

Jury Instructions Handout

Paul M. Newby

Associate Justice, Supreme Court of North Carolina

Advanced Criminal Procedure

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- **English Jury Trial Origins**

- Its origins are uncertain but are likely traced back to Charlemagne's 8th century *inquisitio*, originally only available by royal decree to rule on fiscal affairs of the Crown. *The Origin of Juries*, Heinrich Brunner (1872).
- The historian Maitland observed an unwillingness by the English to admit that the "palladium of our liberties" was not "English in origin but Frankish, not popular, but royal."
- The jury trial became more prevalent in England after the Church forbade clergy from assisting trial by fire/water in 1215.
- "No freemen shall be taken or imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land." Magna Carta, art. 39 (1215).

Importance of Jury in Colonial America

- "...For depriving us in many cases, of the benefits of Trial by Jury." Declaration of Independence (July 4, 1776).
- "For the generation that made the American Revolution, trial by jury was prized precisely because the jury could protect a defendant from an overreaching government. At the trial of John Peter Zenger in colonial New York in 1735, the defense counsel reminded the jury that they had 'the right beyond all dispute to determine both the law and the fact.' And they did just that, acquitting Zenger of seditious libel for printing the truth about the government, for which they got three huzzahs from the crowded courtroom." Prof. Orth, Letter to Editor, *NY Times* (Jan. 1, 2012).

- **Juror Question**

- During deliberations, the bailiff brings you a note from the jurors indicating the foreperson has already made up his mind. Counsel for both parties agree to have you call the foreperson into the courtroom to instruct him on his role. Do you:
 - A. Bring the entire jury into the courtroom and instruct them corporately on the record?
 - B. Instruct the foreperson individually in the presence of both counsel?

- **Transcript Request**

- After an hour of deliberations, the jury sends the trial court a note requesting a transcript of one of the defense witness's testimony. Do you:
 - A. Say, "In the exercise of my discretion, I deny the request," and instruct the jury "to rely on your recollection of the trial testimony."
 - B. Inform the jury, "We don't have the capability of real-time transcripts so we cannot provide you with that. You are to rely on your recollection of the trial testimony."

- **Indictment and Charge**

- Defendant is indicted for first-degree statutory sexual offense, N.C.G.S. section 14-27.4(a)(1). The trial court, however, instructs the jury on the charge of sexual offense with a child, N.C.G.S. section 14-27.4A. First-degree statutory sexual offense is a lesser included offense of sexual offense with a child. Did the trial court commit reversible error?

- A. YES or B. NO

- **Lesser Included Instruction**

- Defendant is charged with first-degree murder of his daughter. He shot the then-pregnant mother causing the daughter's premature birth and subsequent death. The evidence showed defendant had a strong desire not to have a second child; defendant approached mom and shot her in the abdomen; and defendant refused to call 911 for twelve hours afterward. You deny defendant's request for an instruction on second-degree murder. Was this error?
 - A. No, because there was substantial evidence of premeditation.

- B. Yes, because the evidence would permit the jury to find him guilty of second-degree murder.
- *State v. Stokes*, No. 94PA13-2 (N.C. 11 Apr. 2014)
 - Defendant was convicted of second-degree kidnapping. The COA reversed for lack of sufficient evidence for removal. The COA saw no basis for considering whether defendant could be convicted of attempted second-degree kidnapping because the State did not attempt to prove it at trial nor argue it on appeal.
 - The Supreme Court reversed the COA, acknowledging the long-standing practice of appellate courts to determine if there was sufficient evidence to support a lesser included offense of the convicting crime.
- **Flight**
 - Defendant was from Florida but was visiting his aunt in NC. He got in a fight and shot the victim at 2:30am. He did not return to the aunt's house after the shooting. Defendant was found three months later in FL. The trial court gave the jury an instruction on flight. Did the trial court err?
 - A. Yes, because mere evidence that defendant left the scene and returned to his home in Florida is not enough to support an instruction on flight.
 - B. No, because defendant's decision to return to Florida at such an unusual hour was not his normal pattern of behavior and thus was evidence that defendant took steps to avoid apprehension.
- **Joint Defendants**
 - "This Court has often found reversible error where two or more defendants are tried together for the same offense upon jury instructions susceptible to the construction that the jury should convict all of the defendants if they find beyond a reasonable doubt that any of the defendants committed the offense charged. *State v. McCollum*, 321 N.C. 557, 559-60 (1988)."
- **Reasonable Doubt**
 - You instruct the jury on reasonable doubt using the pattern instructions. After ninety minutes of deliberation, the jury sends a note asking what will happen if it fails to reach a verdict. You call the

jury back into the courtroom, and one of the jurors asks you to “explain reasonable doubt again.” You respond: It’s a doubt based on reason and common sense arising out of some or all of the evidence or the lack or insufficiency of the evidence, whichever the case may be, and you are to use your common sense and your reason to come to a decision. It’s not absolute.

The same juror asks, “No hundred percent?” You respond: “No hundred percent.”

Defendant objects and asks for a curative instruction “because you did not include that it’s a doubt that fully satisfies or entirely convinces you.” Do you:

- A. Give a curative instruction? or B. Deny defendant’s request?
- Follow-up Question...
- You call the jury back into the courtroom and state, “There were some concerns that I didn’t read the whole definition of reasonable doubt to you, so I’m going to read it to you as it states in the jury instruction.” You then reinstruct the jury using the pattern instruction. Fifteen minutes later, the jury finds defendant guilty. Do the reasonable doubt instructions as a whole constitute reversible error?
 - A. Yes, the instructions on reasonable doubt constitute reversible error.
 - B. No, the instructions on reasonable doubt do not constitute reversible error.
- **Deadlock**
 - After three notes from the jury indicating it was deadlocked, the trial court instructed the jury as follows: “I’m going, in my discretion, I’m going to ask you to resume your deliberations for another half an hour. I’m not going to stretch it any farther than that, but I’m going to ask you to give it your best shot. And it’s your choice, not mine, but I’m not going to hot bond you, and we’re not going to make you to stay until 5 o’clock, but I’m going to ask you to go back and try again, remembering the instructions I gave you. And at 3:30 I’m going to ask you to come out, unless you’ve hit, hit the button and reached the decision prior to that. And that’s your choice. I mean, I can’t tell you what to do. I appreciate your note letting me know, but I’m going to ask you, since the people have so much invested in this, and we don’t

want to have to redo it again, but anyway, if we have to we will. That's not my call either. That doesn't belong to me.

I'll just ask you to give us another half hour an hour [sic] and continue to deliberate with a view towards reaching an agreement if it can be done without violence to your individual judgment. As I said earlier, none of you should change your opinion if you, you know, if you feel like that's what your conscience dictates, you stick by it. So with that, I'm going to ask you to go back and continue.

Exactly thirty minutes later, the jury returned a guilty verdict on one count and failed to reach a verdict on the two remaining counts. Was the instruction appropriate?

- A. YES or B. NO

- In *State v. May*, 749 S.E.2d 483 (N.C. Ct. App. 2013), the COA held there was reversible error because:
 1. "When[] a trial judge gives a deadlocked jury any of the instructions authorized by N.C.G.S. § 15A-1235(b), he must give them all." *State v. Aikens*, 342 N.C. 567, 579 (1996).
 2. "A North Carolina jury may no longer be advised of the potential expense and inconvenience of retrying the case should the jury fail to agree." *State v. Easterling*, 300 N.C. 594, 608 (1980).
 3. "The mere fact that a judge prescribes a time limit for the jury's decision does not amount to coercion where the jury does not actually come to a decision within the general limits imposed by the judge." *State v. Sutton*, 31 N.C. App. 697, 702 (1976).

- **Characterization of Prosecuting Witness**

- Defendant is indicted for child sex abuse offenses involving two sisters, allegedly occurring twenty years prior. The evidence at trial consists almost entirely of the girls' testimony and defendant's testimony of the past events. You plan to follow the pattern jury instructions in your jury charge. Defendant requests you modify the pattern instructions by asserting "alleged victim" in the place of "victim." Do you:
 - A. Deny defendant's request and stick with the pattern instructions?
 - B. Grant defendant's request because the trial court is not permitted to express an opinion as to a disputed fact?

- **Jury Polling**

- The jury returns a guilty verdict, and defendant requests the jury be polled under N.C.G.S. section 15A-1238. The clerk responds by polling each juror individually as to their guilty verdicts. Then the trial court polls the jurors collectively concerning the aggravating factor. Defendant does not object. Did the trial court error?
 - A. Yes, the trial court erred in polling the jurors collectively on the aggravating factor.
 - B. No, the trial court did not error in polling the jurors collectively on the aggravating factor.