

Jury Misconduct

Trial Judge Erred by Failing to Grant Defendant's Request to Remove Juror With Remaining Peremptory Challenge After Judge Had Reopened Jury Voir Dire

State v. Thomas, ___ N.C. App. ___, 673 S.E.2d 372 (3 March 2009).

After the jury was impaneled and the trial had begun, the trial judge learned that one of the seated jurors had attempted to contact an employee in the district attorney's office before impanelment. Voir dire was reopened, the trial judge questioned the juror, and allowed the parties to do so as well. The judge did not allow the defendant to remove the juror with a remaining peremptory challenge. The court ruled that the judge erred under *State v. Holden*, 364 N.C. 404 (1997) (once trial judge reopens examination of a juror, each party has absolute right to exercise any remaining peremptory challenges to excuse juror).

Criminal Law_jurors praying during recess_motion for appropriate relief denied

State v. Elliott, 360 NC 400 (2006)

The trial court did not err by denying a first-degree murder defendant's motion for appropriate relief that was based upon two jurors praying together in the lobby during a recess. There is nothing to indicate a discussion or deliberation of any kind, and no evidence that the jurors talked about the case during the recess. Moreover, even if there was misconduct, defendant presented only newspaper accounts and did not present affidavits from potential witnesses, so that there was insufficient documentary evidence to show the required prejudice.

Criminal Law_alleged juror misconduct_motion for appropriate relief denied

State v. Elliott, 360 NC 400 (2006)

There was no abuse of discretion in the denial of an evidentiary hearing on a motion for appropriate relief arising from alleged juror misconduct. A defendant is not entitled to an evidentiary hearing on a motion for appropriate relief that merely asserts constitutional violations; defendant here did not make an adequate threshold showing of juror misconduct; and defendant did not allege any of the limited matters about which jurors can testify to impeach a verdict, so that none of the jurors defendant proposed to call as witnesses would have been allowed to testify.

Jury--deliberations--jury's note--juror not following law

State v. Coleman, 161 NCA 224 (2003)

The trial court did not err in an armed robbery and felony murder case by failing to make further inquiry on the second day of jury deliberation after receiving a note from the jury alleging that one juror was not following the law and requesting that the juror at issue be replaced, because: (1) the trial court informed the jury that the juror could not be replaced and instructed the jury as to its duty to follow the law; (2) defendant did not object to the trial court's instruction to the jury regarding the jury's note, did not request a mistrial, and did not ask the court to make an inquiry; (3) defendant opposed the State's suggestion that an alternate juror be seated to replace the challenged juror; and (4) it was within the discretion of the trial court to determine whether an inquiry was necessitated by the note from the jury, and there was no obligation to investigate further based on the ambiguity of the note's allegation and the corrective measure taken by the trial court in its subsequent instruction.

Constitutional Law; Jury--trial by twelve person jury--seating of alternate juror

State v. Hardin, 161 NCA 530 (2003)

A defendant was entitled to a new trial where a juror was replaced by an alternate juror after deliberations were begun, which resulted in a verdict by more than twelve people. N.C. Const. art. I, § 24.

Jury--allegations of juror misconduct--anonymous telephone call

State v. Aldridge, 139 N.C. App. 706 (2000)

The trial court did not abuse its discretion in a first-degree murder case by refusing to conduct an inquiry into an alleged incident of possible juror misconduct based solely on an anonymous telephone call, because an examination of the juror involved in alleged misconduct is not always required, especially where the allegation is nebulous or where the witness did not overhear the juror or third party talk about the case.