

JURY VERDICT

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- I. Introduction.** Absent a waiver of the right to a jury trial, a criminal defendant has a right to be tried by a jury of twelve, whose verdict must be unanimous. G.S. 15A-1201(a); see *also* G.S. 15A-1237(b); N.C. CONST. art. I, § 24; see *generally* *Ramos v. Louisiana*, 590 U.S. 83 (2020) (Sixth Amendment requires unanimous jury verdict to convict criminal defendant of serious offense in federal and state courts); *State v. Bradley*, 181 N.C. App. 557, 561-62 (2007) (“The North Carolina Constitution and the North Carolina General Statutes both require an unanimous verdict in a criminal jury trial.” (citation omitted)). This section addresses issues related to the jury verdict in non-capital cases.

For issues related to a hung jury, see [Jury Deadlock](#), in this Benchbook. Note that errors affecting verdict unanimity can occur if a trial court instructs a juror outside the presence of all other members of the jury or if a juror is substituted after deliberations have begun. These errors are discussed in [Jury Review of Evidence](#) and [Jury Misconduct](#). For additional discussion of jury verdict issues, see JULIE RAMSEUR LEWIS AND JOHN RUBIN, NORTH CAROLINA DEFENDER MANUAL VOL. 2 TRIAL Ch. 24 ([Right to Jury](#)) & 34 ([Deliberations and Verdict](#)) (2020) and NORTH CAROLINA PROSECUTORS RESOURCE ONLINE, § 242.2 (Jury Verdict: Unanimity, Inconsistency & Challenges), available at <https://ncpro.sog.unc.edu/manual/242-2>.

II. Form of The Verdict.

A. Generally.

G.S. 15A-1237 requires that the verdict be:

- in writing,
- signed by the foreman,
- unanimous,
- returned by the jury in open court, and
- made a part of the record of the case.

Notwithstanding the statutory language, at least one case has held that a verdict was not invalid where the foreperson failed to sign it. *State v. Collins*, 50 N.C. App. 155, 160 (1980) (notwithstanding this defect, the court found that the verdict sheet “substantially answers the issue so as to permit the trial judge to pass judgment in accordance with the manifest intention of the jury” and was properly received and recorded). A conviction will not be invalidated where the record shows that a verdict was properly returned in open court but the verdict sheet is subsequently lost and is absent from the record. *State v. Simmons*, 165 N.C. App. 685, 689 (2004) (“[T]here is sufficient information in the record to determine the crime of which defendant was convicted. Accordingly, we hold that defendant's conviction is valid despite the absence of a verdict sheet in the record.”).

Although there is no required form for a verdict sheet, some judges use this format in the body of the verdict form:

We, the jury, return as our unanimous verdict that the defendant is:

(1) Guilty of [name crime]. _____

OR

(2) Not guilty of [name crime]. _____

Although other forms are acceptable, the trial judge should avoid using a form that asks the jury to answer whether the defendant is guilty of the charged offense, without providing a “not guilty” option. *State v. Hicks*, 86 N.C. App. 36, 43 (1987) (verdict form asked whether the defendant was guilty of the charged crimes and provided a space for the jury to answer; although the form of the verdict sheet “is not preferred and the use of ‘not guilty’ on the verdict sheet is preferred,” no prejudice occurred under the circumstances). A verdict sheet is defective if it does not require the jury to make an ultimate finding regarding the defendant’s guilt. *State v. Douglas*, 197 N.C. App. 215, 220 (2009) (new trial ordered where verdict sheet required jury to make findings on elements of charged crimes but not a finding of guilt). While it is best practice to include the name of the charged crime on the verdict sheet (e.g., assault with a deadly weapon), precision has not been required in this respect. *State v. Connard*, 81 N.C. App. 327, 335-36 (1986) (in a felonious possession of stolen goods case, the verdict was not defective where the jurors found the defendant “Guilty of Possession of Personal Property of Ronald Hewitt”), *aff’d*, 319 N.C. 392 (1987) (per curiam). There is no requirement that the written verdict state every element of the charged offense. *Connard*, 81 N.C. App. at 335-36; see also *State v. Sanderson*, 62 N.C. App. 520, 524 (1983); *State v. Partin*, 48 N.C. App. 274, 284 (1980). For issues regarding special verdicts, see Section II.C.

- B. Insanity.** When insanity is raised as a defense and the jurors find the defendant not guilty on this basis, “their verdict must so state.” G.S. 15A-1237(c); see also *State v. Linville*, 300 N.C. 135, 139 (1980). This is required so “that appropriate mental treatment can be accorded to the defendant through proceedings for commitment of defendant to an institution for psychiatric or other care.” *Linville*, 300 N.C. at 139. As to the form of such a verdict sheet, the North Carolina Supreme Court has instructed:

[I]n cases where the evidence justifies instructions on the defense of insanity, a Special Issue can be submitted as the last issue as follows:

Special Issue: Did you find defendant not guilty because you were satisfied that he was insane?

An affirmative answer to this issue would place upon the record the information necessary for the trial judge to institute commitment procedures pursuant to G.S. 15A-1321.

Id. at 141-42. That court has further instructed:

The submission of a Special Issue as the last issue, presupposes a correct instruction to the jury on defendant's defense of insanity for the return of its general verdict. The jury should be instructed, of course, that it will not consider the Special Issue unless it has returned a general verdict of not guilty. However, in the event of a general verdict of not guilty, the jury must clarify for the record whether its general verdict of not guilty was or was not based upon its satisfaction that defendant was insane. Of course, the reason for a verdict of not guilty rendered for a reason other than insanity need not be specified.

Id. Pattern Jury Instruction N.C.P.I. – Crim. 304.10 is designed to conform to these requirements.

- C. Special Verdicts.** A general verdict is one in which the jury finds the defendant guilty or not guilty of the crime charged. In a special verdict, by contrast, the jury is asked to answer specific factual questions. *See generally* State v. Blackwell, 361 N.C. 41, 46-47 (2006). A verdict by which the jury makes findings on the essential elements of an offense without returning a general verdict on the defendant's guilt is referred to as a "true" special verdict and is prohibited on grounds that it violates a defendant's Sixth Amendment right to a jury trial. *Id.* at 47 (so stating); *see also* State v. Douglas, 197 N.C. App. 215, 217-20 (2009) (in this drug case the jury was asked only: "Did the defendant possess cocaine, a controlled substance, with the intent to sell or deliver it?" and "Did [t]he defendant sell cocaine, a controlled substance, to Officer Eugene Ramos?"; the verdict form did not contain a designation for entering a verdict of guilty or not guilty and thus the defendant's constitutional rights were violated; new trial).

Notwithstanding the prohibition on "true" special verdicts, other types of special verdicts sometimes are necessary or advisable and have been approved by the North Carolina courts. *Blackwell*, 361 N.C. at 47 ("it is well-settled . . . that special verdicts are permissible in criminal cases" (quotation omitted)). The following sections discuss some common situations, excluding bifurcated proceedings such as habitual felon determinations, where a special verdict is necessary or advisable.

1. **Contested Jurisdiction.** The court of appeals has instructed that when jurisdiction is contested, the trial court *must* use a special verdict:

If the trial court preliminarily determines that sufficient evidence exists from which a jury could find beyond a reasonable doubt that the crime was committed in North Carolina, the court is obligated to instruct the jury that unless the State has satisfied it beyond a reasonable doubt that the crime occurred in North Carolina, a verdict of not guilty should be returned. The trial court should also instruct the jury that if it is not so satisfied, it must return a special verdict indicating a lack of jurisdiction. Failure to charge the jury in this manner is reversible error and warrants a new trial.

State v. Bright, 131 N.C. App. 57, 62-63 (1998) (new trial) quotations and citations omitted)). N.C.P.I. – Crim. 311.10 provides a jury instruction and a special verdict form that may be used when jurisdiction is contested.

2. **Aggravating Factors and Sentence Enhancements.** Under *Blakely v. Washington*, 542 U.S. 296 (2004), unless pleaded to by a defendant, any fact other than a prior conviction that increases punishment beyond the prescribed statutory maximum must be proved to a jury beyond a reasonable doubt. A special verdict often is needed for such facts, including, for example, aggravating factors for purposes of structured sentencing; aggravating factors for impaired driving sentencing; and the firearm, bullet-proof vest, or criminal gang activity sentencing enhancements for certain felonies. The pattern jury instructions provide sample forms for many of these situations. See N.C.P.I. – Crim. 204.10 (firearm enhancement under G.S. 15A-1340.16A); N.C.P.I. – Crim. 204.15 (bullet-proof vest enhancement under G.S. 15A-1340.16C); N.C.P.I. – Crim. 204.20 (LWOP for second or subsequent conviction of Class B1 felony if victim is 13 or younger and no mitigating factors under G.S. 15A-1340.16B); N.C.P.I. – Crim. 204.25 (aggravating factors for structured sentencing under G.S. 15A-1340.16); N.C.P.I. – Crim. 204.30 (aggravating factors for rape of a child); N.C.P.I. – Crim. 204.35 (aggravating factors for sexual offense with a child); N.C.P.I. – Crim. 270.15, .15A (aggravating factors for impaired driving sentencing).
3. **Statutory Amendment.** Sometimes statutes are amended during the course of a defendant's alleged ongoing criminal conduct. If such an amendment lessens the State's burden of proof or reclassifies the punishment level for an offense, a special verdict will be required to ensure that the defendant's conduct is covered by the amended statute. See, e.g., State v. Williams, 226 N.C. App. 393, 401 (2013) (plain error occurred where the trial court instructed the jury under an amended stalking statute that lessened the State's burden of proof and no special verdict was used to find that some portion of the defendant's continuing course of conduct occurred after the effective date of the amended statute); State v. Demick, 288 N.C. App. 415, 427 (2023) (where there was evidence that defendant's conduct occurred before and after a statutory reclassification of felony child abuse, general guilty verdict was ambiguous for purpose of sentencing and defendant was entitled to be sentenced at lower of two possible classifications; distinguishing facts at hand from situation where evidence at trial conclusively establishes date offense occurred).

4. **Theories Affecting Punishment.** For some offenses, the underlying theory of the offense affects punishment and therefore a special verdict is needed to properly sentence the defendant. For example, consider a first-degree murder case where the defendant is charged with (1) first-degree murder based on felony murder and premeditation and deliberation and (2) the underlying felony supporting the felony murder charge. In this scenario, a special verdict is necessary to ensure that the defendant is properly sentenced. *State v. Goodman*, 298 N.C. 1, 15 (1979) (explaining: “If defendant were found guilty of first-degree murder solely by virtue of the felony-murder rule, the court would be precluded from imposing upon him additional punishment for the underlying felony; if defendant were found guilty of first-degree murder pursuant to premeditation and deliberation, and if the jury also found him guilty on one or more other felony charges, the court would not be so precluded. Thus, it was appropriate that the court determine the basis of the jury’s verdict so that defendant might be properly sentenced.”).

Another example of this situation is second-degree murder, an offense that is classified as a Class B2 rather than Class B1 felony when the malice element is satisfied solely by so-called “depraved heart malice.” See G.S. 14-17(b). In a second-degree murder case where there is evidence that could support either the Class B2 or B1 versions of the offense and the jury is instructed on both theories, a general verdict of guilty is ambiguous for sentencing purposes and a special verdict requiring the jury to specify the malice theory supporting its verdict is advised. See *State v. Lail*, 251 N.C. App. 463, 475 (2016) (so advising trial courts); *State v. Mosley*, 256 N.C. App. 148, 153 (2017) (citing *Lail*, vacating Class B1 second-degree murder sentence, and remanding for resentencing as a Class B2 offense where trial court did not present jury with special verdict form to specify theory of malice). See also Shea Denning, [State v. Mosley, Murder, and Depraved Heart Malice](#), N.C. CRIM. L., UNC SCH. OF GOV’T BLOG (Oct. 25, 2017). The pattern jury instructions for first-degree and second-degree murder include sample language for special verdicts applicable to the situations discussed here. See also N.C.P.I. – Crim. 202.30 (providing special verdict for accessory before the fact theory of offense, a theory that affects punishment for first-degree murder).

While a special verdict specifying the theory of an offense sometimes is needed for purposes of sentencing, a trial court may not take partial verdicts as to multiple theories of a crime. For example, in a first-degree murder case predicated on theories of felony murder, lying in wait, and premeditation and deliberation, it is error to accept guilty verdicts on the first two theories and to instruct the jury to continue deliberating on the third. *State v. Sargeant*, 365 N.C. 58, 62 (2011). See also *State v. Greenfield*, 375 N.C. 434, 447 (2020) (reversible error for trial court to require jury to “continue deliberations on first-degree murder under the theory of premeditation and deliberation after accepting a partial verdict on first-degree murder under the felony murder rule” because this procedure could have resulted in an improper verdict considering the facts and jury instructions). The pattern jury instructions for first-degree and second-degree murder serve as examples of how to avoid this error as they first require the jury to reach a general verdict as

to the defendant's guilt prior to requiring the jury to specify the theory underlying a general verdict of guilty.

Note that while a jury's failure to specify an underlying theory of offense through a special verdict may render the verdict ambiguous for sentencing purposes, such a failure does not cause the jury's general guilty verdict to be constitutionally infirm for lack of unanimity. See *State v. Demick*, 288 N.C. App. 415, 425-26 (explaining North Carolina case law on this issue); *Mosley*, 256 N.C. App. at 153-54 (remanding for resentencing on unanimous second-degree murder verdict that was ambiguous for sentencing purposes for lack of special verdict on underlying theory).

- D. Multiple Defendants.** "If there are two or more defendants, the jury must return a separate verdict with respect to each defendant." G.S. 15A-1237(d). "If the jury agrees upon a verdict for one defendant but not another, it must return that verdict on which it agrees." *Id.* When this occurs, the trial court should take the verdict as to the first defendant and declare a deadlock as to the second defendant at one time. See *State v. Sargeant*, 206 N.C. App. 1, 14 (noting concerns raised with partial verdicts on other contexts), *aff'd as modified*, 365 N.C. 58 (2011); see also [Jury Deadlock](#).
- E. Multiple Charges & Lesser-Included Offenses.** If there are two or more offenses for which the jury could return a verdict, it may return a verdict with respect to any offense, including a lesser-included offense on which the judge charged, and to which the jury agrees. G.S. 15A-1237(e). Subject to the general requirements discussed above in Section II. A., the trial court has discretion as to how to present lesser included offenses on the verdict sheet. See NORTH CAROLINA PROSECUTORS RESOURCE ONLINE, § 242.1 (Jury Verdict: Requirements and Types), available at <https://ncpro.sog.unc.edu/manual/242-1> (providing an example of how lesser included offenses may be presented on a verdict sheet). North Carolina has rejected an "acquit first" instruction, which requires the jury to unanimously agree to find the defendant not guilty of a greater charge before considering a lesser-included offense. *State v. Mays*, 158 N.C. App. 563, 569-78 (2003) (in response to jury's indication that it was deadlocked on first-degree murder, it was error for the trial court to give the jurors an "acquit first" instruction, telling them that they could not consider second-degree murder unless they had first unanimously decided to acquit the defendant of first-degree murder; noting that acquit first instructions can coerce a verdict and concluding that the legislature rejected such an approach when it enacted G.S. 15A-1237(e)).
- If the jury is unable to reach a verdict as to any of the charges, the trial court should take the verdicts on which the jury agrees and, at the same time, declare deadlock as to the other charges. See *State v. Sargeant*, 206 N.C. App. 1, 14 (noting concerns raised in taking partial verdicts, whether as to lesser-included offenses or to individual charges of a multiple count indictment), *aff'd as modified*, 365 N.C. 58 (2011); see also [Jury Deadlock](#).
- F. Alternative Elements or Acts.** Some criminal offenses include alternative elements or a single element defined such that it may be satisfied by alternative acts. For example, a person commits the offense of impaired driving if he or she

drives a vehicle while under the influence of an impairing substance, after having consumed sufficient alcohol to have an alcohol concentration of at least 0.08, or with any amount of a Schedule I controlled substance in his or her blood or urine. G.S. 20-138.1. For such offenses, the trial court may instruct the jury disjunctively on any alternative elements or acts sufficiently supported by the evidence and the jury may return a general guilty verdict without specifying the particular element or act the defendant performed. *State v. Oliver*, 343 N.C. 202, 215 (1996) (holding that no constitutional unanimity issue occurred in an impaired driving case even if some jurors found defendant was under the influence of an impairing substance while other jurors found defendant's alcohol concentration was at least 0.08). Appellate cases analyzing jury unanimity where a single offense may be proved by alternative elements or acts include *State v. Dick*, 370 N.C. 305 (2017) (first-degree sexual offense), *State v. Walters*, 368 N.C. 749, 754 (2016) (first-degree kidnapping), *State v. Taylor*, 362 N.C. 514, 541 (2008) (felony murder); *State v. Lotharp*, 356 N.C. 420 (2002) (assault with a deadly weapon), *State v. Hartness*, 326 N.C. 561, 567 (1990) (indecent liberties), *State v. Juran*, 294 N.C. App. 81, 90 (2024) (assault on an emergency personnel); *State v. Patton*, 290 N.C. App. 111, 124 (2023) (interfering with a witness); and *State v. Crockett*, 238 N.C. App. 96, 109 (2014) (failure to register as sex offender), *aff'd on other grounds*, 368 N.C. 717 (2016). See also *State v. Applewhite*, 386 N.C. 431 (human trafficking, though jury unanimity was not directly at issue); Jeff Welty, [Unanimity and Felony Murder](#), N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Nov. 16, 2011) (discussing situations where it may be desirable, though not necessary for unanimity, to take a special verdict on the specific felony serving as the predicate for felony murder). As discussed above in Section II.C.4., for some offenses it may be necessary for a jury returning a general guilty verdict to also return a special verdict specifying the underlying theory of the offense for sentencing purposes. That sentencing issue is distinct from the constitutional unanimity principle discussed here.

A different situation occurs when alternative acts constitute distinct elements of separate closely related criminal offenses. For example, a person commits the offense of trafficking marijuana by possession and the separate offense of trafficking marijuana by transportation if he or she both possesses and transports a single trafficking quantity of marijuana. For these offenses, it is possible for a jury's verdict to be fatally ambiguous as to unanimity if the trial court uses a disjunctive instruction on the distinct elements and the verdict sheet is unclear as to the offense for which the jury has returned a verdict of guilty. *State v. Diaz*, 371 N.C. 545, 554 (1986) (verdict was fatally ambiguous where trial court instructed jury that it could find the defendant guilty of "trafficking in marijuana" if it found that the defendant "knowingly possessed or knowingly transported" a trafficking quantity and the jury returned a verdict of "guilty as charged"); see also *State v. Lyons*, 330 N.C. 298 (1991) (secret assault verdict was fatally ambiguous where trial court used disjunctive instruction as to two possible victims). This type of error can be avoided in cases involving closely related offenses by using the pattern jury instructions and following the best practice suggested above in Section II.A. of specifically naming charged crimes on the written verdict sheet. See, e.g., N.C.P.I. – Crim. 260.17 and 260.30 (providing separate instructions for the offenses of drug trafficking by possession and drug trafficking by transportation); N.C.P.I. – Crim. 101.35 (concluding instruction styled such that jurors are instructed that they must agree upon

“unanimous verdicts as to each charge” in cases involving more than one charged offense).

- G. Inconsistent, Contradictory, & Mutually Exclusive Verdicts.** In some cases, the jury will return a verdict that seems inconsistent. For example, suppose a defendant is charged with impaired driving and felony death by vehicle based on impaired driving. Intuitively, one would expect that if the jury finds the defendant not guilty of impaired driving, it also would find the defendant not guilty of felony death by vehicle based on impaired driving, because impaired driving is an element of that more serious offense. If the jury acts counterintuitively and finds the defendant not guilty of impaired driving and guilty of felony death by vehicle, this mere inconsistency does not invalidate the verdict. *State v. Mumford*, 364 N.C. 394, 398, 401 (2010) (holding that because a not guilty verdict under G.S. 20-138.1 (impaired driving) and a guilty verdict under G.S. 20-141.4(a3) (felony serious injury by vehicle) were merely inconsistent, the trial court did not err by accepting the verdict where it was supported with sufficient evidence); *State v. Watson*, 277 N.C. App. 314, 326 (2021) (following *Mumford* and holding that jury’s guilty verdict on felony murder was merely inconsistent with its not guilty verdict on the murder’s underlying offense of statutory rape); *State v. Blackmon*, 208 N.C. App. 397, 403-05 (2010) (following *Mumford* and holding when the jury found the defendant guilty of felonious larceny after a breaking or entering but deadlocked on the breaking or entering charge, the verdicts were merely inconsistent and not mutually exclusive).

However, verdicts may not be accepted when they are inconsistent *and* contradictory. *Mumford*, 364 N.C. at 398. Such verdicts are referred to as mutually exclusive verdicts. *Id.* at 400. For example, suppose the jury returns guilty verdicts of embezzlement and obtaining property by false pretenses. The verdicts are mutually exclusive because property cannot be obtained simultaneously pursuant to both lawful and unlawful means. *Id.* at 400-01 (citing this scenario as an example of mutually exclusive verdicts); *see also* *State v. Melvin*, 364 N.C. 589, 592-93 (2010) (noting that murder and accessory after the fact to that murder are mutually exclusive offenses).

Note that this rule does not preclude the State from charging a defendant with mutually exclusive offenses and trying the defendant for both crimes. *Melvin*, 364 N.C. at 593. The North Carolina Supreme Court has instructed that when mutually exclusive offenses are joined for trial and substantial evidence supports each offense, both should be submitted to the jury with an instruction that the jury may convict the defendant only of one of the offenses or the other, but not of both. *Id.* (holding that failure to give such an instruction was error).

Note also that the mutually exclusive verdict rule applies only when the charged offenses are based on the *same conduct*. When separate conduct supports a conviction of each offense, the verdicts may be accepted. *State v. Mosher*, 235 N.C. App. 513, 518-19 (2014) (in a case where the defendant was found guilty of felony child abuse in violation of G.S. 14-318.4(a3) (the intentional injury version of this offense) and felony child abuse resulting in violation of G.S. 14-318.4(a4) (the willful act or grossly negligent omission version of this offense), the court rejected the defendant’s argument that the verdicts were mutually exclusive, reasoning that substantial evidence permitted the jury to find that two separate offenses occurred in succession); *State v. Johnson*, 208 N.C. App. 443, 448-49 (2010) (in a case where the defendant appealed arguing that guilty verdicts of breaking or entering and discharging a firearm into occupied property

were mutually exclusive because he could not both be in the building and shooting into the building at the same time, the court found no error because the evidence supported a conclusion that the offenses occurred in succession, not at the same time).

III. Taking a Verdict.

A. General Procedure.

A suggested procedure for taking a verdict is set forth below. Note that if there are two or more defendants, the jury must return a separate verdict with respect to each defendant. G.S. 15A-1237(d).

- When the judge is informed that jury has reached a verdict, direct the bailiff to bring the jurors into courtroom and seat them in jury box. G.S. 15A-1237(b) (verdict must be returned by the jury in open court); State v. Smith, 299 N.C. 533, 536 (1980) (same).
- Request the foreperson to stand and state his or her name for the record.
 - The following language may be used:
Judge: Would the person selected as your foreperson please stand?
Judge: [Mr./Ms.] Foreperson, for the record, would you please state your name.
- After the foreperson is standing and has stated his or her name for the record, ask the foreperson if the jury has reached a unanimous verdict, telling the foreperson to answer "Yes" or "No."
 - The following language may be used:
Judge: [Mr./Ms.] Foreperson, please answer this question Yes or No. Has the jury reached a unanimous verdict? [When there are multiple verdicts, add: as to each (charge) (case)?]
- If the foreperson answers "No," direct the bailiff to return the jury to the jury room for further deliberations.
 - The following language may be used:
Judge: [Mr./Ms.] Bailiff, you may return the jury to the jury room to continue deliberations.
- If foreperson answers "Yes," ask the foreperson whether the verdict sheet has been completed and whether he or she has signed and dated the verdict sheet. G.S. 15A-1237(a) (verdict must be in writing and signed by the foreperson).
 - The following language may be used:
Judge: [Mr./Ms.] Foreperson, have you completed, signed and dated the verdict sheet?
- If foreperson indicates that he or she has done so, direct the foreperson to hand the verdict sheet the bailiff, who should hand it to you.
 - The following language may be used:
Judge: [Mr./Ms.] Foreperson, please hand the verdict sheet to the bailiff who will bring it to me.
- Examine the verdict sheet to make sure that it has been properly completed and that it is signed and dated by the foreperson. G.S. 15A-1237(a) (verdict must be in writing and signed by the foreperson). For a discussion of mutually exclusive verdicts, see Section II.G. above. Note that the verdict should be received if it "substantially answers the issue(s) so as to permit the trial judge

to pass judgment in accordance with the manifest intention of the jury." State v. Smith, 299 N.C. 533, 535-36 (1980).

- If there is an issue with the verdict sheet, excuse the jury from the courtroom and consult with counsel about the issue and appropriate instructions for the jury. Then call the jurors back in, instruct them accordingly, and have them resume deliberations. State v. Barbour, 229 N.C. App. 635, 640 (2013) (although the trial court did not err by examining the verdict sheet, rejecting the verdict, and instructing the jury to answer each question before consulting with counsel, the court added: "it would have been preferable for the trial court to have excused the jury from the courtroom, and allowed counsel to view the verdict sheet and to be heard prior to the court's instructions to the jury").
- If the verdict is in proper form, hand the verdict form to clerk.
 - The following language may be used:
Judge: [Mr./Ms.] Clerk, you may take the verdict of the jury.
- The Clerk then will ask the jury whether the verdict is unanimous. Alternatively, the judge may do this.
 - The following language may be used:
Clerk/Judge: Members of the jury, you have returned as your unanimous verdict that the defendant is [guilty/not guilty]. Is this your verdict, so say you all?"
- After the jurors respond in the affirmative, the judge should ask them to assent to the verdict by a show of hands.
 - The following language may be used:
Judge: Ladies and gentlemen of the jury, if you all agree to and assent to that verdict, please raise your hands.
- Upon a unanimous show of hands, the judge records the jurors assent for the record.
 - The following language may be used:
Judge: Let the record reflect that each juror has raised his or her hand, indicating unanimous consent.
- Upon a request by either party, the judge must poll the jury. G.S. 15A-1238. Alternatively the judge may poll the jury in his or her discretion. *Id.* See Section III.C. below regarding polling the jury.
- The judge must accept the verdict and order that it be recorded. G.S. 15A-1237(a) (verdict must be made a part of the record in the case).
 - The following language may be used:
Judge: The court accepts the verdict and orders that it be recorded.
- The judge should then address each party and inquire whether there is any further business for the jury.
 - The following language may be used:
Judge: (addressing prosecutor): Is there anything further with this jury for the State?
Judge: (addressing defense counsel): Is there anything further with this jury for the defendant?
- The judge should then discharge the jury.
 - The following language may be used:
Judge: Ladies and gentlemen of the jury, you are now discharged in this case. Your work has been concluded in this case. On behalf of the county and the State, thank you for your service.

- You also may wish to address speaking with the lawyers and obtaining a work note from the clerk.

B. Judge's Comment on Verdict. Two separate statutes prohibit the trial judge from commenting on the verdict in criminal cases, G.S. 15A-1239 and G.S. 1-180.1. G.S. 15A-1239 provides:

The trial judge may not comment upon the verdict of a jury in open court in the presence or hearing of any member of the jury panel. If he does so, any defendant whose case is calendared for that session of court is entitled, upon motion, to a continuance of his case to a time when all members of the entire jury panel are no longer serving.

G.S. 1-180.1 provides:

In criminal actions the presiding judge shall make no comment in open court in the presence or hearing of all, or any member or members, of the panel of jurors drawn or summoned for jury duty at any session of court, upon any verdict rendered at such session of court, and if any presiding judge shall make any comment as herein prohibited, or shall praise or criticize any jury on account of its verdict, whether such comment, praise or criticism be made inadvertently or intentionally, such praise, criticism or comment by the judge shall constitute valid grounds as a matter of right, for the continuance for the session of any action remaining to be tried during that week at such session of court, upon motion of a defendant or upon motion of the State. The provisions of this section shall not be applicable upon the hearing of motions for a new trial, motions to set aside the verdict of a jury, or a motion made in arrest of judgment.

Construing these statutes, the court of appeals has held that “[t]he Legislature has provided the exclusive remedy for judicial praise, criticism or comment on the verdict by declaring in G.S. 1-180.1 that the prohibited remarks ‘shall constitute valid grounds as a matter of right, for the continuance for the session of any action remaining to be tried during that week at such session of court, upon motion of a [party].’” *State v. Neal*, 60 N.C. App. 350, 353 (1983). Citing the statutory language, that court held that the statutory remedy of continuance does not apply to hearings on motions for a new trial, motions to set aside the verdict, or motions to arrest judgment. *Id.* at 353 (statute did not apply in connection with the defendant’s motion for appropriate relief seeking a new trial). Note that if the defendant fails to move for a continuance prior to trial, the right to it is waived. *Id.* at 354.

C. Polling the Jury.

- 1. Required on Party’s Motion.** “Upon the motion of any party made after a verdict has been returned and before the jury has dispersed, the jury *must* be polled.” G.S. 15A-1238 (emphasis added). Although many judges ask the parties if they wish the jury to be polled, at least one case has held it is not plain error for the trial judge to dismiss the jury without

doing so. *State v. Carmon*, 156 N.C. App. 235, 245 (“It was the responsibility of defendant to make this request . . .”), *aff’d*, 357 N.C. 500 (2003) (per curiam).

- a. **Basis of Right.** The right to poll the jury is established by statute and Article I, Section 24 of the North Carolina Constitution. *State v. Black*, 328 N.C. 191, 197 (1991).
- b. **No Right to Multiple Polls.** Although G.S. 15A-1238 “entitles every defendant to a polling of the jury to determine the unanimity of the verdict”, it does not “entitle defendant to an unlimited number of polls.” *State v. Hedgecoe*, 106 N.C. App. 157, 164 (1992).
- c. **Right Waived if Not Timely Asserted.** A party waives the right to poll if a request is never made or is not made until after the jury has dispersed. *Black*, 328 N.C. at 198 (right waived when not made until after the jury had dispersed); *State v. Flowers*, 347 N.C. 1, 22 (1997) (right waived when not asserted at trial). With respect to the dispersal rule, the North Carolina Supreme Court has explained:

The rationale behind requiring that any polling of the jury be before dispersal is to ensure that nothing extraneous to the jury's deliberations can cause any of the jurors to change their minds. Once a juror leaves the courtroom after the verdict is returned and goes into the streets, despite her best efforts to shield herself, she still can be affected by improper outside influences. At that point, such improper outside influences may take the form of things the juror sees or hears or may be limited to the juror's own weighing of the evidence and the law independently and in the absence of other members of the jury. In other words, once the jury is dispersed after rendering its verdict and later called back, it is not the same jury that rendered the verdict.

Black, 328 N.C. at 198 (citations omitted). Thus, the courts have held that the right to a poll was waived when it was asserted:

- the morning after the verdict was taken. *State v. Clark*, 138 N.C. App. 392, 401 (2000);
- at 2:20 pm, after the lunch recess, with the jury having been discharged at 12:30 pm, *State v. Froneberger*, 55 N.C. App. 148, 154 (1981);
- thirty minutes after the verdict was taken, during which time the jury “was free to leave the courtroom and go into the streets.” *Black*, 328 N.C. at 198;
- after the verdict was accepted and the trial judge told the jury that they could remain in the courtroom or return to the jury assembly room and that they could discuss the case with

anyone if they so desired, *State v. Ballew*, 113 N.C. App. 674, 681 (1994) (“Upon leaving the jury box, the jurors became susceptible to any number of extraneous influences. Therefore, we conclude that the jury had ‘dispersed’ . . .”), *aff’d*, 339 N.C. 733 (1995) (per curiam).

2. **Judge May Poll Sua Sponte.** The judge may require polling of the jury sua sponte. G.S. 15A-1238.
3. **Who Conducts.** The poll may be conducted by the judge or by the clerk. G.S. 15A-1238.
4. **How Conducted.** The poll must inquire of each juror individually
 - whether he or she assented to the verdict in the jury room and
 - whether he or she still assents to it in open court.

G.S. 15A-1238; *State v. Holadia*, 149 N.C. App. 248, 262 (2002) (new trial where the trial court asked jurors the first question but failed to determine whether they still assented to the verdict in open court). These two questions need not be posed separately; it is sufficient to ask them in one question as follows: “Is this your verdict, and do you still assent thereto?” *State v. Lackey*, 204 N.C. App. 153, 159 (2010) (approving of such language). Although he or she may choose to do so, the judge or clerk is not required to ask the jurors about each charged offense separately. *State v. Hunt*, 198 N.C. App. 488, 496-97 (2009) (polling was proper where each juror was asked: “Your foreperson has returned with the following verdict, that you found Mr. Hunt not guilty of conspiracy to commit first-degree murder, guilty of discharging a firearm into an occupied and operating vehicle, and guilty of first-degree murder under the first-degree felony murder rule. Is this your verdict, and do you still assent thereto?”). At least one case has held that the poll need only inquire as to the general verdict, and not as to any specific theories unanimously found by the jury to support the conviction. *State v. Carroll*, 356 N.C. 526, 544 (2002) (in this murder case, poll was proper where clerk asked jurors about their verdict of guilty of first-degree murder and did not inquire about supporting theories indicated on the verdict sheet and previously announced in court).

The poll must be conducted of each juror individually, G.S. 15A-1238; questioning the jurors collectively and having them respond as a group does not satisfy this requirement. *State v. Holadia*, 149 N.C. App. 248, 263 (2002).

5. **When Poll Reveals a Lack of a Unanimous Verdict.** If the poll reveals that there is not a unanimous verdict, the judge must direct the jury to resume deliberations. G.S. 15A-1238.
6. **Colloquy for Polling.** A suggested colloquy for polling the jury is set forth below. Note that the colloquy should be modified if the clerk polls jury or if the polling is on a verdict of not guilty.

Judge: Members of the jury, you will now be asked individually about your verdict(s). The clerk will call your name and you should stand when your name is called. I will then state: Your foreperson has returned with the following verdict, that you found the defendant guilty

of [name offense(s)]. I will then ask you: Was this your verdict and do you still assent thereto? You will answer that question either Yes or No. After answering the question, you may be seated.

If you do not understand the question, you should ask me to repeat it. You should listen to the question as I ask it and you should be sure you understand it before you answer. As I said, the question may be answered Yes or No.

[Mr./Ms.] Clerk, please call the names of the jurors. Please call the name of the foreperson first.

Clerk: [Calls name of foreperson]

Judge: [Mr./Ms.] Foreperson, you have returned with the following verdict, that you found the defendant guilty of [name offense(s)]. Was this your verdict and do you still assent thereto?

Foreperson: [Yes/No]

Judge: You may be seated.

Clerk: [Calls name of juror].

Judge: Your foreperson has returned with the following verdict, that you found the defendant guilty of [name offense(s)]. Was this your verdict and do you still assent thereto?

Juror: [Yes/No]

Judge: You may be seated.

Note: If any juror answers a question "No" or otherwise qualifies his or her verdict, the jury must be instructed as to the requirement of a unanimous verdict and must retire to jury room and deliberate further on its verdict.

Note: If all jurors answer "Yes," the judge should make the following statement for the record as to each verdict returned:

Judge: Let the record show that, after the verdict was returned in open court, the jury was polled; that each juror was asked if he or she had returned a verdict of guilty of [name offense(s)] and if it was still his or her verdict; that each juror answered the question Yes; and the court concludes that the verdict of guilty of [names offense(s)] is a unanimous verdict. The verdict is accepted by the court and ordered to be recorded by the clerk.

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