

JURY ISSUES

By: Robert C. Ervin

1. The jury sent a note through the bailiff asking to view a set of line-up photographs reviewed by the victim of the alleged crime. Both the Assistant District Attorney and the defense attorney object to allowing the jury to view the line-up photographs. Is it error to allow the jury to view the line-up photographs in the courtroom?
2. The defendant was tried and convicted of robbery. The alleged offense occurred in November, 1982. At trial, the State's case rested on eyewitnesses' identification of the defendant and the defendant relied on a defense of alibi contending that he lived in another state at the time of the robbery. During deliberations, the jury asked to view Exhibit #1, the photographic lineup, and with the consent of the parties the exhibit was delivered to the jury room. While viewing the photographs, a juror peeled back tape placed over a handwritten notation revealing the words "Police Department, Wilson, North Carolina— 12291, 12-07-81". The jurors discussed the notation as evidence contradicting the defendant's alibi defense. The defendant was convicted. Is the defendant entitled to a new trial?
3. During the trial of a robbery case, the State offered evidence of a statement made by the defendant to a detective. This evidence was presented when the detective read the defendant's statement to the jury. The statement itself was not introduced into evidence as an exhibit. The jury, while deliberating, sent out a note asking for "all statements of the defendant and any pictures taken." Should the Court, in the exercise of its discretion, provide the written copy of the statement that the detective read into evidence to the jury in response to their request?
4. The jury sent a note requesting that the testimony of two witnesses be re-read. Both the State and the defense agreed that the testimony should not be re-read. The trial court determined, in the exercise of its discretion, that the testimony should not be re-read to the jury. The trial court sent a written message to the jury, through the bailiff, denying the jury's request. Is this procedure permissible?
5. During jury deliberations, the foreperson of the jury returned to the courtroom and in open court and on the record asked the trial judge for a clarification of the law. The trial court judge answered the question in open court on the record and the foreperson returned to the jury room. Is this procedure error?
6. During jury deliberations, the jury sent a note to the trial judge requesting certain exhibits and transcripts of the testimony of four witnesses. The entire jury was returned to the courtroom. The trial court, with the consent of the parties, allowed the jury to take the exhibits into the jury room. The trial court denied the request for a transcript and indicated that the court reporter had not yet transcribed the testimony and the Court did not have the ability to present the transcript to the jury. The Court advised the jury that it was their responsibility and obligation to rely on their own recollection of the evidence. Is this procedure erroneous?
7. During the trial of a cocaine and methamphetamine trafficking case, the jury, during deliberations, sent the trial court a written question asking, "What was the amount of cocaine in

the cooler?” Is the trial court permitted to answer the jury’s question concerning the facts of the case?

8. The jury advised the trial court that it was divided 9 to 3 in the case. The trial court gave additional instructions consistent with the pattern instruction customarily given when a jury reports a deadlock. The Court added at the conclusion of the pattern charge that “the main purpose of that is that it will be expensive again to have to get another jury to try this case over.” Are the additional jury instructions permissible?
9. The courtroom clerk reported that when the jurors left the courtroom one juror commented to other jurors that he believed “when you take that Bible in your hand you are supposed to be telling the truth and I don’t think that young boy was telling the truth.” The Court excused the juror who reportedly made the comment without any further inquiry. Did the Court err by excusing this juror?
10. After jury deliberations began in a murder trial, a juror informed the judge that he could not return the next day because of a scheduled doctor’s appointment. The trial court dismissed this juror, replaced him with an alternate juror and instructed the jury to begin its deliberations anew. Did the trial court judge err by removing the juror with the doctor’s appointment, substituting an alternate juror and instructing the jurors to begin deliberations anew?
11. The defendant was escorted by police officers through the courtroom several minutes before court began. At the time, the defendant was handcuffed and wearing visible leg restraints. All of the jurors were present in the courtroom when the defendant was escorted through and each juror indicated, when questioned by the Court, that he or she had seen the defendant in handcuffs and leg restraints. Could the trial court properly deny a motion for a mistrial and rely on curative instructions to the jury?
12. During the trial of a murder case, the jury was sequestered at a local hotel. There was a police complaint originating from the hotel of disorderly conduct involving at least three jurors. Police officers observed three jurors in an intoxicated condition moving about in their underwear along the hallways. At least one juror was so intoxicated that he had to be threatened with arrest before he would agree to return to his hotel room. The trial court, after hearing evidence from law enforcement officers involved in the incident, declared a mistrial over the defendant’s objection. Did the trial court err by ordering a mistrial?
13. During the course of the trial, a juror fell asleep. This occurred during defense counsel’s cross-examination of one of the State’s witnesses. Did the trial court err by not declaring a mistrial when it observed the juror sleeping during the trial?
14. During the course of a trial, a voir dire hearing was conducted concerning a statement that the defendant allegedly made to a relative. After the hearing, but prior to the introduction of any of the evidence presented at the voir dire hearing, a local newspaper published details of the evidence in a front-page news story. The defendant moved to inquire whether any jurors had read or heard about the article. Did the trial judge err by denying the defendant’s request?
15. The defense lawyer advised the trial court that his secretary had informed him that someone called his office and left a message that one of the jurors had been talking about the case being tried with her mother-in-law. The juror reportedly said that she thought the defendant was guilty

because of the look on his face. The defendant requested an inquiry by the court concerning this information. Did the trial court err by failing to question the juror who had reportedly made these comments?

16. In a murder case, an individual reported to the court that she went to the coffee bar in the basement of the courthouse and observed some of the jurors. This individual heard one of the jurors say to the others that “the boy probably took a knife and cut himself and threw the knife away and is going to plead self-defense”. The defense attorney asked the Court to inquire by calling the juror who allegedly spoke these words to be questioned about the incident. The trial court denied the request. Did the trial court err by denying this request?
17. During a first degree murder trial, the Assistant District Attorneys prosecuting the case advised the Court that a juror had contact with one of the assistants that morning when the juror brought an insurance letter to the District Attorney’s office relating to a traffic citation the juror received prior to the beginning of the trial. The juror spoke to one of the ADAs, who referred the juror to an office employee, who later read the insurance letter to the ADA in order to determine whether the letter was sufficient. The employee took the juror’s ticket and the juror returned to the courtroom. The citation was dismissed in accordance with the standard policies of the District Attorney’s office. The defendant challenged the juror’s ability to continue serving as a juror. The trial court denied this challenge. Did the trial court err by not replacing this juror with an alternate?
18. The jury began deliberations in a drug case on Wednesday and the Court recessed until Friday because of Veteran’s Day. On Friday morning a juror returned to court with a two page typewritten document titled “Circumstantial Evidence” that listed fourteen circumstantial factors pointing toward the defendant’s guilt. The juror gave the document to the bailiff and asked him to make copies to distribute to the other jurors. The bailiff gave the document to the trial judge. Defense counsel moved for an inquiry and a mistrial. The trial court denied both motions and returned the document to the juror without making copies. Did the trial court err?
19. The defendant was convicted of sexual battery. After the jury returned its verdict and before the sentencing hearing the next morning, the defendant’s trial counsel moved for a mistrial. The defendant’s attorney indicated that several jurors told him that jurors had admitted looking up legal terms such as “sexual gratification, reasonable doubt and intent” and the sexual battery statute on the internet during the trial. The trial court did not conduct and further inquiry and denied the defendant’s motion for a mistrial. Did the trial court abuse its discretion by failing to act?
20. During the sentencing phase of a capital murder trial, a juror took a Bible into the jury room and read passages from the Old Testament concerning the death penalty to the other jurors and the jurors discussed those passages in their deliberations. The jury then returned a death sentence. On a Motion for Appropriate Relief, the defendant established that this occurred by testimony from jurors. Is the defendant entitled to a new trial?
21. A juror informed the court that she had received telephone calls the previous evening from an alternate juror. When the alternate juror was questioned, he informed the court that one of the bailiffs made comments after a defense expert testified to the effect that, “They can pay somebody enough money to say something was wrong with it” and “some of the people who testified for the defense were paid to say what—were here to say because they were paid.” The

alternate juror indicated that about half the jurors were present when a bailiff made these remarks. Three jurors verified hearing these remarks. When the jurors who heard this bailiff's remarks were questioned, each juror indicated he or she was not influenced by the comments and could make a fair and impartial decision after the presentation of all the evidence. Could the trial court properly rely on the affected jurors' assurances that they could be fair and impartial and deny the defendant's motion for a mistrial?

22. A juror indicated in voir dire that he knew one of the State's witnesses and informed defense counsel that he had not worked with the witness in question on any law enforcement related matters. Later, the defendant learned that the juror was an active member of the Board of Directors of the local Crimestoppers organization and may have known the State's witness in that capacity. Does this evidence justify granting a new trial?
23. While jury was deliberating, the trial court judge went on the record and stated that "with permission of the parties, I knocked on the jury room door. They invited me in and I asked the foreperson, 'Are you making any progress?' and the foreperson said 'Little to none.'" And I said, 'Little to none?' to which the other 11 jurors said, 'None.'" So I'm at the point where I'm going to ask them to come in and declare a mistrial." The Court conferred with counsel about this situation and was then advised by the courtroom officer that the jury had reached a unanimous verdict. The jury then returned a verdict finding the defendant guilty. Was the court's conduct error?
24. During jury deliberations, a note is sent by the jury to the judge. The note asks, "Do we have any concern for our safety following the verdict? Based on previous witness gang information and large number of people in court during the trial." The note continued by requesting, "Please do not bring this up in court." The judge received the note and did not inform the parties of the existence of the note. Later, the jury returned a verdict finding the defendant guilty of first degree murder. Was the trial judge's approach to handling the note erroneous?

The case law indicates a series of principles or best practices.

- 1) There is a duty to investigate or inquire into substantial allegations of juror misconduct.
- 2) The better practice is to inquire of the witnesses to the misconduct, including jurors.
- 3) The trial court should find facts on the record based on the results of the inquiry.
- 4) The trial court should give appropriate curative instructions tailored to the misconduct, if any, is established.
- 5) The trial court should remove tainted jurors to eliminate prejudice, provided jury deliberations have not begun.
- 6) If the impact of the misconduct cannot be cured by curative instructions and the removal of tainted jurors, then a mistrial is in order.