NC CASE LAW: JURY ISSUES

1. State v. Abraham, 338 N.C. 315 (1994)

A defendant is not entitled to any particular juror. His right to challenge is not a right to select but to reject a juror." *State v. Wesley Thomas Harris*, 338 N.C. 211, 227, 449 S.E.2d 462, 470 (1994). [2]

2. In re Will of Worrell, 35 N.C. App. 278 (1978)

The voir dire examination of prospective jurors serves a dual purpose: (1) to ascertain whether grounds exist for challenge for cause; and (2) to enable counsel to exercise intelligently the peremptory challenges allowed by law. *State v. Carey*, 285 N.C. 497, 206 S.E. 2d 213 (1974); *State v. Dawson*, 281 N.C. 645, 190 S.E. 2d 196 (1972). The primary purpose of the voir dire of prospective jurors is to select an impartial jury. *State v. Lee*, 292 N.C. 617, 234 S.E. 2d 574 (1977).

While the regulation of the manner and extent of the inquiry on voir dire rests largely in the trial judge's discretion, his exercise of discretion is not absolute and is subject to review on appeal. 8 Strong's N.C. Index 3d, Jury § 6.

3. State v. Hunt, 37 N.C. App. 315 (1978)

Regulation of the manner and extent of the inquiry of a prospective juror concerning his fitness rests largely in the trial court's discretion and will not be found to constitute reversible error unless harmful prejudice and clear abuse of discretion are shown. *State v. Young*, 287 N.C. 377, 214 S.E. 2d 763 (1975), *modified as to death penalty*, 428 U.S. 903, 49 L.Ed. 2d 1208, 96 S.Ct. 3207 (1976).

4. State v. Ramirez, 2011 N.C. App. LEXIS 185 (2011)

However, "[a] defendant is not entitled to any particular juror. His right to challenge is not a right to select but to reject a juror." *State V. Abraham*, 338 NC 315, 344 (1994). "A defendant has no absolute right to question or to rehabilitate prospective [*9] jurors before or after the trial court excuses such jurors for cause." *State v. Warren*, 347 N.C. 309, 326, 492 S.E.2d 609, 618 (1997).

When challenges for cause are supported by prospective jurors' answers to questions propounded by the prosecutor and by the court, the court does not abuse its discretion, at least in the absence of a showing that further questioning by defendant

would likely have produced different answers, by refusing to allow the defendant to question the juror challenged [about the same matter].

State v. Brogden, 334 N.C. 39, 44, 430 S.E.2d 905, 908 (1993) (citations omitted).

The duty of the appellate court is not to micromanage the jury selection process. Indeed, an appellate court should reverse only in the event that the decision of the trial court is so arbitrary that it is void of reason. . . . Determinations of whether a juror would follow the law as instructed are best left to the trial judge, who is actually present during *voir dire* and has an opportunity to question the prospective juror. *See* [*State v. Lasiter*, 361 N.C. 299, 301-02, 643 S.E.2d 909, 911 (2007)]. "Deference to the trial court is appropriate because it is in a position to assess the demeanor [*10] of the venire, and of the individuals who compose it, a factor of critical importance in assessing the attitude and qualifications of potential jurors." *Uttecht v. Brown*, 551 U.S. 1, 127 S. Ct. 2218, 2224, 167 L. Ed. 2d 1014, 1023 (2007) (citations omitted). *Cummings*, 361 N.C. at 449-50, 648 S.E.2d at 795-96.

5. State v. Hedgepeth, 66 N.C. App. 390 (1984)

"Each defendant is entitled to full opportunity to face the [***7] prospective jurors, make diligent inquiry into their fitness to serve, and to exercise his right to challenge those who are objectionable to him." *State v. Thomas*, 294 N.C. 105, 115, 240 S.E. 2d 426, 434 (1978). Indeed, our jury selection system "permit[s] parties to protect themselves against prejudice by allowing them to exclude unacceptable jurors." *State v. Woods*, 286 N.C. 612, 619, 213 S.E. 2d 214, 220 (1975), *death* [*394] *sentence vacated*, 428 U.S. 903, 49 L.Ed. 2d 1208, 96 S.Ct. 3207 (1976)..

6. State v. Soyars, 332 N.C. 47 (1992)

Both the State and the defendant have the right to question prospective jurors to determine their fitness and competency to serve. N.C.G.S. §§ 9-15(a) (1986), 15A-1214(c) (1988). This right serves a double purpose -- to ascertain whether grounds for challenge for cause exist and to enable counsel to exercise peremptory challenges intelligently. *State v. Allred*, 275 N.C. 554, 169 S.E.2d 833 (1969). However, the extent and manner of counsel's inquiry rest within the trial court's discretion; thus, to establish reversible error, the defendant must show prejudice in addition to a clear abuse of discretion. [***20] *State v. Parks*, 324 N.C. 420, 378 S.E.2d 785 (1989);

7. State v. Locklear, 145 N.C. App. 447 (2001)

It appears from the record that the trial court believed that defendant was required to use the three peremptory challenges he had remaining after seating the regular

jury before being able to use the additional challenges allotted for alternate jurors. We do not believe the statute so requires. Defendant was not required to exhaust his supply of peremptory challenges left over from regular jury selection until he had used both of the challenges allotted for alternate jurors in G.S. § 15A-1217(c). The latter statute specifies that a defendant is entitled to two peremptory challenges for alternate jurors "*in addition to* any unused challenges" (emphasis added).

8. State v. Kennedy, 320 N.C. 20 (1987)

Challenges for cause in jury selection are matters in the discretion of the court and are not reviewable on appeal except for abuse of discretion. [*29] *State v. Watson*, 281 N.C. 221, 188 S.E. 2d 289, *cert. denied*, 409 U.S. 1043, 34 L.Ed. 2d 493 (1972)

9. State v. Conner, 335 N.C. 618 (1994)

In this case the trial judge made each side sign a pretrial agreement, among other things, stating:

E. Counsel will be required to observe the limits of jury voir dire set out in State vs. Phillips, 300 N.C. 678, 268 S.E.2d 452 (1980) and State vs. Vinson, 287 N.C. 326, 215 S.E.2d 60 (1972); in this regard, counsel are specifically admonished (under penalty of contempt) that they shall not:

7. Repeat questions previously asked by the Court unless the answer given makes further questioning relevant.

Defendant contends that the provision of the pretrial order prohibiting counsel, under penalty of contempt, from taking advantage of a right expressly given by the statute constitutes error. We agree.

The trial court's pretrial order is in direct contravention of the language and meaning of the statute. We find, therefore, that the restriction prohibiting defendant from asking questions previously asked by the court violated N.C.G.S. § 15A-1214(c) and was error. (In this case the court went on to find that the error was not prejudicial.)

10. State v. Phillips, 300 N.C. 678 (1980)

When jury selection began, defense counsel asked Juror No. 2 if defendant would have to prove anything to her before he would be entitled to a verdict of not guilty. At that point, the court requested counsel to direct questions of a general nature to all twelve jurors. The court then permitted counsel to ask all twelve jurors if they would follow the court's instructions, the burden being on the State to prove the guilt of the defendant beyond a reasonable doubt. Nothing in the record indicates that [*682] the court imposed any further restriction upon defense counsel's ability to

examine each prospective juror individually. Defendant took exception to the ruling and this constitutes his first assignment of error.

No violation of G.S. 15A-1214(c) is shown. The action of the trial judge did not deprive defendant of his right to question each prospective juror personally and individually concerning his fitness [***8] and competency to serve as a juror and did not impair counsel's ability to determine whether there was a basis for a challenge for cause or whether a peremptory challenge should be exercised with respect to any particular juror. HN1 G.S. 15A-1214(c) does not preempt the exercise of all discretion by the trial judge during the jury selection process. It remains the prerogative of the court to expedite jury selection by requiring certain general questions to be submitted to the panel as a whole. *State v. Leonard*, 296 N.C. 58, 248 S.E. 2d 853 (1978). The presiding judge has the duty "to supervise the examination of prospective jurors and to decide all questions relating to their competency." *State v. Young*, 287 N.C. 377, 214 S.E. 2d 763 (1975), *death sentence vacated*, 428 U.S. 903 (1976). *Accord, State v. Leonard, supra; State v. Thomas*, 294 N.C. 105, 240 S.E. 2d 426 (1978). The trial judge has broad discretion "to see that a competent, fair and impartial jury is impaneled and rulings of the trial judge in this regard will not be reversed absent a showing of abuse of discretion." *State v. Johnson*, 298 N.C. 355, 259 S.E. 2d 752 (1979).

In the instant case, no abuse [***9] of discretion is shown. In fact, it is the duty of the judge to expedite the trial in every appropriate way. Here, the question which prompted the court's intervention is disapproved. Counsel should not fish for answers to legal questions before the judge has instructed the juror on applicable legal principles by which the juror should be guided. Counsel should not argue the case in any way while questioning the jurors. Counsel should not engage in efforts to indoctrinate, visit with or establish "rapport" with jurors. Jurors should not be asked what kind of verdict they would render under certain named circumstances. Finally, questions should be asked collectively of the entire panel whenever possible. **Here, the patient trial judge was simply trying to expedite jury selection by requiring *appropriate* interrogation. He is to be commended for it.** Defendant's first assignment of error is overruled.

11. State v. Price, 301 N.C. 437 (1980)

On 5 November 1979, defense counsel was at his home asleep on the couch when he was called to the telephone by his thirteen-year-old son who told him that a woman had asked to speak with him. The attorney went to the phone and discovered that the caller was a female juror in the present case. The woman had called the attorney about thirty minutes earlier but had told the son, who had answered that call as well, not to disturb the lawyer when she had been informed that he was asleep. When the second call was received the son had awakened his father thinking that the matter was fairly important to have the same individual call again so quickly. **During the second phone call, the woman persisted in discussing matters of a personal nature with defendant's counsel, including his marital status. The attorney was able, after a short while, to end the conversation.**

The next day, the attorney informed the presiding judge about the incident. After hearing the lawyer's account of the incident, the judge made findings of fact and

concluded that the juror in question ought to be removed from the panel so as to assure a fair trial for defendant. When court reconvened, the alternate juror was substituted for her.

HN10 G.S. § 15A-1215(a) provides that the trial judge may substitute an alternate juror for another juror if the latter dies, becomes [*454] incapacitated or disqualified, or is discharged for any reason before final submission of the case to the jury. The exercise of this power rests in the sound discretion of the trial judge and is not subject to review absent a showing of an abuse of discretion. *State v. Nelson*, 298 N.C. 573, 260 S.E. 2d 629 (1979); *State v. Waddell*, 289 N.C. 19, 220 S.E. 2d 293 (1975), *death sentence vacated*, 428 U.S. 904 (1976). This discretion ought to be used to the end that both the state and defendant receive a fair trial. *State v. Nelson, supra; State v. McKenna*, 289 N.C. 668, 224 S.E. 2d 537, *death sentence vacated*, 429 U.S. 912 (1976).

12. State v. Rogers, 355 N.C. 420 (2002)

By statute, citizens over the age of sixty-five (now 72) are qualified to serve on juries. N.C.G.S. § 9-3 (2001). However, a prospective juror over that age may, when summoned, request an exemption. N.C.G.S. § 9-6.1 (2001). The judge has the option of allowing or denying the request. *Id.* Once the venire is in the courtroom, any juror, though qualified, nevertheless may ask to be excused. The General Assembly has [**877] declared the public policy of this State to be that jury service is the solemn obligation of all qualified citizens, and that excuses from the discharge of this responsibility should be granted only [*448] for reasons of compelling [***43] personal hardship or because requiring service would be contrary to the public welfare, health, or safety.

N.C.G.S. § 9-6(a) (2001). This language gives trial courts considerable latitude to deal with the particular problems that appear with every trial, and we have recognized that the decision to excuse a prospective juror lies in the trial court's discretion. *State v. Neal*, 346 N.C. 608, 619, 487 S.E.2d 734, 741 (1997), *cert. denied*, 522 U.S. 1125, 140 L. Ed. 2d 131, 118 S. Ct. 1072 (1998). We have stated that HN27 a juror may properly be excused on the basis of age. *State v. Nobles*, 350 N.C. 483, 494, 515 S.E.2d 885, 892 (1999) ("The transcript shows that [the prospective juror] was properly excused 'because he was over sixty- five.'"); *State v. Sanders*, 276 N.C. 598, 606, 174 S.E.2d 487, 493 (1970) ("court in its discretion properly excused the juror who was 84 years of age"), *death sentence vacated on other grounds*, 403 U.S. 948, 29 L. Ed. 2d 860 (1971). Accordingly, we discern no abuse of discretion in the trial court's decision to grant the jurors' requests to be excused. [***44] Nevertheless, in light of the statutory admonition contained in N.C.G.S. § 9-6(a), we remind the trial courts that excusing prospective jurors present in the courtroom who are over the age of sixty-five (now 72) must reflect a genuine exercise of judicial discretion. Defendant correctly points out that such jurors often bring to the jury pool both a wealth of experience and a willingness to serve.

See also **State v. Elliott 360 NC 400 (2006)** regarding jurors over age 72.