

Evidence

Cummings v. Ortega, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80MTdQQTEwLTEucGRm>). In a civil medical malpractice case, the court held that under Rule 606(b) juror affidavits were inadmissible to support a new trial motion. Two days after the jury returned a verdict in favor of the defendant, juror Rachel Simmons contacted the plaintiff's attorneys to report misconduct by juror Charles Githens. Simmons executed an affidavit stating that before the case was submitted to the jury, Githens told the other jurors that "his mind was made up" and he would not change his views. Githens said the other jurors could either "agree with him or they would sit there through the rest of the year." Simmons stated that Githens's conduct "interfered with [her] thought process about the evidence during the plaintiff's case." An affidavit from another juror corroborated this account. Based on these affidavits, the plaintiff successfully moved for a new trial. On appeal, the court noted that Rule 606(b) reflects the common law rule that juror affidavits are inadmissible to impeach the verdict except as they pertain to external influences that may have affected the jury's decision. External influences include information that has not been introduced in evidence. Internal influences by contrast include information coming from the jurors themselves, such as a juror not assenting to the verdict, a juror misunderstanding the court's instructions, a juror being unduly influenced by the statements of fellow jurors, or a juror being mistaken in his or her calculations or judgments. The court found that the affidavits in question pertained to internal influences. The court also rejected the plaintiff's argument that Rule 606(b) was inapplicable because the misconduct occurred before her case was submitted formally to the jury.

Capital

Conner v. N.C. Council of State, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8yMTNQQTUwLTEucGRm>). (1) In a case centered on the constitutionality of the State's method of execution in capital cases, the Court held that the N.C. Council of State's process for approving or disapproving the Department of Correction's lethal injection protocol is not subject to the Administrative Procedure Act and that petitioners cannot challenge it by going through the Office of Administrative Hearings. Instead, the court held, any issue petitioners have with the protocol rests with the state trial courts or the federal courts. (2) The court also held that the superior court erred by dismissing the petitioners' declaratory judgment claim that the Council's approval of the execution protocol violated G.S. 15-188. Nevertheless, the court affirmed the superior court's order as modified because the court correctly construed G.S. 15-188 to mean that petitioners' rights "are limited to the obligation that [their] death[s] be by lethal injection, in a permanent death chamber in Raleigh, and carried out pursuant to an execution protocol approved by the Governor and the Council of State" and that no factual or legal authority "supports Petitioner[s] claims of a due process right to participate in the approval process."