

CAP JURY SEL

Trial Judge in Capital Jury Selection Did Not Abuse Discretion in Removing on Own Motion Prospective Juror for Cause

State v. Brower, 186 N.C. App. 397, 651 S.E.2d 390 (16 October 2007).

The defendant was tried capitally and convicted of second-degree murder involving a shooting during a drug deal. The trial judge asked a prospective juror if his feelings about the circumstances of the charged offense would cause him to be partial toward one side or the other, and the juror answered unequivocally “yes.” After ascertaining that the juror’s ability to evaluate the evidence would be affected by the circumstances of the charged offense, the trial judge ruled that the juror would be unable to give both parties a fair trial and removed him for cause on his own motion. The court ruled that the trial judge did not abuse his discretion in doing so.

(1) Trial Judge Did Not Abuse Discretion in Denying Defendant’s Challenge for Cause of Prospective Juror Who Was a Law Enforcement Officer

(2) Trial Judge Did Not Abuse Discretion in Denying Defendant’s Challenge for Cause of Prospective Juror Under Morgan v. Illinois, 504 U.S. 719 (1992)

State v. Cummings, 361 N.C. 438, 648 S.E.2d 788 (24 August 2007).

The defendant was convicted of first-degree murder and sentenced to death. (1) The court ruled that the trial judge did not abuse his discretion in denying the defendant’s challenge for cause of a prospective juror who was a law enforcement officer. See the court’s extensive discussion of this issue. (2) The court ruled that the trial judge did not abuse his discretion in denying the defendant’s challenge for cause of a prospective juror under Morgan v. Illinois, 504 U.S. 719 (1992) (defendant has right to challenge for cause a prospective juror who would automatically vote for the death penalty in every case). See the court’s extensive discussion of this issue.

(1) Jury - Selection - Prospective Jurors Over 65

(2) Jury – Selection - Capital Trial – Questions - Cost Of Life Imprisonment - Putting Aside Personal Beliefs

(3) Jury – Selection - Capital Trial - Substituting Jurors For Sentencing Phase

State v Elliott, 360 NC 400 (2006)

(1) The premise that the court may excuse a juror merely for being over sixty-five is unfounded in North Carolina law; a prospective juror's age may be a compelling personal hardship, but this is not always so. Although the issue was

not properly preserved for appellate review, the trial court's exercise of discretion is apparent from its discussion with prospective jurors over sixty-five and the trial court did not abuse its discretion by refusing to excuse the juror in question. N.C.G.S. §§ 9-3, 9-6(a), and 9-6.1. **(2)** The trial court did not abuse its discretion in a capital trial by not allowing defendant to question prospective jurors about whether they had any preconceived notions about the cost of life imprisonment versus the death penalty. Defendant was allowed to ask whether prospective jurors were inclined to vote for imposition of the death penalty automatically. **(3)** The trial court did not err during jury selection for a capital trial by refusing to seat two jurors opposed to the death penalty for the guilt phase and then substitute death-qualified alternate jurors during the sentencing phase.

Jury -- Selection -- Capital Trial -- Voir Dire -- Stake Out Questions

State v. Campbell 359 NC 644 (2005)

The trial court did not err in a capital first-degree murder case by refusing to allow defendant to ask prospective jurors during voir dire whether defendant's election not to testify would adversely influence their decision given the fact that defendant had made a confession, because: 1) parties are not allowed to stake out a prospective juror's opinion based on specific facts; 2) defendant was allowed to ask prospective jurors whether his decision not to testify would affect their impartiality, and jurors were instructed that defendant had a right not to testify; 3) defendant was able to inquire of prospective jurors whether they would be able to follow the law; 4) defendant had sufficient opportunity to examine prospective jurors on their ability to be fair and impartial in this trial and on their ability to render a decision without regard to defendant's failure to testify; and 5) although defendant now asserts that the ruling violated his federal and state constitutional rights, defendant failed to assert this argument before the trial court and has thus waived it.

(1) Jury–selection–capital trial–passage of entire panel to defendant

(2) Jury–selection–rehabilitation–ability of system to answer concerns–legal conclusion

State v. Jones 358 NC 330 (2004)

(1) The trial court did not err in a capital first-degree murder prosecution by following the method of jury selection in N.C.G.S. § 15A-1214(d), under which the state is allowed to remove some prospective jurors and replace them with others before passing the entire panel to the defendant. **(2)** There was no abuse of discretion during jury selection for a capital first-degree murder in sustaining the state's objection to defendant's question about whether the system took into account his concerns about the strength of the evidence. The question called for a legal conclusion.

Jury--statutory obligation--full panel of twelve jurors

State v. Roache 358 NC 243 (2004)

The trial court did not err in a capital multiple murder prosecution by allowing the State to pass individual jurors to defendant rather than a panel of twelve because: 1) N.C.G.S. § 15A-1214(j) authorizes a trial judge in a capital case to allow individual voir dire at his or her discretion for good cause shown; 2) when the trial court directs individual voir dire on all issues pursuant to N.C.G.S. § 15A-1214(j), all parties are required either to accept or reject a juror before the next prospective juror is called; 3) in the instant case, inasmuch as defendant did not request a finding of good cause when the trial judge indicated that he had reviewed the statute and was satisfied that the procedure was permitted, it is presumed that the trial judge found the necessary good cause; and 4) although defendant contends that the improper jury selection procedure violated his constitutional right to a fair and impartial jury, defendant did not raise this constitutional issue at trial, and thus, failed to preserve this assignment of error for appellate review.

Jury – Selection -- Questioning Replacement Jurors Before Approval Of Panel Of Twelve

State v. Garcia 358 NC 382 (2004)

Although the trial court violated North Carolina's jury selection statute under N.C.G.S. § 15A-1214(f) by requiring defendant to question replacement jurors in a first-degree murder case before the State approved a full panel of twelve individuals, this error was not prejudicial to defendant and was not structural constitutional error because: 1) defendants claiming error in jury selection procedures must show prejudice in addition to a statutory violation before they can receive a new trial; 2) defendant has not complained that the aberrant procedure resulted in a biased jury, an inability to question the prospective jurors, an interference with his right to challenge, or any other defect without which a different result might have been reached; 3) our Supreme Court has previously held, under similar circumstances of juror shortage, that a defendant is not prejudiced by questioning fewer than a full panel of replacement jurors when that defendant has not exhausted his peremptory challenges, and defendant in this case possessed adequate remaining peremptory challenges during both court sessions for which he assigns error; and 4) defendant has failed to show that he was denied a trial by a fair and impartial jury or to show that any other constitutional error resulted from the jury selection procedure employed at his trial, and defendant did not raise this constitutional issue at trial.

Jury -- Peremptory Challenges -- Voir Dire Reopened

State v. Boggess 358 NC 676 (2004)

The trial court erred in a first-degree murder and robbery with a dangerous weapon case by failing to allow defendant to exercise one of his remaining peremptory challenges to excuse a juror after the trial court permitted counsel to question the juror upon finding out that after completing her individual voir dire the juror learned that defendant's mother would be staying at the home of one of the juror's friends during the trial, because: 1) if the judge at any point allows the attorneys to question the juror directly, voir dire has necessarily been reopened and the procedures set out in N.C.G.S. § 15A-1214(g)(1)-(3) are triggered; and 2) once the examination of a juror has been reopened, the parties have an absolute right to exercise any remaining peremptory challenges to excuse such a juror.

Jury – Selection – Examination After Peremptory Challenge – No Structural Error

State v. Thompson 359 NC 77 (2004)

A violation of the random selection provision of N.C.G.S. § 15A-1214(a) during jury selection (examination of the remaining jurors after a peremptory challenge without seating a replacement) was not structural error. A technical violation of a statute is not sufficient to support a claim of a defect in the trial mechanism so serious that the trial cannot reliably determine guilt or innocence.

Jury--Capital Trial -- Selection --Voir Dire -- Questions Concerning Parole And Parole Eligibility

State v. Haselden 357 NC 1 (2003)

The trial court did not err in a capital first-degree murder case by denying defendant's request to voir dire jurors regarding their opinions and beliefs concerning parole and parole eligibility, because: 1) neither the North Carolina or United States Supreme Court has ever held that a defendant has a right, constitutional or otherwise, to question jurors about parole eligibility; 2) the jury in the present case was informed on the meaning of life imprisonment according to N.C.G.S. § 15A-2002; and 3) during deliberations the jurors neither indicated any confusion regarding the meaning of life without parole nor requested any additional instruction from the trial court.

Jury – Selection – Capital Trial -- Consideration Of Life Sentence -- Bias

State v. Kemmerlin 356 NC 446 (2002)

The trial court did not abuse its discretion in a first-degree capital murder prosecution by preventing defendant from exploring whether a prospective juror

could consider a life sentence for premeditated murder given her personal knowledge of early release from life sentences for murder, because: 1) the trial court verified that all prospective jurors could and would impartially consider the evidence regarding mitigating and aggravating circumstances; 2) defendant was allowed to ask prospective jurors if they understood that some first-degree murders do not deserve the death penalty; 3) the pertinent prospective juror informed the court that she understood that not all first-degree murders merit death, she did not feel that her prior associations with murder would affect her ability to be fair and impartial in defendant's case, and she would not automatically vote for the death penalty upon conviction; and 4) the trial court's jury instructions during the penalty phase sufficiently cured any potential misconception regarding life imprisonment without parole.

(1) Jury – Selection – Capital Trial – Qualification For Both Phases

(2) Jury – Selection – Capital Trial - Reservations About Death Penalty – Inconsistent Answers

(3) Jury – Selection – Capital Trial - Reservations About Death Penalty – Unalterable Views

State v. Berry 356 NC 490 (2002)

(1) An assignment of error in a first-degree murder prosecution concerning potential jurors with reservations about the death penalty was not restricted to the sentencing proceeding even though defendant raised it in that context. A trial court may not select a panel for the guilt-innocence phase with the understanding that different jurors will be substituted at sentencing. **(2)** The trial court did not abuse its discretion in a capital first-degree murder prosecution by excusing for cause a prospective juror whose answers were inconsistent but who could not state that he would follow the law if the evidence were circumstantial. **(3)** The trial court did not abuse its discretion in a capital first-degree murder prosecution by excusing a potential juror for cause where she was unalterably opposed to the death penalty. Mere opposition does not disqualify a juror who can set aside her personal beliefs and follow the law; in this case, the court asked an additional question to determine that the opposition was unalterable.

Jury--voir dire--failure to disclose a crime victim

State v. Maske 358 NC 40 (2003)

The trial court did not err in a capital first-degree murder case by denying defendant's motion for a mistrial based on alleged juror misconduct regarding a failure to disclose during voir dire that the juror was a victim of a robbery forty years earlier but thereafter sharing this experience with the other jurors, because: 1) the juror's inadvertent failure to disclose the four-decade-old information that

she had forgotten did not amount to concealment; and 2) the juror demonstrated no bias. See Farb p. 5

Jury - Selection - Capital Trial - Request For Individual Voir Dire

State v. Nicholson, 355 N.C. 1 (2002)

The trial court did not abuse its discretion in a double capital first-degree murder prosecution by denying defendant's request for individual voir dire pursuant to N.C.G.S. § 15A-1214(j) during jury selection based on pretrial publicity, because: 1) defendant failed to support his original motion for individual voir dire with any facts or allegations concerning pretrial publicity; 2) a prospective juror's comment during collective voir dire stating that she thought the case was a tragedy did not unduly taint other prospective jurors in the panel; and 3) defendant failed to carry his burden of showing any particular harm resulting from the denial of his motion.

Jury - Selection - Challenge For Cause - Financial Concerns About Potential Impact Of Jury Service

State v. Reed, 355 N.C. 150 (2002)

The trial **court did not err in a first-degree murder case by failing to allow defendant's challenge for cause** under N.C.G.S. § 15A-1212(9) of a prospective juror who expressed financial concerns about the potential impact of jury service even though defense counsel alleges it showed the prospective juror could not render a fair and impartial decision, because: 1) although the juror stated the length of the trial might interfere with his ability to decide or possibly be a fair juror, an examination of his answers throughout the entire voir dire reveals there is no indication that he would not or might not be able to follow the law as given to him by the trial court; 2) the prospective juror repeatedly stated during both the State's and defendant's voir dire that he could follow the law; and 3) the prospective juror stated during both the State's and defendant's voir dire that he had no outside distractions, that he could be fair to both sides, and that he could listen to all the evidence fairly.

Jury--Selection--Understanding About Parole Eligibility For A Life Sentence

State v. Williams 355 NC 501 (2002)

The trial court did not err in a prosecution for first-degree murder, first-degree rape, first-degree sexual offense and other crimes involving seven different victims over a fifteen-month span by denying defendant's request to question jurors during jury selection on their understanding about parole eligibility for a life sentence, because defendant has failed to establish any compelling reason why our Supreme Court should reconsider its prior holding deciding this issue against defendant.

Jury--Capital--Duty To Stand Up Alone And Announce Death Verdict--Excusal For Cause

State v. Prevatte 356 NC 178 (2002)

The trial court did not err in a first-degree murder and second-degree kidnapping case by allowing the State to inform prospective jurors that as a part of their duty they might have to stand up alone and announce a death verdict and by excusing for cause a prospective juror based on the fact that she could not fulfill this duty, because: 1) the State and the trial court were merely describing the polling process to the jurors; and 2) the trial court perceived an inability on the prospective juror's part to follow the law with regard to imposition of capital punishment. * Question about polling procedure*

Jury--Capital Selection--Peremptory Challenges--Batson--Racial Discrimination

State v. Barden 356 NC 316 (2002)

The trial court erred in a capital first-degree murder prosecution by holding that defendant had not made a prima facie showing of racial discrimination at the time he raised a Batson objection to the prosecutor's peremptory challenges of two African-American prospective jurors and the case is remanded to the trial court for the limited purpose of holding a hearing pursuant to Batson to give the State an opportunity to present race-neutral reasons for striking these prospective jurors.

(1) Jury--Selection--Capital Trial--Bible Teachings

(2) Jury--Selection--Capital Trial--Stake-Out Questions

(3) Jury--Selection--Capital Trial--Rehabilitation--Impasse Between Defendant And Counsel

State v. Mitchell, 353 N.C. 309 (2001)

(1) The trial court did not abuse its discretion during jury selection for a capital first-degree murder prosecution by not allowing defendant to ask a potential juror about her understanding of the Bible's teachings on the death penalty after she had stated that she followed what the Bible said about the death penalty. The court permitted defendant to inquire into her religious affiliation, her views on capital punishment, her ability to consider mitigating circumstances, her willingness to impose a sentence of life imprisonment, and whether any teachings of her church would interfere with her ability to perform her duties as a juror. **(2)** The trial court did not abuse its discretion during jury selection for a first-degree murder prosecution by not allowing defendant to ask a potential juror questions which

were an attempt to determine the kind of mitigating circumstances that would be sufficient to outweigh aggravating circumstances not yet in evidence. (See text for the Questions). (3) The trial court did not err during a first-degree murder prosecution by excusing a prospective juror for cause and honoring defendant's personal decision not to attempt rehabilitation where the court properly found that defendant and his counsel had reached an absolute impasse over the tactical decision of whether to attempt to rehabilitate the prospective juror, defense counsel made a proper record of the circumstances, and defendant was fully informed and understood the potential consequences of his actions.

Jury--Selection--Capital Sentencing--Stake-Out Question

State v. Call, 353 N.C. 400 2001

The trial court did not err during jury selection in a capital sentencing proceeding by sustaining the prosecutor's objection to defendant's question about whether a juror could maintain the courage of her convictions if she did not think that the State had proved its case and the other eleven jurors felt that it had. Counsel may not pose hypothetical questions designed to elicit in advance what a juror's decision will be under a given state of facts; moreover, the question also appeared to be an incorrect statement of the law in that jurors have a duty to deliberate with the other jurors with a view to reaching an agreement.

(1) Jury--Capital Sentencing--Alternate Juror--Substituted During Deliberations--Error

(2) Jury--Selection--Prosecutor's Use Of Word "Necessary"

State v. Poindexter, 353 N.C. 440 2001

(1) The trial court erred in a capital first-degree murder prosecution by denying defendant's motion for a mistrial under N.C.G.S. § 15A-1061 based on the post-verdict removal of a juror for juror misconduct committed during the guilt-innocence phase of deliberations and the substitution of an alternate juror for the sentencing proceeding, because: 1) defendant has a right under the North Carolina Constitution to trial by a jury composed of twelve qualified jurors; and 2) the dismissed juror's misconduct during jury deliberations resulted in a guilty verdict by a jury composed of less than twelve qualified jurors. N.C. Const. art. I, § 24. 354 N.C. 28, STATE V. TAYLOR 2001 ***good*** (2) The trial court did not err in a capital first-degree murder and robbery with a dangerous weapon trial by allowing the prosecutor to repeatedly use the word "necessary" during jury selection to allegedly imply that the death penalty is necessary to deter crime, because: 1) it cannot be said that the question as to whether the jurors thought the death penalty was "necessary" conveyed to the jury the impression that the death penalty is a deterrent to crime; and 2) it is improper to speculate as to what each

juror felt was the reason for the necessity or lack of necessity for the death penalty.

Jury--Capital Resentencing--Life-Qualifying Questions

State v. Jaynes, 353 N.C. 534 (2001)

The trial court did not abuse its discretion in a capital resentencing proceeding by failing to allow defendant to ask two prospective jurors life-qualifying questions during voir dire, because: 1) the challenged questions constituted improper efforts to pin down the prospective jurors regarding which specific mitigating circumstances would sway them towards a life sentence; and 2) defendant was given ample opportunity to question the prospective jurors regarding whether they would automatically vote for the death penalty.

(1) Jury--Selection--Consideration Of Life Sentence--Stake-Out Questions

(2) Jury--Selection--Religious Views

State v. Fletcher, 354 N.C. 455 (2001)

(1) The trial court did not err in a capital first-degree murder resentencing proceeding by allegedly preventing defendant from fully exploring whether a prospective juror could consider a life sentence given the circumstances of this case, including a first-degree burglary conviction, because: 1) stake-out questions based on a specific aggravating circumstance are improper, and jurors should not be asked what kind of verdict they would render under certain named circumstances; and 2) defendant could have properly asked whether the prospective juror could consider all aggravating and mitigating circumstances presented to the jury. (2) The trial court did not err in a capital first-degree murder resentencing proceeding by allegedly preventing defendant from exploring a prospective juror's religious views, because: 1) defendant was prevented from asking the prospective juror whether he believed in "an eye for an eye," rather than whether his religious views would impair his ability to follow the law; and 2) the fact that one prospective juror volunteers such personal information in response to a permissible question does not make it proper for counsel to specifically ask another prospective juror to reveal that same information.

Jury - Capital Case - Peremptory Challenge - Racial Discrimination - Failure To Make Prima Facie Showing

State v. Smith, 351 N.C. 251 (2000)

The trial court did not err in finding that defendant failed to make a prima facie showing that the State's peremptory challenge of a black prospective juror was

based on race where defendant showed only that the State exercised six of its eight peremptory challenges to excuse blacks and that blacks make up fifty to sixty percent of the county; defendant did not make any specific Batson challenge to the other five peremptorily excused black prospective jurors, and the trial court thus had no obligation to inquire into the reasons for striking those jurors; the prosecutor had accepted the first black to enter the jury box and had also struck whites before striking this prospective juror; defendant, the victims, and the State's key witnesses were all black; the prosecutor did not make any racially motivated comments or ask any racially motivated questions of the black prospective jurors; and seven of the fourteen prospective jurors accepted by both the State and defendant were black.

Jury - selection - capital trial - challenge for cause - ability to set aside opinion

State v. Wallace, 351 N.C. 481 (2000)

The trial court did not err by denying defendant's challenge for cause of a prospective juror who formed an opinion about defendant's guilt prior to trial based on pretrial publicity and defense counsel's statement that the facts were not in dispute in a case involving defendant's convictions for nine counts of first-degree murder, eight counts of first-degree rape, one count of second-degree rape, two counts of first-degree sexual offense, two counts of second-degree sexual offense, one count of assault with a deadly weapon, and five counts of robbery with a dangerous weapon, because during voir dire, the juror clearly stated his ability to set aside that opinion and base his decision on the evidence and the law as presented.

Jury - Selection - Capital Trial - Previous Criminal Record - Improper Attempt To "Stake Out" Jurors

State v. Braxton, 352 N.C. 158 (2000)

The trial court did not abuse its discretion during voir dire of a capital trial by not allowing defendant to ask any prospective jurors whether they could be fair and impartial as to guilt or innocence knowing that defendant had previously been convicted of two first-degree murders and was serving two life sentences when he committed this murder, because the question improperly attempts to "stake out" what kind of verdict a juror would render under certain named circumstances not yet in evidence.

Jury--Challenge For Cause--Personal Relationship With Law Enforcement Officers

State v. Grooms 353 N.C. 50 2000

The trial court did not abuse its discretion in a capital prosecution for first-degree murder by denying defendant's challenge for cause under N.C.G.S. § 15A-1212 of

a juror on the basis of his personal relationship with several of the law enforcement officers who were prospective witnesses for the State because the juror indicated he could remain a fair and impartial juror, could based his decision on the evidence presented in the case, and would not give any greater weight to the testimony of these prospective witnesses.

Jury--Selection--Capital Sentencing--Residual Mitigation

State v. Meyer, 353 N.C. 92 2000

The trial court did not abuse its discretion in a capital sentencing proceeding by preventing defendant from asking a prospective juror whether he could consider residual mitigation under the catchall circumstance, N.C.G.S. § 15A-2000(f)(9), where the prospective juror had indicated that he could follow the law as instructed by the trial court and the court's instruction on the catchall mitigating circumstance after the evidence was heard was proper.

(1) Death Penalty Views - Request For Unequivocal Answers

(2) Death Penalty - Jury Selection - Questions by Prosecutor - Necessity For Death Penalty - Jurors' Roles Not Minimized

State v. Willis, 332 N.C. 151 (1992)

(1) The district attorney's request that prospective jurors give unequivocal answers to questions about their death penalty views was not error, (2) The district attorney's question as to whether prospective jurors thought the death penalty was "necessary" did not convey to the jury the impression that the death penalty is a deterrent to crime and was not improper. Furthermore, the district attorney did not minimize the importance of the jurors' roles in imposing the death penalty by asking if they could be a part of the machinery that brought it about.

Predisposition to Impose Death Penalty - Ability to Consider Life Imprisonment - denial of Challenge For Cause

State v. Sexton, 336 N.C. 321 (1994)

First-Degree Murder - Jury Selection - Death Qualifying - No Opportunity To Rehabilitate

State v. Gibbs, 335 N.C. 1 (1993)

The trial court did not err during jury selection for a first-degree murder by denying defendant the opportunity to rehabilitate two prospective jurors, Moore and Boston, excused for cause based on their answers to death qualification

questions where defendant does not argue and the record does not show that the court made a blanket refusal to permit rehabilitation of any jurors

First Degree Murder - Jury Selection - Views On Death Penalty – Contradictory And Equivocal Responses - Excusal For Cause

State v. Jennings, 333 N.C. 579 (1993) 430 S.E.2d 188 Page 579

Voir Dire - Strength Of Juror's Opinions - Objection Sustained - Absence Of Prejudice

State v. Syriani, 333 N.C. 350 (1993) 428 S.E.2d 118

Defendant failed to show an abuse of discretion or prejudice when the trial court sustained the State's objection to a question as to whether a prospective juror has pretty strong opinions and sticks to them or is easily swayed where the court permitted defense counsel to ask the juror whether she could deliberate with others, which was the crux of the question

(1) First-Degree Murder - Jury Selection - Individual Voir Dire Denied - No Error

(2) First-Degree Murder - Jury Selection - Eligibility For Parole - Questions Not Allowed - No Error

State v. Moore, 335 N.C. 567 (1994) 440 S.E.2d 797 Page 568

(1) Jury Voir Dire - Fairness Of Burden Of Proof - Question Properly Excluded

(2) Capital Trial - Automatic Vote For Death Penalty - Voir Dire Questions Not Allowed - Due Process Violation - Prejudicial Error

(3) Capital Trial - Voir Dire - Appropriateness Of Death Penalty - Improper Question

State v. Conner, 335 N.C. 618 (1994) 440 S.E.2d 826 Page 619

(1) The trial court did not err in sustaining the State's objection to defense counsel's question as to whether potential jurors believed it was fair for the law to place a higher burden of proof on the State than on defendant since the role of a juror is not to weigh and make policy decisions concerning the fairness of the law,
(3) The trial court did not err by refusing to permit defense counsel to ask prospective jurors in a capital trial whether they felt that the death penalty is the appropriate penalty for someone convicted of first-degree murder since this question was overly broad and called for a legislative, policy decision.

(1) Capital Sentencing - Jury Voir Dire - Exclusion Of Questions About Parole And Life Imprisonment

(2) Capital Sentencing - Jury Voir Dire - Attitude Toward Death Penalty – Exclusion Of Questions

State v. Lee, 335 N.C. 244 (1994) 439 S.E.2d 547 Page 247

(2) The trial court did not err by refusing to allow defendant to ask prospective jurors in a capital sentencing proceeding questions as to why they held their death penalty beliefs, whether they believed the death penalty has a deterrent effect, whether they believed human life is sacred, and whether they believed the death penalty should be reserved for the worst cases where all jurors who were eventually selected stated that they had formed no opinion as to the appropriateness of the death penalty in this case

First-Degree Murder - Jury Selection - Questions Regarding Felony Murder Rule - No Prejudice

State v. Fisher, 336 N.C. 684 (1994) ___ S.E.2d ___ Page 684

Peremptory Challenge - Jehovah's Witness - Death Penalty Views - No Religious Discrimination

State v. Eason, 336 N.C. 730 (1994) ___ S.E.2d ___ Page 730

(1) First-Degree Murder - Sentencing Hearing - Jury Selection - Accountability To Victim's Family- Not Staking Jury Out

(2) First-Degree Murder - Sentencing Hearing - Jury Selection - Prosecutor's Questions - Defendant's Intoxication - Jury Not Staked Out

State v. Reeves, 337 N.C. 700 (1994) ___ S.E.2d ___ Page 705

(1) Capital Sentencing - Death Penalty Views - Excusal Of Prospective Juror For Cause

(2) Capital Sentencing - Denial Of Individual Voir Dire And Sequestration Of Jurors

State v. Robinson, 336 N.C. 78 (1994)

(1) The trial court properly excused a prospective juror for cause in a capital sentencing proceeding where her responses to questions by the prosecutor and the court indicated that her feelings about the death penalty would prevent her from following the law and from being a fair and impartial juror. The trial court was not required to permit counsel for defendant to attempt to rehabilitate this juror, (2) The trial court did not err when it denied defendant's motion for individual voir dire and sequestration of jurors in a capital sentencing proceeding.

(1) Murder - Sentencing - Jury Selection - Questions Concerning Parole Eligibility

(2) First-Degree Murder - Sentencing Hearing - Jury Selection - Knowledge Of Previous Death Sentence

(3) First-Degree Murder - Sentencing - Jury Selection - Knowledge Of Previous Sentence - No Excusal For Cause

State v. Green, 336 N.C. 142 (1994)

(1) The trial court did not err during jury selection for a first-degree murder sentencing hearing by denying defendant's motion to permit questioning of prospective jurors about their beliefs concerning parole eligibility and by denying defendant's request for an instruction on parole eligibility. (2) The trial court did not abuse its discretion during jury selection for a first-degree murder resentencing by denying defendant the opportunity to ask a potential juror whether he knew that the defendant had previously been sentenced to death when the juror revealed that he had been exposed to pretrial publicity about the case.

First-Degree Murder - Jury Selection - Knowledge Of Parole Procedures

State v. Jones, 336 N.C. 229 (1994)

The trial court did not err during jury selection for a first-degree murder sentencing hearing by not allowing defendant to inquire of prospective jurors regarding their attitudes and knowledge of parole eligibility for a person sentenced to life in prison.

(1) Capital case - voir dire questions - consideration of age, mental impairment, etc. - attempt to stake out jurors

(2) Capital Case - Jury Voir Dire - Previous Criminal Record - Automatic Vote For Death Penalty - Question Properly Excluded

(3) Capital Case - Jury Voir Dire - Meaning Of Life Imprisonment - Possibility Of Parole - Questions Properly Excluded

State v. Skipper, 337 N.C. 1 (1994)

(1) The trial court did not err by refusing to permit defendant to ask prospective jurors in a capital case whether they could "consider" age, mental impairment or retardation, and other specific mitigating circumstances in reaching a decision, since the questions were an impermissible attempt to stake out the jurors. (2) Defendant's question to a prospective juror as to whether she felt "that a person should always be given the death penalty if he has a previous criminal record and has been convicted of first-degree murder" was an attempt to determine what kind of verdict the juror would render under certain circumstances not yet in evidence.

First-Degree Murder - Jury Selection - Knowledge Of Previous Trial - Belief In Capital Punishment

State v. Moseley, 338 N.C. 1 (1994) ___ S.E.2d ___

The trial court did not abuse its discretion in a prosecution in which defendant was convicted for first-degree murder, first-degree rape, and first-degree sexual offense by not excusing two prospective jurors for cause on its own motion where a prospective juror recalled seeing in the paper that defendant had previously been tried in Forsyth County but indicated that he had formed no opinion of this case and could disregard any information he had previously obtained and decide the case solely on the evidence presented, and another prospective juror initially indicated that he would vote for the death penalty if the jury found defendant guilty, but indicated that he could follow the law after it was explained by the judge.

Capital Trial - Jury Selection - Death Penalty Views-Excusal For Cause Without Questioning By Defendant

State v. Ward, 338 N.C. 64 (1994) ___ S.E.2d ___

First-Degree Murder - Jury Selection - Questions As To Parole Not Permitted – No Error

State v. Spruill, 338 N.C. 612 (1994) ___ S.E.2d ___

Jury Selection - Ability To Give Defendant, Victim's Family, State A Fair Trial

State v. Bell, 338 N.C. 363 (1994) ___ S.E.2d ___

It was not improper for the prosecutor to ask prospective jurors in a capital trial whether they could give defendant, the victim's family, and the State a fair trial.

(1) Voir Dire - Vote Under Particular Facts - Questions Properly Excluded

(2) Voir Dire - Alcoholism As Disease Or Illness - Questions Properly Excluded

State v. Jones, 339 N.C. 114 (1994) ___ S.E.2d ___

Capital Murder - Jury Selection - Questions Concerning Particular Mitigating Circumstances - Not Allowed

State v. Miller, 339 N.C. 663 (1995) ___ S.E.2d ___

Capital Sentencing - Voir Dire Examination - Previous First-Degree Murder Conviction - Consideration Of Life Sentence - Attempt To "Stake Out" Jurors

State v. Robinson, 339 N.C. 263 (1994) ___ S.E.2d ___

First-Degree Murder - Jury Selection - Hesitancy Over Death Penalty - Peremptory Challenge

State v. Basden, 339 N.C. 288 (1994) ___ S.E.2d ___

There was no error during jury selection for a first-degree murder where the trial court initially excluded a juror for cause at the State's request, then agreed to strike its prior ruling and allow the State to exclude her through a peremptory challenge. A prosecutor may exercise a peremptory challenge to excuse a juror due to his hesitancy over the death penalty.

Capital Murder - Jury Selection - Question Concerning Impact Of Child As Victim - Not Allowed

State v. Lynch, 340 N.C. 435 (1995) ___ S.E.2d ___

First-Degree Murder Capital Trial Excusal For Cause No Rehabilitation

State v. Alston, 341 N.C. 198 (1995) ___ S.E.2d ___

There was no error in a first-degree murder trial in which capital punishment was sought in the trial court's refusal to afford defendant the opportunity to rehabilitate 15 prospective jurors excused for cause pursuant to *Witherspoon v. Illinois*, 391 U.S. 510.

Capital Trial Jury Selection Parole Question By Prospective Juror Instruction On Meaning Of Life Sentence Not Required

State v. Burr, 341 N.C. 263 (1995) ___ S.E.2d ___

The trial court did not err by failing to instruct a prospective juror, and the jury panel, on the meaning of a life sentence when defense counsel asked the prospective juror if he would be able to consider life imprisonment as an appropriate penalty for first-degree murder, and the juror replied, "is that without privilege of parole?"

Capital Trial Special Venire Excusal And Deferral Of Jurors By District Court No Right To Presence By Defendant

State v. Mccarver, 341 N.C. 364 (1995) ___ S.E.2d ___

First-Degree Murder Jury Selection Whether The Jurors Could Vote For Death No Prejudicial Error

State v. Buckner, 342 N.C. 198 (1995) ___ S.E.2d ___

There was no prejudicial error in a first-degree murder prosecution where the prosecutor asked prospective jurors whether they could return a sentence of death if they found that an aggravating factor existed, that the aggravating factors outweighed the mitigating factors, and that the aggravating factors were sufficiently substantial to call for the imposition of the death penalty.

Capital Murder Jury Selection Juror Unable To Vote For Death Penalty Excusal For Cause

State v. Williams, 343 N.C. 345 (1996) 471 S.E.2d 379

(1) Capital Trial Jury Selection Beliefs About Death Penalty Question Not Improper

(2) Capital Trial Jury Selection Death Penalty Beliefs Ability To Impose Death Penalty Question Not Improper

State v. White, 343 N.C. 378 (1996) 471 S.E.2d 593

(1) Where a prospective juror in a capital trial had indicated that his religious beliefs would impair him from imposing the death penalty, the trial court did not err by allowing the prosecutor to ask the juror, "if [the court] tells you that you should put aside your feelings of that nature and make your decision based solely on the evidence and the law, do you feel that your beliefs, based on your religion, would prevent or substantially impair the performance of your duty regardless of

the instructions of the court?" since the question was fairly worded to elicit a clear statement from the juror as to whether he could temporarily set aside those religious beliefs that prevented him from following the law. (2) The trial court did not abuse its discretion by allowing the prosecutor to ask a prospective juror who had indicated that his religious beliefs would impair him from imposing the death penalty whether he could, if the State met its burden of proof, come back into the courtroom, given his religious beliefs, "and stand up in front of this man and say, 'I sentence you to be executed,'"

Capital Murder Juror Initially Expressing Bias Against Defendant Rehabilitated By Judge

State v. Cole, 343 N.C. 399 (1996) 471 S.E.2d 362

The trial court did not abuse its discretion in a first-degree murder retrial by refusing to excuse a juror who expressed bias against defendant where the juror first responded that he thought defendant was guilty but unambiguously responded after being questioned by the judge that he could put aside his knowledge of the case, that his knowledge of the case would not affect his ability to render a fair and impartial verdict, and that he could base his verdict on the evidence presented at trial.

Capital Trial Jury Selection Prosecutor's Question And Argument Ability To Return Death Penalty "Without Hesitation" No Gross Impropriety

State v. Bates, 343 N.C. 564 (1996) 473 S.E.2d 269

Death Penalty Views Reopening Examination Of Passed Juror

State v. Womble, 343 N.C. 667 (1996) 473 S.E.2d 291

The trial court had "good reason" to permit the State to reopen the examination of a prospective juror it had previously passed where the juror's answer to defense counsel's question regarding his feelings about the death penalty was inconsistent with earlier answers he had given to both the prosecutor and the trial court. N.C.G.S. § 15A-1214(g).

Capital Sentencing Jury Selection Questions By Only One Attorney Statutory Rights Not Violated

State v. Fullwood, 343 N.C. 725 (1996) 472 S.E.2d 883

(1) Capital Murder Jury Selection Whether A Juror Would Stand Up To Other Jurors Attempt To Stake Out Jurors

(2) Capital Murder Jury Selection Question As To Whether Juror Would Make Up His Own Mind Improper

(3) Capital Murder Jury Selection Right Of Juror To Stand By Beliefs Attempt To Stake Out Jurors

(4) Capital Murder Jury Selection Presumption Of Innocence Attempt To Stake Out Jurors

(5) Capital Murder Jury Selection Defendant's Attempt To Define Malice

(6) Capital Murder Jury Selection Whether Juror Could Vote For Sentence Other Than Death

State v. Elliott, 344 N.C. 242 (1996) 475 S.E.2d 202

(2) The trial court did not abuse its discretion during jury selection for a capital first-degree murder prosecution by excluding the question "Will each of you make up your own mind about each and every aspect of this case?" In the context of this portion of defendant's voir dire, the excluded question may have had the tendency to suggest that jurors should make decisions without considering the opinions of other jurors. (4) The trial court did not abuse its discretion during jury selection for a first-degree murder prosecution by preventing defense counsel from asking prospective jurors whether they would "hold to" the presumption of innocence. The question may have suggested that jurors should do so without considering the evidence offered by the State to overcome the presumption; (5) The trial court did not abuse its discretion during jury selection for a capital first-degree murder prosecution by not allowing defendant to explain malice to prospective jurors where defendant's attempt to define malice did not provide the jury with a complete statement of the law. It is well within the discretion of the court to prohibit counsel from instructing prospective jurors on the law during voir dire. (6) The trial court did not err during jury selection for a first-degree murder by disallowing questions asking a prospective juror whether he could think of any situation where he could vote to impose a sentence other than death for first-degree murder.

(1) Ability To Impose Death Sentence On Accessory Not Attempt To "Stake-Out" Jurors

(2) Capital Trial Reopening Examination Of Juror Inaccurate Statement Good Reason Peremptory Challenge

State v. Bond, 345 N.C. 1 (1996) 478 S.E.2d 163

(1) The prosecutor did not improperly attempt to "stake-out" jurors in a capital murder trial by inquiring during voir dire into the ability of prospective jurors to impose a death sentence on a defendant who is an accessory to first-degree murder where the prosecutor informed the prospective jurors that the evidence would show that defendant did not pull the trigger but was an accessory before the fact, and evidence of defendant's status as an accessory was uncontroverted. (2) The trial court did not err by reopening the jury voir dire in a capital trial to allow the prosecution to exercise a peremptory challenge of a prospective juror it had already accepted where the juror told the prosecutor that he had no personal feeling concerning the death penalty but later told defense counsel that he personally could not support a death sentence, since the prospective juror could reasonably have been deemed to have made at least one incorrect statement within the meaning of N.C.G.S. § 15A-1214 (g); even assuming that equivocation as to capital punishment did not constitute inaccuracy, such equivocation itself qualified as "good reason" to reopen voir dire within the purview of § 15A-1214 (g). Once the trial court reopened the examination of the juror, the parties had an absolute right to exercise any remaining peremptory challenges to excuse such juror.

(1) Capital Murder Jury Selection Questions About Parole Denied

(2) Capital Murder Jury Selection Only One Attorney Allowed To Question Juror

(3) Capital Murder Special Venire Summoned Excusals On Statutory Grounds Defendant's Presence

State v. Geddie, 345 N.C. 73 (1996) 478 S.E.2d 146

(1) The trial court did not err in a first-degree murder prosecution by denying defendant's motion to question venire members about their understanding of the parole eligibility of persons sentenced to life imprisonment. (3) There was no error in a capital first-degree murder prosecution where the trial court instructed the clerk to summon additional jurors after trial commenced; summonses were issued to forty additional persons; a third summons subsequently was issued to sixty additional persons; and prospective jurors from the first two jury selection listings appeared before various district court judges pursuant to N.C.G.S. § 9-6 to seek excusals or deferrals on statutory grounds. Nothing in the record supports defendant's contention that the special venire members knew they were being summoned specifically for this case and, assuming that the venire was a special venire but that the regular form summons was used, there is no authority for the proposition that the commencement of defendant's trial dates back to the date a summons for a special venire was issued. ***Error has been found in excusing members of a special venire outside of a defendant's presence only when the excusals occurred after the case had been called for trial and the record here indicates that all excusals and deferrals occurred pretrial or in defendant's presence after the trial began.***

Capital Murder Jury Selection Motion For Individual Voir Dire Denied

State v. Barnes, 345 N.C. 184 (1997) ___ S.E.2d ___

First-Degree Murder - Juror's Request To Be Replaced - Denied

State v. Julian, 345 N.C. 608 (1997)

The trial court did not abuse its discretion in a capital first-degree murder prosecution (with a life sentence) by not declaring a mistrial and by not individually questioning a juror about her fitness to continue jury service after the juror requested that she be relieved of her jury duties, stating that she was emotionally distraught and physically ill and that she was ". . . not able to handle someone's fate being in her hands." The trial court properly admonished the jurors not to surrender their honest convictions and there is no indication that the court's instructions were not followed. There is no indication that the juror's ability to be impartial was impaired and defendant has not shown that he did not receive the treatment that the law requires; thus, neither prejudice nor abuse of discretion has been shown.

(1) Jury Selection - Refusal To Impose Death Penalty - Challenge For Cause

(2) Jury Selection - Position On Death Penalty - Challenge For Cause - Rehabilitation Not Allowed

State v. Cummings, 346 N.C. 291 (1997)

(1) The trial court did not err during jury selection for a capital first-degree murder prosecution by excluding a prospective juror for cause when the prospective juror stated that he would follow the capital sentencing scheme but would choose life imprisonment over death. (2) The trial court did not err in a capital murder prosecution by refusing to allow defendant the opportunity to rehabilitate a prospective juror on capital sentencing where the juror had clearly stated his position on the death penalty, the court extensively questioned the juror concerning his beliefs about the death penalty, and defendant failed to show that any further questioning on his part would have resulted in a different answer.

Capital Resentencing - Reopening Voir Dire - Peremptory Challenge - No Error

State v. Holden, 346 N.C. 404 (1997)

The trial court did not abuse its discretion in a capital resentencing hearing by reopening voir dire after the jury was impaneled and permitting the State to exercise a peremptory challenge where the prosecutor informed the court after the

close of all the evidence that he had learned from "an officer of the court" that a juror had in the last few years presented an argument against the death penalty; the juror was brought into the courtroom for questioning and stated that she currently believed that some people should receive the death penalty, that she had never stated that the death penalty was not being fairly administered or that the death penalty should not be imposed, and that her responses on voir dire were correct; and the trial court declined to excuse the juror for cause but the prosecutor exercised one of his remaining peremptory challenges. The information provided by the prosecutor established good reason to reopen voir dire to inquire into whether the juror made the statements attributed to her, whether she continued to hold these beliefs and whether her beliefs would prevent or substantially impair the performance of her duties as a juror. While not addressed by statute, this Court has held that the trial court may reopen the examination of a juror after the jury is impaneled and that this decision is within the sound discretion of the trial court. *State v. McLamb*, 313 N.C. 572, 575-76, 330 S.E.2d 476, 479 (1985); *State v. Kirkman*, 293 N.C. 447, 452-54, 238 S.E.2d 456, 459-60 (1977). "[O]nce the trial court reopens the examination of a juror, each party has the absolute right to exercise any remaining peremptory challenges to excuse such a juror." *Womble*, 343 N.C. at 678, 473 S.E.2d at 297.

(1) Capital Murder - Bench Conferences - Potential Jurors Excused Or Deferred - No Error

(2) Capital Murder - Jury Selection - Parole - Defendant Not Allowed To Question Prospective Jurors

State v. Neal, 346 N.C. 608 (1997)

(1) There was no error in a capital first-degree murder prosecution where potential jurors were excused or deferred during bench conferences, all but one of which were recorded. **The conferences were held in the presence of counsel for defendant and the State and defendant was present in the courtroom.** It does not appear that defendant's presence would have had a relation, reasonably substantial, to the fullness of his opportunity to defend, such that his absence thwarted the fairness and justness of his trial. The facts in *State v. Buchanan*, 330 N.C. 202 substantially overlap with the facts in this case. (2) There was no error in a capital first-degree murder prosecution in the denial of defendant's request to ask prospective jurors about their understanding of a sentence of life without parole. The North Carolina Supreme Court has consistently decided this issue against defendant's position and the United States Supreme Court has never held that a defendant has a constitutional right to pose this question to prospective jurors. *Simmons v. South Carolina*, 512 U.S. 154, held that the trial court must inform the jury that the sentence of life imprisonment carries with it no possibility of parole where the State argues for the death penalty on the premise that the defendant will be dangerous in the future; that issue was not the basis of the State's argument for the death penalty in this case. Finally, the trial court complied

precisely with the provisions of N.C.G.S. § 15A-2002, which provides that the judge shall instruct the jury that a sentence of life imprisonment means life without parole, and there is nothing in the record demonstrating that the jurors did not believe the trial court or follow its instructions. Furthermore, defendant's attorneys repeatedly told the jury that a sentence of life without parole would confine the defendant to a prison cell for the remainder of his life.

Capital Murder - Jury Selection - Leading Questions - No Error

State v. Gray, 347 N.C. 143 (1997)

The trial court did not err in a capital first-degree murder prosecution in allowing the State to use leading questions during the jury voir dire. Although leading questions should not in most cases be used when testimony is being offered to a jury, it is not error to allow such questions at voir dire.

Jury Selection - Question Concerning Prior Murder - Uncontroverted Facts - Impermissible Stake-Out

State v. Richmond, 347 N.C. 412 (1998)

The trial court did not err in a capital prosecution for three counts of first-degree murder and one count of first-degree rape by refusing to allow defendant to ask prospective jurors whether they would be able to consider mitigating circumstances and impose a life sentence after being informed that defendant had been previously convicted of first-degree murder. An almost identical question was presented in *State v. Robinson, 339 N.C. 263*, where it was held to be an improper attempt to stake out the jurors. It is not permissible to ask a prospective juror how a certain set of facts would affect his or her decision and a stake out question is not made permissible simply because it is predicated on a set of facts that is cast as uncontroverted rather than hypothetical. Language in *State v. Bond, 345 N.C. 1*, should not be construed to allow any or all voir dire questions premised on uncontroverted facts, regardless of their tendency to stake out or indoctrinate jurors. Furthermore, *Morgan v. Illinois, 504 U.S. 719*, does not require that a defendant be allowed to ask stake out questions. The trial court here properly refused to allow questioning about defendant's prior first-degree murder conviction, while allowing defendant to ask prospective jurors whether they would be able to consider all aggravating and mitigating circumstances.

(1) Capital Trial - Jury Voir Dire - Beliefs About Parole - Questions Not Permitted

(2) Peremptory Challenge - Racial Discrimination - Insufficient Showing

State v. Smith, 347 N.C. 453 (1998)

(1) The trial court in a capital sentencing proceeding did not err by refusing to allow defendant to inquire, during jury selection, into the prospective jurors' attitudes and beliefs about parole where defendant was sentenced under the scheme in which the sentencing alternative to the death penalty is life in prison without parole, and the trial court instructed the jurors in accordance with N.C.G.S. § 15A-2002 that "if you recommend a sentence of life imprisonment, the Court will impose a sentence of life imprisonment without parole." (2) Defendant's showing that he is black and that the State peremptorily struck one black prospective juror was insufficient to establish a prima facie case of racial discrimination.

Capital Case - Jury Voir Dire - Finding Of Particular Aggravating Circumstance - Vote For Death Penalty - Improper Stake-Out Question

State v. Fletcher, 348 N.C. 292 (1998)

Defense counsel's question to a prospective juror in a capital trial as to whether the juror would automatically vote for the death penalty if the jury found the especially heinous, atrocious or cruel aggravating circumstance was an inappropriate stakeout question. Even if defense counsel's question were held to be a proper attempt under *Morgan v. Illinois, 504 U.S. 719*, to determine whether this juror would automatically vote for the death penalty without regard for mitigating circumstances, defendant was not prejudiced by the exclusion of this question where the trial court allowed defendant's challenge for cause to remove the juror after subsequent questioning exposed the juror's inability to be impartial and consider mitigating circumstances.

Jury Selection - Death Penalty Views - Conflicting Responses - Excusal For Cause

State v. Hoffman, 349 N.C. 167 (1998)

The trial court did not abuse its discretion in excusing a prospective juror for cause in a capital sentencing proceeding based upon her death penalty views where she gave conflicting responses to voir dire questions in that she stated on numerous occasions that she did not believe in the death penalty, that she could not consider the death penalty as an appropriate punishment, and that her views would substantially impair the performance of her duties as a juror, but she also stated that she could set aside her views and consider death as a possible punishment.

(1) Capital Trial - Jury Selection - Questions By Only One Attorney

(2) Capital Trial - Jury Selection - Ability To Write And Announce Death - Questions Not Improper

State v. Call, 349 N.C. 382 (1998)

(1) The trial court may properly allow only one of a capital defendant's attorneys to question jurors during voir dire where the court does not preclude the attorneys from consulting or communicating with one another. (2) The prosecutor in a capital case was not improperly permitted to ask prospective jurors whether they could write the word "death" on the recommendation form and could announce their verdict of death in open court, although only the jury foreperson would be required to sign the verdict form and announce the verdict, since the questions legitimately sought to determine the jurors' ability to carry out their duties in defendant's capital trial.

Jury Selection - Denial Of Individual Voir Dire

State v. Trull, 349 N.C. 428 (1998)

The trial court did not err in denying defendant's motion for individual voir dire of prospective jurors on the ground that the collective voir dire exposed jurors who sat on defendant's jury to statements of other prospective jurors that they could not be fair and impartial as the result of pretrial publicity where defendant failed to show in what manner collective voir dire tainted the jurors who were seated; the parties were careful not to elicit specific information or opinions in the presence of other prospective jurors; and on several occasions, the trial court did in fact permit both sides to conduct individual voir dire to protect against the prejudice defendant now claims occurred in his case.

First-Degree Murder - Jurors' Understanding Of Life Imprisonment

State v. Morganherring, 350 N.C. 701 (1999)

The trial court correctly denied defendant's pretrial motion to question jurors about their understanding of life imprisonment where defense counsel admitted at the pretrial hearing that the statute allowing in capital cases an instruction that a sentence of life imprisonment means life without parole took effect after the crimes in the instant case.

(1) Capital Trial - Jury Selection - Opposition To Death Penalty - Challenge For Cause - Denial Of Rehabilitation Attempt

(2) Capital Trial - Jury Selection - Strong Enough To Impose Death Penalty - Not Improper Stakeout Question

State v. Fleming, 350 N.C. 109 (1999)

(1) The trial court did not abuse its discretion in denying defendant's request to attempt to rehabilitate two prospective jurors challenged by the State for cause based upon their opposition to the death penalty where both jurors unequivocally

stated that they could not recommend the death penalty under any circumstances. (2) The prosecutor's questions to prospective jurors in a capital trial as to whether they were "strong enough" to recommend and impose the death penalty was not an improper "stake-out" question. Use of the term "strong enough" was not an impermissible inquiry as to the kind of verdict the prospective jurors would render or how they would be inclined to vote on a given state of facts.

(1) Capital Trial - Jury Selection - Female Defendant - Questions Not Inappropriate

(2) Capital Trial - Jury Selection - Church Membership - Questions Inappropriate

State v. Anderson, 350 N.C. 152 (1999)

(1) The trial court did not err in a capital prosecution for first-degree murder by allowing the prosecutor to ask prospective jurors, "Would the fact that the defendant is a female in any way affect your deliberations with regard to the death penalty?" An inquiry into the possible sensitivities of prospective jurors toward a female defendant facing the death penalty was not an inappropriate effort to ferret out any prejudice arising from defendant's gender. (2) The trial court did not abuse its discretion during jury selection for a capital first-degree murder prosecution by sustaining objections to defendant's questions concerning church membership and whether church members ever expressed opinions about the death penalty. Defendant's questions did not make an appropriate inquiry regarding the prospective jurors' religious beliefs or their ability to impose the death penalty or a life sentence.

(1) Voir Dire - Knowledge Of Case - Question Not Improper Stake-Out - Waiver

(2) Voir Dire - Outline Of Felony Murder - Not Inadequate Statement Of Law

State v. Nobles, 131 N.C. 483 (1999)

(1) In a prosecution for first-degree murder and discharging a firearm into occupied property, the prosecutor's question to prospective jurors as to whether they knew or had read anything about the case which informed the jurors that the vehicle into which defendant fired was occupied by defendant's wife and three small children was not an improper stake-out question. Further, defendant waived his right to complain on appeal about the prosecutor's mention of the fact that defendant's three children were in the vehicle at the time of the shooting by failing to object during trial. (2) The prosecutor's questions to prospective jurors in which he defined felony murder as a killing which occurs during the commission of a violent felony, such as discharging a firearm into an occupied vehicle, did not constitute inaccurate or inadequate statements of the law because they failed to inform the jurors of the State's burden of proving that defendant knew the vehicle was occupied since the prosecutor never intended to list any elements of the offense, and defendant never requested that he do so. Moreover, defendant

suffered no harm from the prosecutor's substitution of "vehicle" for "property" when using the crime as a sample felony.

Capital Sentencing - Jury Selection - Questions - Acting In Concert, Aiding And Abetting, Felony Murder - Not Improper Stake-Out

State v. Cheek, 351 N.C. 48 (1999)

The State was not improperly permitted to "stake-out" prospective jurors in this capital case and bias them in favor of a sentencing decision of death by asking those jurors questions regarding their abilities to follow the law on acting in concert, aiding and abetting, and the felony murder rule where the State's questions contained an accurate summary of the law, the State merely asked whether the prospective jurors would be able to follow the law, and nothing in the record suggests that the State was inquiring how a prospective juror would be inclined to vote under a given set of facts.

Defendant's Conviction Of Another Murder - Knowledge By Prospective Jurors - Refusal To Excuse

State v. Sokolowski, 351 N.C. 137 (1999)

The trial court did not abuse its discretion in refusing to excuse five prospective jurors for cause in this first-degree murder prosecution because they had some knowledge, through news media accounts, of defendant's conviction of another murder which was connected to the murder of this victim by a common plan or scheme where each of the five jurors said that he or she could set aside knowledge of defendant's prior murder conviction and decide guilt or innocence based solely on the evidence presented at trial, and the record provides no basis for a conclusion that any juror based his or her decision upon pretrial information.