

Criminal Court: The Law You Need to Know: Pt. 1

January 2025



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Pleas

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Preliminary Points

Types of pleas:

1. Not guilty
2. Guilty
3. No Contest

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[illegible]

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[illegible]

Taking a Guilty Plea

[illegible]

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Taking a Guilty Plea

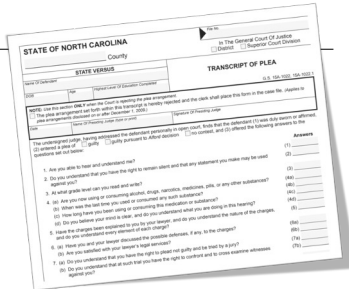
- Knowing, voluntary & intelligent
- G.S. 15A-1022 ensures that plea complies with constitutional requirements

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Taking a Guilty Plea

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- AOC-CR-300 & -300A



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G.S. 15A-1022

- (a) . . . [A] superior court judge may not accept a plea of guilty or no contest from the defendant without first **addressing him personally** . . .
- (b) By inquiring of the prosecutor and defense counsel **and the defendant personally**, the judge must determine whether there were any prior plea discussions
- . . .

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Taking a Guilty Plea

- Factual basis
 - Statement by prosecutor
 - D's written statement
 - Presentence report
 - Sworn testimony
 - Statement by defense counsel

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What if the crime pleaded to is not in the indictment?

Must be a lesser included offense
or

Criminal information must be filed

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Plea arrangements as to sentence

- May you hear from State and defendant about proposed plea agreement?
 - Yes. G.S. 15A-1021(c)
- May you indicate whether you will agree to the proposal?
 - Yes. G.S. 15A-1021(c)
- May you change your mind after hearing the facts?
 - Yes. G.S. 15A-1021(c)

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What if prosecutor has agreed to recommend a sentence that you do not intend to impose?

- You must advise the parties whether you concur
- If you reject the arrangement, then
 - Refuse to accept the plea
 - Tell the D neither the D nor the State is bound by the agreement
 - Explain why rejected and give opportunity to modify
 - D entitled to a continuance until next session
 - Rejection must be noted on the transcript and made part of the record

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What if there is no arrangement as to sentence, but you do not like the plea?

- The parties must disclose the arrangement at the time of the plea.
- The judge **must accept** the plea if the judge determines it is the product of the defendant's informed choice and there is a factual basis for the plea.
- G.S. 15A-1023(c); *see also State v. Chandler*, 376 N.C. 361, 367 (2020) (trial court erred by rejecting defendant's guilty plea because defendant would not admit that he was factually guilty).

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Withdrawal of Plea

Before sentencing: Any fair and just reason

After sentencing: To avoid manifest injustice

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Jury Selection

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Jury Selection

Before questioning begins, the trial judge must identify the parties and their attorneys and must briefly inform the prospective jurors of the

- charges against the defendant,
- dates of the alleged offenses,
- name of any alleged victim,
- defendant's plea, and
- any affirmative defense of which the defendant has given pretrial notice

NCPI – Crim 100.20

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Complete Recordation

Upon a motion of any party or on the judge's own motion, jury selection must be recorded in a non-capital case. G.S. 15A-1241(b).

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Right to Question Jurors

- Counsel for both parties are entitled to question jurors and are primarily responsible for voir dire. G.S. 15A-1214(c); G.S. 9-15(a)
- Trial judge “may briefly question prospective jurors individually or as a group concerning general fitness and competency.” G.S. 15A-1214(b).
- Trial judges have broad discretion in controlling voir dire.
 - But parties must be allowed to repeat judge’s questions
 - Cannot categorically ban individual questions
- May allow individual voir dire (questioning of prospective juror without other prospective jurors present)

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Right to Question Jurors

- Parties generally are entitled to inquire into the experiences, beliefs, and attitudes of prospective jurors which are relevant to their ability to be fair and impartial and to follow the law in the case at hand.
- This generally permissible line of inquiry does not amount to “the right to delve without restraint into all matters concerning potential jurors’ private lives.”

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Right to Question Jurors

- Parties **may not** ask “stakeout” questions.
 - Stakeout questions are those that attempt to elicit in advance what a juror’s position would be under a certain state of the evidence or on a given state of facts.
 - Jurors should not be asked to pledge themselves to a future course of action before hearing evidence and receiving instructions on the law.
- Parties **may not** ask questions that state incorrect law or are misleading about the law.
- Defendant **may** ask jurors whether exercising right not to testify would affect their ability to be fair and impartial or to follow the trial court’s instructions on the law.

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Order of Questioning

- State goes first. G.S. 15A-1214(d)
- When State is satisfied with panel of twelve, State passes panel to defendant.
- If there are co-defendants, panel is passed to each co-defendant consecutively. G.S. 15A-1214(f).
 - Co-defendant exercises challenges for cause and peremptory challenges, then questioning reverts to State to fill vacancies, then back to co-defendants.

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Challenges for Cause (G.S. 15A-1212)

- is not qualified under G.S. 9-3;
- is incapable of rendering jury service due to mental or physical infirmity;
- is, or has been previously, a party, a witness, a grand juror, a trial juror, or a participant in civil or criminal proceedings involving a transaction which relates to a charge against the defendant;
- is, or has been previously, a party adverse to the defendant in a civil action;
- has complained against or been accused by the defendant in a criminal prosecution;
- is related to the defendant or alleged victim of the crime by blood or marriage within the sixth degree;
- has formed or expressed an opinion of the defendant's guilt or innocence;
- is presently charged with a felony;
- as a matter of conscience is unable to render a verdict in accordance with the law; or
- for any other reason is unable to render a fair and impartial verdict.

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Peremptory Challenges (G.S. 15A-1217)

- Allotted based on number of defendants
- Capital cases
 - 14 to each defendant; State gets 14 for each defendant
- Non-capital cases
 - 6 to each defendant; State gets 6 for each defendant
- In all cases, one peremptory challenge for each party for each alternate

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Batson Challenges

Equal Protection Clause (and the NC Constitution) prevent an attorney from exercising a peremptory strike against a prospective juror that is motivated by race or sex.

Batson v. Kentucky, 476 U.S. 79 (1986) (race)

J.E.B. v. Alabama, 511 U.S. 127 (1994) (sex)

State v. Waring, 364 N.C. 443 (2010)

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Peremptory challenges constitute a jury selection practice that permits those to discriminate who are of a mind to discriminate.

- *Batson*, 476 U.S. at 96; *State v. Chapman*, 359 N.C. 328, 339 (2005).

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“America’s trial judges operate at the front lines of American justice” [and in criminal trials they] “possess the primary responsibility to enforce Batson and prevent racial discrimination from seeping into the jury selection process.”

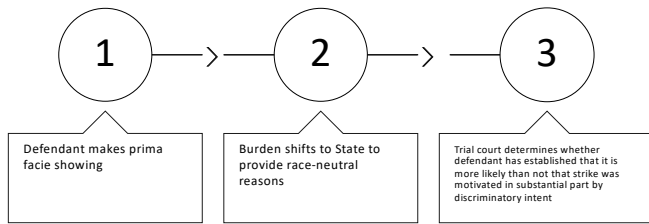
- *Flowers v. Mississippi*, 588 U.S. 284, 303 (2019)

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Batson Framework



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Remedy for a *Batson* violation

- When the trial judge finds a *Batson* violation it is the better practice to order that jury selection start over with a new panel of prospective jurors.
- Asking jurors who have been improperly excluded because of their race to return to the jury and render an impartial verdict would require near superhuman effort.
- *State v. Cofield*, 129 N.C. App. 268, 273 (1998).

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Impaneling the Jury

- After all jurors, including alternate jurors, have been selected, the clerk impanels the jury by instructing them:
- "*Members of the jury, you have been sworn and are now impaneled to try the issue in the case of State of North Carolina versus _____. You will sit together, hear the evidence, and render your verdict accordingly.*"
- Then the trial judge gives the precautionary instructions in N.C.P.I—Crim. 100.25.

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