
34.3 Coercion of the Verdict by the Trial Judge

A. In General

Every person charged with a crime in North Carolina has an absolute right to a fair trial "before an impartial judge and an unprejudiced jury in an atmosphere of judicial calm." *State v. Carter*, 233 N.C. 581, 583 (1951). Article I, section 24 of the N.C. Constitution prohibits a trial judge from coercing a jury to return a verdict. *State v. Patterson*, 332 N.C. 409 (1992).

In an effort to avoid coerced verdicts from jurors who are having a difficult time reaching a decision, the General Assembly enacted G.S. 15A-1235. *State v. Evans*, 346 N.C. 221 (1997). The instructions contained in that statute are set out *supra* in § 34.1, Instructions to the Jury about Reaching a Verdict. G.S. 15A-1235 borrows from the standards approved by the American Bar Association and is the "proper reference for standards applicable to charges which may be given a jury that is apparently unable to agree upon a verdict." *State v. Easterling*, 300 N.C. 594, 608 (1980). The instructions given to a deadlocked jury must conform to those standards. *Id.*

Although *Easterling* held that a trial judge's instructions to a deadlocked jury must conform to those set out in G.S. 15A-1235, the mere failure by the trial judge to precisely follow those instructions is not itself reversible error. *See State v. Peek*, 313 N.C. 266 (1985); *State v. Massenburg*, 234 N.C. App. 609 (2014). In determining whether a judge has coerced a verdict, the appellate court must consider the totality of the circumstances under which the instructions were made and the probable impact of the instructions on the jury. *State v. Beaver*, 322 N.C. 462 (1988); *Peek*, 313 N.C. 266. If the circumstances suggest to a juror that he or she should surrender well-founded convictions conscientiously held or his or her own free will and judgment in deference to the views of the majority, then coercion has occurred. *See State v. Holcomb*, 295 N.C. 608 (1978); *State v. Roberts*, 270 N.C. 449 (1967).

Some of the factors to be considered in weighing the totality of circumstances are whether the judge

- conveyed an impression to the jurors that he or she was irritated with them for not reaching a verdict;

- intimated to the jurors that he or she would hold them until they reached a verdict; and
- told the jurors that a retrial would burden the court system if the jury did not reach a verdict.

Beaver, 322 N.C. 462, 464. Additional considerations include "the amount of time the jury deliberated, the complexity of the case, and the content and tone of the court's instructions to the jury." *State v. Cox*, ___ N.C. App. ___, 808 S.E.2d 339, 349 (2017) (citation omitted). If the judge's instructions merely served as a catalyst for further deliberations and did not encourage the jurors to concur in what is really a majority verdict rather than a unanimous verdict, then coercion has not occurred. *See Peek*, 313 N.C. 266; *State v. Dexter*, 151 N.C. App. 430 (2002), *aff'd per curiam*, 356 N.C. 604 (2002).

B. Inquiry into Numerical Split

A trial judge's inquiry as to the division of the jury, without asking which votes were for conviction or acquittal, is not inherently coercive and does not constitute a per se violation of the defendant's right to a jury trial as guaranteed by article I, section 24 of the N.C. Constitution. *State v. Fowler*, 312 N.C. 304 (1984). Likewise, such an inquiry does not violate a defendant's rights under the Due Process Clause or the Sixth Amendment to the U.S. Constitution. *Id.* (interpreting the decision in *Brasfield v. United States*, 272 U.S. 448 (1926), which found reversible error in a trial judge's inquiry into the numerical division of a jury deadlock, as based on the U.S. Supreme Court's supervisory power over the *federal* courts and not on the defendant's constitutional rights). The making of an inquiry into the numerical division of the jury lies within the sound discretion of the trial judge. *State v. Mann*, 317 N.C. 164 (1986); *State v. Rasmussen*, 158 N.C. App. 544 (2003).

C. Length of Deliberations

G.S. 15A-1235(c) states that the trial judge "may not require or threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals." There is no bright-line rule setting an outside time-limit on jury deliberations; nor is there a rule that deliberations for a certain length of time, in relation to the length of time spent by the State presenting its evidence, is too long. *State v. Baldwin*, 141 N.C. App. 596 (2000) (finding no coercion where the trial judge, after being informed that the jury was at an impasse after only two and one-half hours of deliberations, ordered the jury to continue deliberating, and the jury reached a verdict at 11:04 p.m. after about seven hours of deliberations).

A verdict is coerced if the trial judge's comments and actions, along with the length of deliberations, improperly influenced the jury to reach a decision. *See, e.g., State v. Dexter*, 151 N.C. App. 430 (2002) (holding that jury could have reasonably felt coerced where the jury had deliberated for three days and sent out three notes informing the judge it could not reach a verdict, and the judge did not respond in the presence of the jury to a

juror's note asking for time off for his wife's surgery and only gave the instructions set out in G.S. 15A-1235 after the second note), *aff'd per curiam*, 356 N.C. 604 (2002); *State v. McEntire*, 71 N.C. App. 720 (1984) (finding jury coercion where, after five hours of deliberations and being told that the jury would probably not be able to agree, the judge instructed them to continue deliberating without giving the instructions set out in G.S. 15A-1235).

Practice note: Always request that the record reflect the exact amount of time spent by the jury in deliberations in the event that coercion becomes an issue on appeal. Court reporters do not always note this important information in the transcript.

D. Comment on the Inconvenience or Expense of Retrial

Due to the danger of coercion, a deadlocked jury may not be advised of the potential expense and inconvenience of retrying the case. *State v. Easterling*, 300 N.C. 594 (1980); *see also* G.S. 15A-1235 Official Commentary ("The Commission deleted from its draft a provision previously sanctioned under North Carolina case law which would have authorized the judge to inform the jurors that if they do not agree upon a verdict another jury may be called upon to try the case."); *State v. Lipfird*, 302 N.C. 391 (1981) (granting new trial where trial judge violated G.S. 15A-1235 by instructing the deadlocked jury on the inconvenience of a retrial); *State v. Buckom*, 111 N.C. App. 240 (1993) (trial judge committed prejudicial error by instructing the jury, as part of an anti-deadlock instruction, that the "main purpose" of trying to reconcile differences in further deliberations was to avoid an expensive retrial), *aff'd per curiam*, 335 N.C. 765 (1994); *State v. Johnson*, 80 N.C. App. 311 (1986) (finding prejudicial error where the judge knew the jury was deadlocked 11-1 and his instructions, inter alia, mentioned the potential inconvenience and use of the court's time). If the jury is not deadlocked, an isolated mention of the expense and inconvenience of retrying the case may be harmless error. *See Easterling*, 300 N.C. 594; *State v. Mack*, 53 N.C. App. 127 (1981). However, once the trial judge knows that a jury is deadlocked, "the mention of inconvenience and additional expense may well be prejudicial and harmful to the defendant, and must be scrutinized with extraordinary care." *Mack*, 53 N.C. App. 127, 129.

E. Preservation of Issue on Appeal

If the trial judge instructs the jury in a coercive manner and does not comply with the requirements of G.S. 15A-1235, the defendant must object in order to preserve the issue for appellate review. In order to properly preserve the issue on both statutory and constitutional grounds, the objection should specifically note that the judge's instructions violate G.S. 15A-1235 and article I, section 24 of the N.C. Constitution. *See State v. May*, 368 N.C. 112 (2015).

If no objection is lodged, the appellate court will review the issue using the more stringent "plain error" standard of review. *See, e.g.*, *May*, 368 N.C. 112, 122 (assuming error in the trial judge's unobjected-to instructions regarding the expense of a retrial and requiring the jury to continue their deliberations after deadlock had been announced, but

holding that the instructions did "not rise to the level of being so fundamentally erroneous as to constitute plain error."); *State v. Pate*, 187 N.C. App. 442, 445 (2007) (because defendant did not object to the judge's coercive instructions to the deadlocked jury, the argument would be analyzed under the plain error standard of review; court found that the judge's error in the instructions did not have "a probable impact on the jury's finding of guilt" under the facts of the case) (citation omitted).