Chapter 26
Jury Misconduct

This chapter deals with issues related to jurors who engage in inappropriate conduct and possible remedies. Miscellaneous jury procedures are discussed *infra* in Chapter 27, issues dealing with jury instructions are covered *infra* in Chapter 32, and issues related to jury deliberations are covered *infra* in Chapter 34.

26.1 Right to a Fair and Impartial Jury

A. Trial Judge's Constitutional Responsibilities

Under the Sixth and Fourteenth Amendments to the U.S. Constitution, every defendant in a criminal action who is entitled to a jury trial is entitled to a trial before a neutral and impartial jury. *See Morgan v. Illinois*, 504 U.S. 719 (1992); *Duncan v. Louisiana*, 391 U.S. 145 (1968). This right is also guaranteed by article I, section 24 of the N.C. Constitution. *State v. Garcell*, 363 N.C. 10 (2009). "It is the duty and responsibility of the trial judge to insure that the jurors remain impartial . . . ." *State v. Rutherford*, 70 N.C. App. 674, 677 (1984). Thus, it is the trial judge's responsibility to conduct investigations into apparent juror misconduct, "including examination of jurors when warranted, to determine whether any misconduct has occurred and has prejudiced the defendant." *State*

v. Barnes, 345 N.C. 184, 226 (1997). An examination is generally required only where some prejudicial content is reported. *State v. Harrington*, 335 N.C. 105, 115 (1993).

B. Statutory Admonitions

Section 15A-1236(a) of the North Carolina General Statutes (hereinafter G.S.) requires the trial judge at appropriate times to admonish the jurors that it is their duty:

- not to talk among themselves about the case except in the jury room after their deliberations have begun;
- not to talk to anyone else or to allow anyone else to talk with them or in their presence about the case, and to report to the judge immediately the attempt of anyone to communicate with them about the case;
- not to form an opinion about the guilt or innocence of the defendant or express any opinion about the case until they begin their deliberations;
- to avoid reading, watching, or listening to accounts of the trial; and
- not to talk during trial to parties, witnesses, or counsel.

Under this statute, the judge may also admonish the jurors about other matters that he or she considers appropriate. The defendant must object to any failure to properly admonish the jury and must show prejudice resulting therefrom. *State v. Harris*, 315 N.C. 556 (1986).

C. Remedies for Misconduct

In the event that prejudicial juror misconduct has occurred, the trial judge can take "any appropriate action." *State v. Drake*, 31 N.C. App. 187, 191 (1976). The most common remedies are:

- Issuing a contempt citation. *See* G.S. 15A-1035 (a presiding judge may maintain courtroom order through the use of his or her contempt powers as provided in G.S. Chapter 5A, Contempt).
- Giving an appropriate instruction. *See State v. Hines*, 131 N.C. App. 457 (1998) (holding that appropriate instructions may cure even constitutional errors).
- Discharging the juror and substituting an alternate juror. G.S. 15A-1215(a) authorizes a trial judge to replace a juror with an alternate juror if any juror becomes incapacitated or disqualified at any time 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 reversible error absent a showing of an abuse of discretion. *State v. Nelson*, 298 N.C. 573 (1979). G.S. 15A-2000(a)(2) authorizes the substitution of an alternate juror during a capital sentencing hearing if any juror dies, becomes incapacitated or disqualified, or is discharged for any reason prior to the start of deliberations.
- Granting a motion for mistrial for misconduct discovered prior to the verdict. *See* G.S. 15A-1061 ("[T]he judge must declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to

the defendant's case."). Misconduct on the part of a jury member may result in a mistrial if it would render a fair and impartial trial impossible under the law. Whether a motion for mistrial should be granted is a matter that rests in the sound discretion of the trial judge, and this decision is not reversible absent a showing of an abuse of that discretion. *State v. McCarver*, 341 N.C. 364 (1995).

- Granting a motion for a new trial for misconduct discovered after the verdict. Like a motion for mistrial, a motion for a new trial is addressed to the sound discretion of the trial judge, and unless his or her ruling is clearly erroneous or an abuse of discretion, it will not be disturbed. *State v. Johnson*, 295 N.C. 227 (1978); *State v. Sneeden*, 274 N.C. 498 (1968).

Practice note: If misconduct occurs, counsel should immediately bring it to the attention of the trial judge. Mere conclusory statements by defense counsel alleging juror misconduct will rarely be found to be sufficient to show improper conduct. Counsel should, whenever possible, substantiate assertions of misconduct by presenting witness testimony or affidavits. Counsel should also specifically request inquiry by the court, including juror examination, so that there is a sufficient basis for appellate review in the event that the motion for relief is denied.

26.2 Exposure to Extraneous Information

Juror misconduct encompasses a wide range of improper activities. Misconduct is determined by the facts and circumstances in each case. Exposure to extraneous information has occupied the courts' attention in numerous cases and is discussed here. Other common types of misconduct are discussed *infra* in § 26.3.

A. Discovered Before Verdict

A fundamental aspect of a criminal defendant's constitutional right to confront witnesses and evidence against him or her is that a jury's verdict must be based on evidence produced at trial, not on extrinsic evidence that has escaped the rules of evidence, supervision of the court, and other procedural safeguards of a fair trial. *See, e.g.*, *Parker v. Gladden*, 385 U.S. 363 (1966); *Turner v. Louisiana*, 379 U.S. 466 (1965). "'[W]hen there is a *substantial reason to fear* that the jury has become aware of improper and prejudicial matters, the trial court must question the jury as to whether such exposure has occurred and, if so, whether the exposure was prejudicial.'" *State v. Campbell*, 340 N.C. 612, 634 (1995) (emphasis added) (citation omitted); *see also State v. Hines*, 131 N.C. App. 457 (1998) (defendants' right to confrontation violated and motion for mistrial should have been granted where prosecutor's notes and typewritten list of statements defendants made, including hearsay statements, were mistakenly published to the jury without being admitted into evidence).

When information or evidence that would not be admissible at trial reaches the jury, the trial judge must weigh all the circumstances and determine in his or her discretion whether or not a defendant's right to a fair trial has been violated. *State v. Jones*, 50 N.C.

App. 263, 268 (1981). The denial of a motion for a mistrial based on alleged misconduct affecting the jury is equivalent to a finding by the trial judge that prejudicial misconduct has not been shown, and the decision will be reversed only on a clear showing that the trial judge abused his or her discretion. *State v. Bonney*, 329 N.C. 61 (1991); *State v. Degree*, 114 N.C. App. 385, 392 (1994).

B. Discovered After Verdict

Generally. As a general rule, once a verdict is rendered, it may not be impeached—that is, a juror may not testify nor may evidence be received as to matters occurring during deliberations or calling into question the reasons on which the verdict was based. *See State v. Cherry*, 298 N.C. 86 (1979). "However, harsh injustice has sometimes resulted from the view that jury verdicts are beyond challenge. Thus, as an 'accommodation between policies designed to safeguard the institution of trial by jury and policies designed to insure a just result in [an] individual case,' certain exceptions to the rule have been carved out." *State v. Lyles*, 94 N.C. App. 240, 244 (1989) (citation omitted). G.S. 15A-1240 and N.C. Rule of Evidence 606(b) provide limited exceptions to the anti-impeachment rule.

Application of statute. G.S. 15A-1240(c)(1) allows impeachment of a verdict only in a criminal case and only when matters not in evidence came to the attention of one or more jurors under circumstances that would violate the defendant's constitutional right to confront the witnesses against him or her. If the challenged evidence does not implicate the defendant's right to confront, G.S. 15A-1240(c)(1) does not apply. *State v. Rosier*, 322 N.C. 826, 832 (1988) (defendant's right to confront not violated where jury foreman watched a program on child abuse contrary to the trial judge's instructions and foreman told other jurors about a young friend of his who had been raped; jurors' affidavits concerning these events should not have been considered by the court because "[p]arties do not have the right to cross examine jurors as to the arguments they make during deliberation as the foreman did in this case"). Under subsection (c)(2) of G.S. 15A-1240, a verdict may also be impeached after the jury has been dispersed when there is evidence of bribery, intimidation, or attempted bribery or intimidation of a juror.

Application of rule. N.C. Rule of Evidence 606(b), which applies in both criminal and civil cases, provides that a juror is competent to testify when the validity of a verdict is challenged, but only on the question (1) whether extraneous prejudicial information was improperly brought to the jury's attention or (2) whether any outside influence was improperly brought to bear upon any juror. Extraneous information under Rule 606(b) has been interpreted to mean information that reaches a juror without being introduced into evidence and that deals specifically "with the defendant or the case which is being tried." *Rosier*, 322 N.C. 826, 832 (judge's consideration of jurors' affidavits found improper where the affidavits related that jury foreman watched a program on child abuse contrary to the trial judge's instructions and told jurors about a young friend of his who had been raped because that information was not "extraneous information" within the meaning of Rule 606 since it did not deal with defendant or the case being tried). General information that a juror has gained in his or her day-to-day experiences does not

constitute "extraneous information." *Compare State v. Heatwole*, 344 N.C. 1 (1996) (juror's exchange with his professor about violent tendencies of paranoid schizophrenics was not "extraneous information" because it did not deal with defendant or with the case being tried), *with State v. Lyles*, 94 N.C. App. 240 (1989) (testimony by jurors was proper under both Rule 606 and G.S. 15A-1240(c)(1) where a juror peeled paper from the bottom of an exhibit during deliberations and uncovered information that implied that defendant had prior criminal involvement and that directly contradicted the defendant's alibi witnesses; jurors' exposure to the information was found to entitle the defendant to a new trial). *See also* 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 148, at 535–39 (7th ed. 2011) (discussing the anti-impeachment rule).

Steps to resolve allegation of juror exposure to improper information. Where a defendant claims that he or she is entitled to relief under G.S. 15A-1240(c) or Rule 606(b), the judge first must determine whether the type of misconduct alleged falls within the purview of the statute or evidence rule (as discussed above). If the judge finds that the verdict may be impeached within the terms of the statute or rule, then the judge must decide whether the exposure to the information violated the defendant's right of confrontation. If a constitutional violation is found, the error is presumed prejudicial and the burden is on the State to show that the jury's exposure to the improper information was harmless beyond a reasonable doubt. *See State v. Lyles*, 94 N.C. App. 240 (1989).

C. Selected Examples

Dictionaries/reference materials. The N.C. Supreme Court has stated that "'[i]t generally is ground for reversal that the jury obtained and took into the jury room a dictionary which they consulted to determine the meaning of legal or other terms, which they do not understand.'" *In re Will of Hall*, 252 N.C. 70, 87 (1960) (citation omitted); *see also State v. McLain*, 10 N.C. App. 146, 148 (1970) ("It was improper for the jury to obtain and read a dictionary definition of one of the offenses charged in the bill of indictment."). However, in *Lindsey v. Boddie-Noell Enterprises, Inc.*, 355 N.C. 487 (2002), the N.C. Supreme Court reversed per curiam the decision of the N.C. Court of Appeals, 147 N.C. App. 166 (2001), and adopted the reasoning of the dissenting opinion, which held that the dictionary definitions at issue were not "extraneous information" within the meaning of N.C. Rule of Evidence 606(b) because the definitions of the words "willful" and "wanton" did not specifically concern the defendant or the evidence presented in the case. These definitions were simply matters of common knowledge that jurors were supposed to possess. The court then held that even if the dictionary definitions were "extraneous information" within the meaning of Rule 606(b), there was no actual prejudice to the defendant in that case due to the trial judge's sufficient instructions.

In a later case, *State v. Bauberger*, 176 N.C. App. 465 (2006), the court of appeals majority held that even though dictionary definitions appear to fall within the extraneous information exception of N.C. Rule of Evidence 606(b), the court was bound to find otherwise based on the supreme court's decision in *Lindsey*. The majority also held that juror affidavits concerning dictionary use could not be used to impeach the jury's verdict

under G.S. 15A-1240 because the dictionary definitions considered by the jury "concerned legal terminology" and did not discredit the defendant's testimony or witnesses; thus, the defendant's Sixth Amendment rights were not implicated. Judge Geer dissented, stating that she would hold in accordance with the universal rule adopted by the rest of the country that a jury's unauthorized consultation of a dictionary constitutes consideration of extraneous information. She further stated that the jury's consultation of a dictionary violates a defendant's constitutional rights under the Sixth and Fourteenth Amendments to be present at every stage of his or her trial and to a trial by fair and impartial jurors. The N.C. Supreme Court affirmed the decision of the court of appeals in *State v. Bauberger*, 361 N.C. 105 (2006). The court, however, was evenly split, three to three, leaving the court of appeals' decision undisturbed and without precedential value. Thus, it appears that the law with regard to the jury's use of dictionaries may not be completely settled, and it is still worthwhile to move for a mistrial or to set aside the verdict based on the jury's consultation of reference materials during trial.

Bibles. With regard to a jury's consideration of the Bible during deliberations, the questions before the trial judge will be whether the Bible falls within the definition of extraneous information under N.C. Rule of Evidence 606(b) and whether the jury's consultation of the Bible violates the defendant's constitutional rights. These questions have not been squarely decided by the North Carolina appellate courts. *Cf. State v. Barnes*, 345 N.C. 184, 228 (1997) (finding no abuse of discretion in the trial judge's failure to inquire of the jury regarding defense counsel's unsubstantiated assertion that the jury consulted a Bible prior to deliberations "[a]s there is no evidence that the alleged Bible reading was in any way directed to the facts or governing law at issue in the case").

For a case discussing jurisdictions that have held that a Bible in the jury room is an "external influence on the jury's deliberations," see *Oliver v. Quarterman*, 541 F.3d 329, 338 n.10 (11th Cir. 2008). *See also* Amanda C. Shoffel, *The Theocratic Jury Room:* Oliver v. Quarterman *and the Burgeoning Circuit Split on Biblical Reference and Influence in Capital Sentencing*, 36 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 113 (2010) (arguing that the physical presence of a Bible in a jury room during the sentencing phase in a capital case should create an irrebuttable presumption of prejudice under the Sixth Amendment).

Media reports. The courts have recognized that the exposure of jurors to news media reports during trial has been a "very real problem for a long time." *State v. Jones*, 50 N.C. App. 263, 268 (1981). When there is a *substantial reason to fear* that the jury has become aware of improper and prejudicial matters such as media reports, inquiry by the trial judge is required. *See State v. Barts*, 316 N.C. 666, 683 (1986) (no abuse of discretion in denying motion for mistrial where defendant made no showing that jury had been exposed to highly prejudicial newspaper article about defendant and inquiry revealed no violation of the judge's instruction to avoid exposure to the news media); *State v. McVay*, 279 N.C. 428 (1971) (holding that while inquiry was not required because there was no evidence that the jury was actually exposed to the newspaper article, it is the better practice for the judge to inquire of the jurors to see if they had been exposed or influenced by it).

If a jury has been exposed to media coverage, the trial judge may still properly deny a motion for mistrial if the coverage was merely an objective account of what has occurred at trial and was not prejudicial to the defendant. *See State v. Woods*, 293 N.C. 58 (1977). However, where the jurors have been exposed to prejudicial matters and the error is not cured by a subsequent instruction by the court, a new trial is warranted. *See State v. Reid*, 53 N.C. App. 130 (1981).

Practice note: If the jury is exposed to extraneous material, counsel should immediately bring it to the attention of the trial judge. Counsel should not merely assert that the exposure occurred but should also substantiate the claim, if possible, by presenting affidavits or testimony. *See State v. Barnes*, 345 N.C. 184 (1997) (in reviewing defendant's argument that the trial judge erred in failing to conduct an investigation into alleged Bible-reading by a juror in the jury room, court noted that counsel had failed to substantiate the claim).

Failure to object to extraneous material being taken into the jury room may also result in the waiver of appellate review of the issue. *See, e.g.*, *State v. Jones*, 339 N.C. 114 (1994) (defendant's assent to allowing the jury to use a dictionary during its deliberations waived any error by the trial judge in giving the jury the dictionary definition of "mitigate"); *State v. Poole*, 154 N.C. App. 419 (2002) (defendant waived right to argue on appeal that the trial judge erred in reading a definition from dictionary and allowing jury to use dictionary during its deliberations where defendant stated no objections to the jury's use of the dictionary when asked by the trial judge).

26.3 Other Common Types of Misconduct

A. Third Party Communication

It is misconduct for a juror during the trial to discuss the matter outside the court or to receive any information related to the case except in open court and in the manner provided by law. Thus, any pertinent communication between jurors and third parties including victims, defendants, counsel, courtroom personnel, witnesses, relatives, friends, etc., is prohibited. If allegedly improper contact with a juror is discovered, or if a prejudicial statement is inadvertently overheard by a juror, the trial judge must determine whether such contact resulted in substantial and irreparable prejudice to the defendant. It is within the discretion of the trial judge as to what inquiry to make. *State v. Burke*, 343 N.C. 129, 149 (1996) (citing *Remmer v. United States*, 347 U.S. 227 (1954)); *State v. Jacobs*, 172 N.C. App. 220 (2005).

If outside contacts are improperly brought to bear against a juror and are intended to influence the verdict, the trial judge abuses his or her discretion in denying a motion for a mistrial or new trial. *See State v. Lewis*, 188 N.C. App. 308 (2008) (granting defendant a new trial where the lead detective made comments during a break to a deputy sheriff serving as a juror that were intended to influence the verdict). "'[B]rief, public, and nonprejudicial conversations between jurors and parties or their relatives will not vitiate

the verdict or require that the jury be discharged . . . .'" *O'Berry v. Perry*, 266 N.C. 77, 81 (1965) (citation omitted).

B. Intoxicated/Impaired Jurors

"The law requires that jurors, while in the discharge of their duties, shall be temperate, and in such condition of mind as to enable them to discharge those duties honestly, intelligently, and free from the influence and dominion of" impairing substances. *State v. Jenkins*, 116 N.C. 972, 974 (1895). If a juror, while hearing the evidence, argument of counsel, or charge, or while deliberating as to verdict, is so incapacitated by reason of intoxicants or otherwise as to be physically or mentally incapable of functioning as a competent, qualified juror, the trial judge may order a mistrial. *State v. Tyson*, 138 N.C. 627 (1905) (mistrial was proper where a juror was found to be intoxicated and unfit for duty during the trial). However, use of impairing substances *outside* the courtroom does not justify granting a mistrial unless it is found that the juror is unfit to serve while present in court. *See State v. Crocker*, 239 N.C. 446 (1954) (although several jurors became intoxicated during an overnight recess, a mistrial was not warranted where there was no evidence or finding that any of those jurors were impaired upon the reconvening of the court on the following morning). Under G.S. 15A-1215, if a juror becomes incapacitated for any reason, an alternate may be substituted. *See infra* § 27.3, Substitution of Alternates.

C. Failure to Disclose Information During Voir Dire

If a juror fails to disclose or misrepresents potentially important information during jury selection, the party moving for a new trial must show:

- the juror concealed material information during voir dire;
- the moving party exercised due diligence during voir dire to uncover the information; and
- the juror demonstrated actual bias or bias implied as a matter of law that prejudiced the moving party.

State v. Maske, 358 N.C. 40, 48 (2004). If the party meets this burden, the trial judge must grant the motion. For a discussion of the meaning of bias implied as a matter of law, see *State v. Buckom*, 126 N.C. App. 368, 382 (1997).

If it is discovered prior to the jury being impaneled that a juror made an incorrect statement during voir dire:

- The judge may examine, or permit counsel to examine, the juror to determine whether there is a basis for a challenge for cause.
- If the judge determines there is a basis for a challenge for cause, he or she must excuse the juror or sustain any challenge for cause that has been made.
- If the judge determines there is no basis for a challenge for cause, any party who has

not exhausted his or her peremptory challenges may challenge the juror.

G.S. 15A-1214(g).

D. Sleeping/Inattentive Juror

In superior court, a defendant has the right to be convicted by a jury of twelve. N.C. CONST. art. I, § 24; G.S. 15A-1201; *State v. Hudson*, 280 N.C. 74 (1971). If a juror is sleeping during the trial or otherwise inattentive (working crossword puzzles, etc.), the defendant can move to substitute the juror or for a mistrial. The defendant must show by competent evidence that the juror was inattentive or sleeping and also that the defendant was prejudiced thereby. *State v. Lovin*, 339 N.C. 695 (1995) (no abuse of discretion in denial of defendant's motion to substitute a juror because the evidence was sufficient to support the conclusion that the juror, although inattentive to parts of the case, could nevertheless perform his duties); *State v. Williams*, 33 N.C. App. 397 (1977) (no error in trial judge's failure to grant a mistrial ex mero motu based on a sleeping juror because defendant did not show any prejudice). The misconduct should be brought to the attention of the trial judge immediately and supported by witness testimony or affidavits if possible. *See State v. Engle*, 5 N.C. App. 101 (1969) (court of appeals would not consider affidavits regarding a sleeping juror when presented for the first time on appeal).

E. Unauthorized Jury View of Crime Scene

Unless authorized by the trial judge (*see infra* § 27.2A, View of the Crime Scene), a view of the crime scene by a juror is considered misconduct. *State v. Perry*, 121 N.C. 533 (1897). However, the fact that a juror makes an unauthorized visit to the place of the crime is not grounds for a new trial unless it appears that some prejudice resulted to the defendant. *State v. Boggan*, 133 N.C. 761 (1903) (no undue influence shown where jurors passed through crime scene during their stay at a hotel pending the trial); *State v. Hawkins*, 59 N.C. App. 190 (1982) (although jurors used information about the lighting at the crime scene provided by a juror who visited scene, there was no constitutional violation because there was considerable testimony by an officer as to the lighting conditions); *State v. Smith*, 13 N.C. App. 583 (1972) (noting that courts in other jurisdictions have suggested that possible prejudice from unauthorized viewing by one juror can be removed by having the entire jury view the scene). Whether to grant relief is in the trial judge's discretion. *State v. Farris*, 13 N.C. App. 143 (1971).

F. Presence of Unauthorized Persons in Jury Room During Deliberations

Alternate jurors. The presence of an alternate juror in the jury room *during deliberations* violates a statutory mandate and the defendant's right to a jury trial as contemplated by article I, section 24 of the N.C. Constitution. *See* G.S. 15A-1215(a) (alternate jurors must be discharged on final submission of a case to the jury); *State v. Bindyke*, 288 N.C. 608 (1975) (new trial granted based on constitutional violation where alternate was present in the jury room for three to four minutes during deliberations).

The presence of an alternate in the jury room at any time *after deliberations begin* is reversible error per se. However, if the alternate's presence is inadvertent and momentary, and it occurs under circumstances from which it can clearly be determined that the jury has not begun its function, then the alternate's presence will not void the trial. If the trial judge believes it is probable that deliberations had not yet begun when the alternate was in the jury room, the trial judge may recall the jury and the alternate and make limited inquiry as to whether there has been any discussion of the case or comment as to what the verdict should be. If the answer is yes, the judge must declare a mistrial. If the answer is no, the alternate will be excused and the jury returned to deliberate. *Bindyke*, 288 N.C. 608; *State v. Jernigan*, 118 N.C. App. 240 (1995) (no mistrial warranted where alternate was present in jury room during selection of a foreman because this did not amount to "deliberation"); *see also State v. Locklear*, 180 N.C. App. 115 (2006) (no prejudicial error occurred where alternate spoke with trial jurors after deliberations had begun because the conversations did not take place in the deliberations room and the alternate did not express her feelings about the case to the other jurors).

The right to a jury trial by twelve cannot be waived by the defendant. *State v. Rowe*, 30 N.C. App. 115 (1976) (even though defendant refused trial judge's offer of mistrial, a new trial was granted because an alternate was in the jury room for ten minutes and deliberations had begun).

Other nonjurors. The presence of a "stranger" in the jury room is improper, but it does not automatically invalidate a verdict. If the trial judge finds facts showing that neither the deliberations nor the verdict were in any manner influenced by the misconceived entrance of an outsider and that there was no communication between the outsider and any juror, it may refuse to set aside the verdict. *State v. Hill*, 225 N.C. 74 (1945) (affirming the denial of defendant's motion to set aside the verdict based on the presence of two reporters in the jury room for several minutes where inquiry showed that neither the deliberations nor the verdict were in any manner influenced by their unauthorized presence); *see also State v. Battle*, 271 N.C. 594 (1967) (no error in the denial of defendant's motion to set aside the verdict where a juror from a different case mistakenly went into the jury room for a short time with defendant's jury); *State v. Riera*, 6 N.C. App. 381 (1969) (no error in the denial of defendant's motion for mistrial where record revealed that the jury became silent and said nothing when an unauthorized female mistakenly entered the jury room during deliberations), *rev'd on other grounds*, 276 N.C. 361 (1970).

Although older cases such as *Hill* and *Battle* state that a trial judge's refusal to set aside the verdict or grant a mistrial is not reviewable on appeal, later cases utilize an abuse of discretion standard of review. *See State v. Billups*, 301 N.C. 607 (1981) (finding no abuse of discretion by trial judge in denial of defendant's motion for mistrial where prosecuting witness entered the jury room during a recess at the conclusion of trial, but prior to the charge of the court, to use the bathroom and did not communicate with any of the jurors); *State v. Washington*, 141 N.C. App. 354 (2000) (finding no abuse of discretion in trial judge's failure to declare a mistrial sua sponte where bailiff entered the jury room during deliberations to retrieve some magazines and did not communicate with any of the jurors

nor did he hear any deliberations); *State v. Phillips*, 87 N.C. App. 246 (1987) (no abuse of discretion by trial court in failing to set aside the verdicts where the victim's wife was in the jury room before the opening of court one day and the sheriff took coffee cups to the jury in the jury room).