

26.1 Right to a Fair and Impartial Jury

- A. Trial Judge's Constitutional Responsibilities
 - B. Statutory Admonitions
 - C. Remedies for Misconduct
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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

G.S. 15A-1236(a) 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).

While not specifically required by the statute, trial judges frequently admonish the jury not to visit the scene where the case arose or to do any independent inquiry or

investigation into the matter. *See* N.C. Pattern Jury Instruction—Crim. 100.31 (June 2010) (Admonitions to Jurors at Recesses). The admonition to jurors not to go and visit the place where the offense was alleged to have occurred was omitted from the statute “because in some instances the place may be a public one difficult to avoid.” G.S. 15A-1236 Official Commentary. Nevertheless, a judge may still admonish the jury not to visit the scene if he or she considers it appropriate by utilizing the last sentence of subsection (a) of the statute, which allows the judge to give admonishments about other appropriate matters. *See id.*

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 before the start of deliberations.
- Granting a motion for mistrial for misconduct discovered during trial. *See* G.S. 15A-1061 (“The 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.”); *see also State v. Poindexter*, 353 N.C. 440 (2001) (defendant moved for mistrial based on juror’s misconduct during deliberations in guilt-innocence phase of capital case; new trial granted because defendant’s constitutional right to have a verdict rendered by twelve qualified jurors was violated). Misconduct on the part of a jury member may also result in a mistrial if it would render a fair and impartial trial impossible under the law. G.S. 15A-1063(1) (trial judge may grant a mistrial on party’s motion or on his or her own motion if “[i]t is impossible for the trial to proceed in conformity with 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. Bonney*, 329 N.C. 61 (1991).
- Granting a motion for a new trial for misconduct discovered after the verdict. *See State v. Miller*, 271 N.C. 646, 661 (1967) (defendants’ motions for mistrial based on juror misconduct “should have been for a new trial instead of a mistrial, because the

trial was over when the motions were made and the jurors were dispersed.”). 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. Sneed*, 274 N.C. 498 (1968); *see also State v. Lewis*, 188 N.C. App. 308 (2008) (finding an abuse of discretion by trial judge in failing to grant defendant’s motion for appropriate relief seeking a new trial based on a third party’s improper contact with a juror).

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. *See, e.g., State v. Langley*, ___ N.C. App. ___, 803 S.E.2d 166, 170 (2017) (“recogniz[ing] the growing problem of juror misconduct through the use of easily accessible electronics and potential Due Process and Equal Protection concerns,” but holding that defendant prevented further review and invited error when he did not accept the trial judge’s offer to inquire further into a juror’s misconduct in “Googling” a legal term), *rev’d and remanded on other grounds*, ___ N.C. ___, 817 S.E.2d 191 (2018).
