

THE MECHANICS

State moves for cause



1. Ask to question the juror (if yes, rehabilitation, below)



2. Ask to be heard

AND

3. Ask the court to **retain the juror**



4. Take a moment to form your objection

"The defense objects to the cause challenge under 6th and 14th Amendments to the U.S. Constitution, Article I, Sections 19, 24, and 26 of the N.C. Constitution, and N.C. Gen. Stat. Section 15A-1212.



The statute is one of inclusion, allowing N.C. citizens the right to serve. Under North Carolina Supreme Court Case *State v. Smith*, "The operative question is not whether the prospective juror is biased but whether that bias is surmountable with discernment and obedience to the law ..."



Here, [*use facts of your case and analogize to pro-state case law below. Identify any other unfairness you see, such as disparate questioning or structural unfairness.*]"

REHABILITATE

Different perspectives and opinions are a normal, welcome part of the process.

Walk the juror toward questions about **the verdict** being fair and impartial. Step by step. Be patient.

Script: *Knowing that it's individual citizens like you that make the jury system work, could you listen to the evidence in this case? Could you determine what the facts are based on what you see and hear? Could you listen to the judge explain the law? Could you deliberate with other jurors? And, if or when you and your other jurors reach a verdict, would your participation in with your jurors render that verdict unfair or unjust?*

The SCT on the **role of the jury**:

- "The diverse and representative character of the jury must be maintained 'partly as an assurance of diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility.'" Justice Kennedy in *J.E.B. v. Alabama*, 511 U.S. 127, 134 (1994).
- "[T]he jury is a necessary check on governmental power." *Peña-Rodriguez v. Colorado*, 137 S.Ct. 855, 860 (2017).

CASE LAW TRANSLATOR

SYSTEM-SKEPTICAL JUROR

Law

Carolina Beach Chief of Detectives, Lt. Goodson, was properly retained on the jury where the Lt. said he:

- “attach[ed] a great deal of credibility to law enforcement officers”
- Felt “a closeness to law enforcement officers” in his “bones”
- Would “be more inclined to assign more credibility to the officer over ... the civilian”

State v. Cummings, 361 N.C. 438, 453-56 (2007)

Argument

The State’s cause challenge is properly denied even where:

- A juror is skeptical of the credibility of law enforcement officers
- A juror feels aligned with racial justice issues including BLM and criminal legal reform
- A juror is more inclined to assign credibility to a civilian over an officer.

DISTRACTED-BY-CIRCUMSTANCE JUROR

Law

Juror seated despite repeatedly voicing concerns that finances would be on his mind such that it would interfere with his ability to pay attention, to take his time, and to listen to the evidence.

State v. Reed, 355 N.C. 150, 151-60 (2002)

Argument

Juror who repeatedly expresses concerns about circumstances (finances, job, caretaking, etc.) is still qualified where the juror can follow the law, listen to the evidence, and be fair to both sides.

HONEST-ABOUT-BIAS JUROR

Law

Two jurors (a police officer and a relative of an ADA) were retained where both:

- Could not positively rule out having a pro-prosecution bias, but
- Ultimately “indicated that [they] would render a fair and impartial decision.”

Because:

The jurors’ responses “represent nothing more than total honesty and their import is characteristic of any prospective juror whose individual biases are not instantly shed upon being summoned for jury duty.”

State v. Whitfield, 310 N.C. 608, 612 (1984)

Argument

Whitfield directs that a juror who has expressed a bias or preference, but ultimately indicates they can participate in coming to a fair and impartial verdict, should be seated.

- Research indicates jurors’ self-assessment of their biases is unrelated to jurors’ ability to determine facts and “largely independent of their final verdict preferences.”

Thomas Ward Frampton, For Cause: Rethinking Racial Exclusion and the American Jury, 118 Mich. L. Rev. 785, 831 (2020).

JUROR WHO KNOWS THE CASE, CLIENT, OR PLACE

Law

State v. Grooms: Juror knew victim and attended a pretrial protest of delay in bringing case to trial. 353 N.C. 50, 69 (2000)

State v. Lasiter: Juror had “several personal and social” ties to LEOs and courthouse personnel, her husband was a bailiff, and she knew the ADA trying the case. 361 N.C. 299, 301-05 (2007)

State v. Hunt: Juror/officer knew the testifying officers and had heard the defendant’s case discussed by other LEOs. 37 N.C. App. 315, 319-20 (1978)

Argument

Juror who knows your client and expresses concern about the prosecution of the case should be allowed to serve.

Juror who knows anyone associated with the client or the defense should be allowed to serve.

Juror who knows testifying witnesses and has heard others discussing the case should be allowed to serve.

PRESERVE

Always condition your acceptance of the jury:

“The defense is satisfied but for our continued objection to the challenge for cause of juror [name].”