JURY SELECTION

PURPOSES OF VOIR DIRE

I. Select Impartial Jury – Primary Purpose
   a. State v. Lee, 292 N.C. 617, 621, 234 S.E.2d 574, 577 (1977).
   b. State v. Locklear, 331 N.C. 239, 247, 415 SE2d 726, 731 (1992).
   c. Simmons v. Parkinson, 119 N.C. App. 424, 427, 458 S.E.2d 726, 728 (1974).

II. Eliminate Bias and Prejudice
   a. State v. Carey, 285 N.C. 497, 506, 206 S.E.2d 213, 220 (1974) (holding that the parties have a right to an unbiased jury).
   b. State v. Jones, 339 N.C. 114, 136, 451 S.E.2d 826, 836-37 (1994) (stating that one purpose of voir dire is to ferret out the jurors' latent prejudices).

III. Double Purpose: (a) Ascertaining Cause Challenges; and (b) Enabling Counsel to Intelligently Exercise Peremptory Challenges
   a. State v. Wiley, 355 N.C. 592, 565 S.E.2d 22 (2002).
   b. State v. Syriani, 333 N.C. 350, 372, 428 S.E.2d 118, 129 (1993).
   c. In re Will of Worrell, 35 N.C. App. 278, 282, 241 S.E.2d 343, 346-47 (1978).

IV. Assure the Parties that the Resulting Jury Will Make Its Decision Solely from the Evidence Presented
   a. State v. Leroux, 326 N.C. 368, 384, 390 S.E.2d 314, 325 (1990).
   b. State v. White, 340 N.C. 264, 280, 457 S.E.2d 841, 850-51 (1995).
   c. State v. Honeycutt, 285 N.C. 174, 179, 203 S.E.2d 844, 848 (1974).

OPEN VOIR DIRE

I. Statutory Right to Examine Each Juror as to Fitness and Competency, the Basis for a Challenge for Cause, and Whether to Use a Peremptory Challenge

a. State v. Syriani, 333 N.C. 350, 372, 428 S.E.2d 118, 129 (1993).
b. State v. Jones, 336 N.C. 490, 497, 445 S.E.2d 23, 26-27 (1994).
c. N.C.G.S. § 9-15(a) (2006).
d. N.C.G.S. § 15A-1214(c) (2006).

II. Counsel is Allowed Wide Latitude in Examining Jurors in Voir Dire

a. State v. McKoy, 323 N.C. 1, 14, 372 S.E.2d 12, 21-22 (1988), rev'd on other grounds, McCoy v. North Carolina, 494 U.S. 433, 108 L. Ed. 2d 369 (1990).
b. Simmons v. Parkinson, 119 N.C. App. 424, 426, 458 S.E.2d 726, 727-28 (1974).
c. In re Will of Worrell, 35 N.C. App. 278, 282, 241 S.E.2d 726, 728 (1974).

III. Counsel Permitted to Explain Aspects of Law in Voir Dire to Ensure Juror Can Follow the Law

a. State v. Hedgepeth, 66 N.C. App. 390, 394, 310 S.E.2d 920, 922 (1984) (holding that a defendant is entitled ask about jurors' ability to follow the law on the limited relevance of the defendant's prior record).
b. State v. Clark, 319 N.C. 215, 221 353 S.E.2d 205 (1987) (holding that it is proper for a prosecutor to ask a juror if the fact that the state is relying on circumstantial evidence would cause the juror any problems).

IV. Peremptory Challenges Are Worthless If Counsel Has No Opportunity to Gain Information Needed to Make Strike Decisions

a. U.S. v. Ledee, 549 F.2d 990, 993 (5th Cir. 1977).
b. U.S. v. Barnes, 604 F.2d 121, 142 (2d Cir. 1979).

V. Right to Voir Dire to Uncover Unqualified Jurors Is One Aspect of the Constitutional Guarantee of a Fair Trial

a. State v. Moseley, 338 N.C. 1, 22, 449 S.E.2d 412, 425-26 (1994) (quoting Morgan v. Illinois, 504 U.S. 719, 119 L. Ed. 2d 492 (1992)).
b. State v. Wiley, 355 N.C. 592, 611, 565 S.E.2d 22, 37 (2002).
c. U.S. v. Bobbitt, No. 98-4489, No. 98-4490, 2000 U.S. App. LEXIS 1187, at *12 (4th Cir. Jan. 31, 2000) (stating that voir dire plays an essential role in guaranteeing a defendant's Sixth Amendment right to an impartial jury).

VI. Jury Selection Involves Complex Weighing of Factors

a. State v. Williams, 339 N.C. 1, 18, 452 S.E.2d 245, 255-56 (1994).
b. State v. Porter, 326 N.C. 489, 501, 391 S.E.2d 144, 152-53 (1990).

VII. Counsel Entitled to Rehabilitate an Equivocal Juror

a. State v. Brogden, 334 N.C. 39, 430 S.E.2d 905 (1993).
b. State v. Green, 336 N.C. 142, 160, 443 S.E.2d 14, 25 (1994) (ruling that, as a matter of law, a trial court's decision not to allow rehabilitation is error).

VIII. Until the Jury is Impaneled, The Trial Court May, in the Exercise of Discretion, Reopen Voir Dire

a. N.C.G.S. § 15A-1214(g) (2006).
b. State v. Matthews, 299 N.C. 284, 289, 261 S.E.2d 872, 876-77 (1980).

c. State v. Boggess, 358 N.C. 676, 683, 600 S.E.2d 453, 457-58 (2004) (holding that a trial court should resolve any doubts in favor of reopening voir dire and let the parties use their remaining peremptory challenges before impaneling the jury).
d. Simmons v. Parkinson, 119 N.C. App. 424, 427, 458 S.E.2d 726, 728 (1974).

IX. Trial Court has Discretion to Reopen Voir Dire after the Jury is Impaneled

a. State v. Holden, 346 N.C. 404, 488 S.E.2d 514 (1997).
b. State v. Waddell, 289 N.C. 19, 220 S.E.2d 293 (1975), vacated on other grounds, Waddell v. North Carolina, 428 U.S. 904, 29 L. Ed. 2d 1210 (1976).
c. Compare State v. McLamb, 313 N.C.572, 577, 330 S.E.2d 476, 479 (1985) (holding that, once the jury is impaneled, the parties have waived their rights to peremptory challenges and it is not an abuse of discretion to refuse to reopen voir dire).

LIMITED VOIR DIRE

I. Right to Ask Voir Dire Questions Is a Statutory Right, Not a Constitutional Right

a. State v. Jones, 336 N.C. 490, 445 S.E.2d 23 (1994).
b. State v. Moseley, 338 N.C. 1, 24, 449 S.E.2d 412, 426-27 (1994) (holding that peremptory challenges are not required by the Constitution (quoting Mu' Min v. Virginia, 500 U.S. 415, 424-25, 114 L. Ed. 2d 493, 505 (1991))).

II. Trial Court Has an Obligation to Ensure that Trials Are Expedited in Every Appropriate Way

a. State v. Phillips, 300 N.C. 678, 682, 268 S.E.2d 452, 455 (1980) (holding that, to expedite voir dire, questions should be asked collectively whenever possible, and the trial court may require certain questions to be submitted to the panel as a whole).
b. State v. Campbell, 340 N.C. 612, 460 S.E.2d 144 (1995).
c. State v. Moore, 335 N.C. 567, 591, 440 S.E.2d 797, 811 (1994)
d. State v. Jones, 336 N.C. 490, 445 S.E.2d 23 (1994) (holding that counsel is not entitled to ask repetitious questions).

III. Counsel Should Not Fish for Answers to Legal Questions before the Court Has Instructed the Jury on Applicable Legal Principles by Which the Jury Should Be Guided

a. State v. Phillips, 300 N.C. 678, 682, 268 S.E.2d 452, 455 (1980).
b. State v. Hill, 331 N.C. 387, 404, 417 S.E.2d 765, 772-73 (1992).
c. State v. Gregory, 340 N.C. 365, 459 S.E.2d 638 (1995).
d. State v. Jones, 358 N.C. 330, 338, 595 SE.2d 124, 130 (2004)

IV. Counsel Should Not Argue the Case in Any Manner while Questioning Jurors

a. State v. Williams, 339 N.C. 1, 22, 452 S.E.2d 245, 258 (1994), overruled on other grounds, State v. Warren, 347 N.C. 309, 492 S.E.2d 609 (1997).
b. State v. Davis, 325 N.C. 607, 383 S.E.2d 418 (1989).
c. State v. Phillips, 300 N.C. 678, 682, 268 S.E.2d 452, 455 (1980).
d. State v. Leroux, 326 N.C. 368, 384, 390 S.E.2d 314, 325 (1990).

V. Counsel Should Not Engage in Efforts to Indoctrinate, Visit With, or Establish Rapport with the Jurors

a. State v. Fisher, 336 N.C. 684, 695, 445 S.E.2d 866, 872 (1994) (holding that voir dire is not the place to forecast the evidence).
b. State v. Phillips, 300 N.C. 678, 682, 268 S.E.2d 452, 455 (1980).
c. State v. Williams, 339 N.C. 1, 22, 452 S.E.2d 245, 258 (1994), overruled on other grounds, State v. Warren, 347 N.C. 309, 492 S.E.2d 609 (1997).
d. State v. Davis, 325 N.C. 607, 383 S.E.2d 418 (1989) (holding that questions that tend to instruct the jury on the law can be prohibited in the discretion of the trial court).

VI. Counsel Should Not Ask Overly Broad Questions or Those Calling for Policy Decisions

a. State v. Miller, 339 N.C. 663, 689, 455 S.E.2d 137, 151-52 (1995).
b. State v. Connor, 335 N.C. 618, 644, 440 S.E.2d 826, 840-41 (1994).
c. State v. Blakenship, 337 N.C. 543, 554, 447 S.E.2d 727, 733-34 (1994), overruled on other grounds by State v. Barnes, 345 N.C. 184, 481 S.E.2d 44 (1997) (disapproving of abstract questions because jurors cannot answer before they hear the evidence).
d. Compare State v. Davis, 340 N.C. 1, 23, 455 S.E.2d 627, 638-39 (1995) (holding that an "eye for an eye" question is not overly broad).

VII. Hypothetical Questions That Are Ambiguous, Confusing, Or That Contain Erroneous or Incomplete Statements of the Law Are Improper and, Generally, Will Not Be Allowed

a. State v. Skipper, 337 N.C. 1, 21, 446 S.E.2d 252, 262 (1994), superseded on other grounds by statute, N.C.G.S. § 15A-2002 (1993), as recognized in State v. Price, 337 N.C. 756, 763, 448 S.E.2d 827, 831 (1994).
b. State v. Denny, 294 N.C. 294, 297, 240 S.E.2d 437, 439 (1978).
c. State v. Vinson, 287 N.C. 326, 336, 215 S.E.2d 60, 68 (1975), vacated in part, Vinson v. North Carolina, 428 U.S. 902, 49 L. Ed.2d 1206 (1976).

VIII. Counsel Should Not Stake Out Jurors with Questions

a. State v. Robinson, 339 N.C. 263, 273, 451 S.E.2d 196, 202-03 (1994) (holding that counsel should not ask what a juror's verdict would be under certain circumstances); accord State v. Vinson, 287 N.C. @ 336, 215 S.E.2d @ 68.
b. State v. Elliot, 344 N.C. 242, 262 (1999) (holding that it is impermissible for counsel to stake out a juror with questions structures to determine how well a juror will stand up to other jurors in the event of a split decision because, while a juror is charges with the duty to make his own decision, he is also charged with the duty to deliberate and give consideration to the opinions of others).
c. State v. Fletcher, 354 N.C. 455 (2001) (holding that counsel may not stake out a juror by asking the juror to pledge himself to a future course of action before hearing the evidence or the instructions); accord State v. Chapman, 359 N.C. 328, 346 (2005).
d. State v. Skipper, 337 N.C. 1, 21, 446 S.E.2d 252, 262 (1994) (holding that counsel may not ask whether a juror would consider specific mitigating circumstances in the sentencing phase), superseded on other grounds by statute, N.C.G.S. § 15A-2002 (1993), as recognized in State v. Price, 337 N.C. 756, 763, 448 S.E.2d 827, 831 (1994); but see State v. Davis, 325 N.C. 607, 383 S.E.2d 418 (1989) (holding that general questions, such as whether a juror could follow instructions as to the consideration of mitigating circumstances, are proper).
e. Compare State v. Williams, 41 N.C. App. 287, 291, 254 S.E.2d 649, 652-53 (1979) (holding that, in an assault case, a prosecutor's statements, telling jurors that the case would involve a drug sale and then asking whether jurors could be fair in such a case, were made only to secure an impartial jury and not to cause the jurors to commit to a future course of conduct).
f. Compare State v. Lee, 292 N.C. 617, 621, 234 S.E.2d 574, 577 (1977) (holding that, when a prosecutor made jurors promise not to sympathize with a defendant because of intoxication, the prosecutor was really asking a question about sympathies, a question asked to secure an unbiased jury, and not staking jurors out as to alcohol's effect on issues of guilt or innocence).

IX. Rehabilitation

a. State v. Skipper, 337 N.C. 1, 18, 446 S.E.2d 252, 260-61 (1994) (stating that the parties may have an opportunity to rehabilitate, but they are not is entitled to it), superseded on other grounds by statute, N.C.G.S. § 15A-2002 (1993), as recognized in State v. Price, 337 N.C. 756, 763, 448 S.E.2d 827, 831 (1994).
b. State v. Johnson, 317 N.C. 343, 346 S.E.2d 596 (1986) (holding that if a juror's answers are unequivocal, then the trial court may refuse to allow rehabilitation).

c. State v. Basden, 339 N.C. 288, 298, 451 S.E.2d 238, 243 (1994) (holding that a trial court, in its discretion, may refuse rehabilitation of certain jurors challenged for cause and, to show an abuse of discretion, the objecting party must show that the prospective juror would likely have changed his position or given different answers in response to additional questions).
d. State v. Keel, 337 N.C. 469, 483, 447 S.E.2d 748, 755-56 (1984) (holding that a trial court, in order to prevent harassment of the jurors, may refuse to allow rehabilitation of certain jurors challenged for cause).

TRIAL COURT VOIR DIRE RESPONSIBILITIES

I. Trial Court Has a Duty to Regulate Questioning

a. State v. Phillips, 300 N.C. 678, 682, 268 S.E.2d 452, 455 (1980) (holding that a trial court has an obligation to see that a competent, fair, and impartial jury is impaneled).
b. State v. Elliott, 360 N.C. 400, 409, 628 S.E.2d 735, 742 (2006) (stating that voir dire is subject to the close supervision of the trial court and that the *manner and extent* of the questioning rests largely in the trial court's discretion).
c. State v Knight, 340 N.C. 531, 459 S.E.2d 481 (1995) (holding that the *scope* of voir dire is largely a matter for the trial court's discretion); accord, State v. Lee, 335 N.C. 244, 439 S.E.2d 547 (1994).
d. State v. McKoy, 323 N.C. 1, 19, 372 S.E.2d 12, 21-22 (1988) (holding that the *form* of voir dire is largely a matter for the trial court's discretion), vacated on other grounds, McCoy v. North Carolina, 494 U.S. 433, 108 L. Ed. 2d 369; accord State v. Vinson, 287 N.C. 326, 336, 215 S.E.2d 60, 68 (1975), vacated in part, Vinson v. North Carolina, 428 U.S. 902, 49 L. Ed. 2d 1206 (1976).

II. Trial Court Has a Duty to Decide All Competency Questions

a. N.C.G.S. § 9-14 (2006).
b. N.C.G.S. § 15A-1211(b) (2006).
c. State v. Phillips, 300 N.C. 678, 682, 268 S.E.2d 452, 455 (1980).

III. Trial Court Has and Broad Discretion to Determine Whether a Juror Can Be Fair and Impartial

a. State v. Kennedy, 320 N.C. 20, 26, 357 S.E.2d 359, 363 (1987) (stating that it is within the discretion of the trial judge, who can see and hear the juror and make findings based on credibility and demeanor, to ultimately determine whether the juror could be fair and impartial).
b. State v. Yelverton, 334 N.C. 532, 543, 434 S.E.2d 183, 189 (1993) (stating that the trial court has the opportunity to see and hear the juror and, having observed the demeanor and made findings as to credibility, it is within the trial court's discretion, based on its observations and sound judgment, to determine whether a juror can be fair and impartial).

IV. Trial Court Has Broad Discretion as to What Constitutes Personal Hardship

a. N.C.G.S. § 9-3 (2006).
b. N.C.G.S. § 9-6 (2006).
c. State v. Reed, 355 N.C. 150, 159, 558 S.E.2d 167, 173-74 (2002).
d. State v. Elliottt, 360 N.C. 400, 407, 628 S.E.2d 735, 740-41 (2006) (holding that excusing jurors over age 65 must reflect the exercise of discretion).

V. Batson Issues

a. Trial Court's Findings of Fact
    i) The trial court must make specific findings of fact at each stage of the three-step process for determining claims of racial discrimination in the use of peremptory challenges, and the appellate court must uphold those findings unless they are clearly erroneous. State v. Carmon, 169 N.C. App. 750, 756, 611 S.E.2d 211, 215 (2005) (citing Hernandez v. New York, 500 U.S. 353, 358, 114 L. Ed. 2d 395, 405 (1991)).
    ii) The standard of review of the trial court's findings concerning a prima facie case of discrimination is whether those findings are clearly erroneous. State v. Chapman, 359

N.C. 328, 339, 611 S.E.2d 794, 805-06 (2005) (citing State v. Barnes, 345 N.C. 184, 210, 481 S.E.2d 44, 58 (1997).

b. Prosecutor's Questions
   i) Unless a discriminatory intent is inherent in the prosecutor's explanation for peremptory challenges, the reason offered, if it is facially based on something other than race, will be deemed racially neutral. State v. Moore, 167 N.C. App. 495, 500, 606 S.E.2d 127, 131 (2004) (citing Hernandez v. New York, 500 U.S. 352, 360, 114 L. Ed. 2d 395, 406 (1991)).
   ii) The fact that a stricken juror made remarks also made by jurors that the prosecutor did not challenge does not require a finding that the reason given by the state for striking the juror was pretextual because a characteristic deemed unfavorable in one juror, and hence grounds for a peremptory challenge, may, in a second juror, be outweighed by other, favorable characteristics. State v. McClain, 169 N.C. App. 657, 669, 610 S.E.2d 783, 791 (2005) (citing State v. Porter, 326 N.C. 489, 501, 391 S.E.2d 144, 153 (1990)).

APPELLATE REVIEW OF VOIR DIRE RULINGS

I. Trial Court Has Broad Discretion to Regulate Jury Voir Dire, and, Therefore, a Clear Abuse of Discretion and Prejudice Are Required to Show Reversible Error

a. State v. Larry, 345 N.C. 497, 509, 481 S.E.2d 907, 914 (1997).
b. State v. Elliott, 360 N.C. 400, 409, 628 S.E.2d 735, 742 (2006).
c. State v. Geddie, 345 N.C. 73, 91, 478 S.E.2d 146, 154-55 (1996) (stating that, where a juror's fitness is arguable, a challenge for cause is within the sound discretion of the trial court and will not be disturbed absent a showing of abuse of discretion).
d. Compare In re Will of Worrell, 35 N.C. App. 278, 282, 241 S.E.2d 726, 728 (1974).

II. Abuse of Discretion Error

a. State v. Cunningham, 333 N.C. 744, 754, 429 S.E.2d 718, 723 (1993) (holding that, where a juror's answers show that she is confused about, misunderstands, or reluctant to follow the law, it is an abuse of discretion and reversible error not to excuse the juror); see also State v. Hightower, 331 N.C. 636, 641, 417 S.E.2d 237, 240 (1992).
b. Simmons v. Parkinson, 119 N.C. App. 424, 426, 458 S.E.2d 726, 727-28 (1974) (holding that an abuse of discretion is shown when the appellate court finds that the trial court's decision is manifestly unsupported by reason and so arbitrary that it could not have been the result of a reasoned decision).

III. Standard of Prejudice for a Statutory Voir Dire Rule Violation Is Whether There Is a Reasonable Possibility of a Different Result Had the Error Not Been Made

a. State v. Jones, 336 N.C. 490, 498, 445 S.E.2d 23, 27 (1994).
b. State v. Connor, 335 N.C. 618, 628, 440 S.E.2d 826, 832 (1994).
c. State v. Garcia, 358 N.C. 352, 407 (2004).

IV. For Voir Dire Question to be Constitutionally Compelled, the Inability to Ask It Must Render the Trial Fundamentally Unfair

a. State v. Skipper, 337 N.C. 1, 21, 446 S.E.2d 252, 262 (1994) (citing Mu' Min v.Virginia, 500 U.S. 415, 424-25, 114 L. Ed. 2d 493, 505 (1991), superseded on other grounds by statute, N.C.G.S. § 15A-2002 (1993), as recognized in State v. Price, 337 N.C. 756, 763, 448 S.E.2d 827, 831 (1994).

V. Appellate Courts Will Not Substitute Their Own Judgment for That of the Trial Court When the Record Discloses Sufficient Evidence to Support the Trial Court's Findings

a. State v. Williams, 339 N.C. 1, 23, 452 S.E.2d 245, 258-59 (1994), overruled on other grounds State v. Warren, 347 N.C. 309, 492 S.E.2d 609 (1997).
b. State v. McDowell, 329 N.C. 363, 379, 407 S.E.2d 200, 209 (1991).