

### 31.5 Mistrial Based on Prejudice to the State

- A. Statutory Authority
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Sometimes misconduct, disruptive events, or improprieties occur during trial that prejudice the State in the eyes of the jury. A motion for mistrial may be the appropriate remedy if the prejudice cannot be cured in some less drastic manner, such as instructions to the jury or replacement of a juror with an alternate.

#### A. Statutory Authority

**Generally.** G.S. 15A-1062 provides that a judge may grant a motion for mistrial made by the State if there occurs during the trial, either inside or outside the courtroom, misconduct resulting in substantial and irreparable prejudice to the State's case and the misconduct was by

- a juror,
- the defendant,
- the defendant's lawyer, or
- someone acting at the behest of the defendant or his lawyer.

**Interpretation of "someone acting at the behest" of defendant or lawyer.** This part of the statute has been interpreted restrictively to mean that the trial judge can only grant the State's motion for mistrial if the defendant or his attorney engaged in "some sort of action or conduct" that induced or prompted the alleged misconduct. *See State v. Cooley*, 47 N.C. App. 376, 381 (1980). It is not sufficient that the defendant will benefit from the misconduct. The acts must have been done "at the behest of the defendant or his lawyer." *Id.* (finding that order for mistrial would not have been proper under G.S. 15A-1062 where there was no evidence that defendant or his attorney induced or prompted the alleged jury tampering activities; however, court found mistrial proper under G.S. 15A-1063, discussed *infra* in § 31.6, Impossibility of Proceeding in Conformity with the Law).

**Juror misconduct.** Under G.S. 15A-1062, the State may move for mistrial when conduct by a juror results in substantial prejudice to the State's case. This misconduct need not have occurred "at the behest of the defendant or his lawyer." *See, e.g., State v. Sanders*, 347 N.C. 587 (1998) (trial judge properly granted State's motion for mistrial pursuant to G.S. 15A-1062 based on juror misconduct not attributable to defendant). For a discussion of issues relating to juror misconduct, see *supra* Chapter 26, Jury Misconduct.

## B. Co-Defendants

If two or more defendants are joined for trial, G.S. 15A-1062 provides that a mistrial may not be declared under that statute as to a defendant who does not join in the State's motion for mistrial if

- neither that defendant, his or her defense counsel, nor a person acting at that defendant's or defense counsel's behest participated in the misconduct; or
- the State's case was not substantially and irreparably prejudiced as to that defendant.

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***Practice note:*** Do not join in the State's motion for mistrial if you do not believe your client was prejudiced by a co-defendant's misconduct. If you join in the State's motion (or appear to consent), you will waive any future claim to dismissal based on double jeopardy. *See infra* § 31.9D, Mistrial Granted on Defendant's Motion or with Consent.

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