of case in violation of court's orders;
- State v. Tyson, 138 N.C. 627 (1905)
  - Mistrial declared due to intoxication of juror; no double jeopardy.
- State v. Jones, 50 N.C. App. 263 (1981).
  - No error in denying mistrial when jurors exposed to newspaper article about defendant's prior conviction for selling heroin when judge examined jurors and concluded they had not formed an opinion as a result and could make a decision based solely on the evidence presented at trial.

# During the Trial

- Insanity of juror
  - State v. Beal, 199 N.C. 278 (1930) (“During . . . this trial, . . . one of the jurors suffered an acute attack of emotional insanity and became wholly incapacitated for further jury service; whereupon . . . the court, as a matter of necessity, withdrew a juror and ordered a mistrial.”)
- Interference with Jurors
  - State v. Cooley, 47 N.C. App. 376 (1980).
  - State v. Poindexter, 353 NC 440 (2001)

# During the Trial



# During the Trial

- New Courtroom Deputies
- Media Coverage: No Photographs of Jurors, No Media Contact with Jurors
- Uncooperative Employers
  - NCGS 9-32

# At the Close of the Evidence

- Explaining to the Jury About the Charge Conference
- Instructions Before Closing Argument

# Instructing the Jury

- When to Provide the Verdict Sheet
- Philosophies about Written Instructions
  - Whether and When

# Deliberations

- Typical Juror Questions
  - Can We Have a Transcript of the Victim's Testimony?
  - Whose Fault Did the Officer Say the Accident Was?
  - How much is the insurance coverage?
  - How old was the doctor's assistant?
  - Can we have the exhibits?
  - Can we have the instructions in writing?

# Deliberations

## Coercing a Verdict

- An inquiry into the jury's division without asking which votes were for acquittal or conviction is not inherently coercive and does not violate a defendant's right to a jury trial. State v. Beaver, 322 N.C. 462 (1988).
- Instructing the jury that its inability to agree will result in the inconvenience of having to retry the case after the jury has returned announcing any deadlock is error. State v. Buckom, 111 N.C. App. 240 (1993), aff'd per curiam 335 NC 765 (1994)



# Deliberations

- The “Dynamite” or “Allen” Charge: G.S. 15A-1235(b)
  - Criminal NCPJI 101.40
  - Civil NCPJI 150.50
  - Motor Vehicle NCPJI 150.50

# Jury Deliberations

- How Long?
- Feeding Them, Staying Late
- Losing a Juror
- Hung Juries and Mistrials

# The Verdict

- Civil Cases

- Agreement to “Unanimous Verdict by at Least 10”
- N.C. R. Civ. P. 48. Agreement to accept verdict by less than twelve may be made at any time before return of verdict. U.S. Industries v. Tharpe, 47 N.C. App. 754 (1980).

# The Verdict: Polling the Jury

- Criminal cases: G.S. 15A-1238
- Jury **must** be polled upon motion of any party, **or** may be polled upon judge's own motion. State v. Smith, 299 N.C. 533 (1980).
- Judge or clerk conducts polling by **asking each juror individually whether verdict announced is his or her verdict.**
- When jury is polled, judge errs in asking jurors to signal their agreement to the verdict by raising their right hands, State v. Buchanan, 330 N.C. 202 (1991) (capital case), or by asking those who returned a verdict of guilty to stand, State v. Boger, 202 N.C. 702 (1932).

# Jurors and Sentencing

- Do the jurors stay for sentencing?

# Discharging the Jury

- NCPJI Civil 150.60
- No Criminal NCPJI Equivalent

# Talking to Jurors Post-Trial

- What is Ok to Say?
- Don't Comment on the Verdict
  - G.S. 15A-1239
  - NCR CivP 51
  - Haymore v. Thew Shovel Co., 116 N.C. App. 40 (1994).