STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
COUNTY OF DAVIDSON	SUPERIOR COURT DIVISION
	FILE NOS. 16 CRS 021, 023.
STATE OF NORTH CAROLINA)	
)	
v.)	STATE'S RESPONSE TO DEFENDANTS'
)	
MOLLY MARTENS CORBETT and)	MOTION FOR APPROPRIATE RELIEF
THOMAS MARTENS,)	
Defendants)	

COMES NOW the State of North Carolina, through the Office of the District Attorney for the Twenty-Second B Prosecutorial District, and moves this court to deny the defendants' Motion for Appropriate Relief. In support of this Response and request for denial of the defendants' Motion for Appropriate Relief the State would submit the following:

I. TO ENSURE STABILITY AND FINALITY TO VERDICTS, JURORS MAY NOT IMPEACH THEIR VERDICT EXCEPT IN VERY LIMITED CIRCUMSTANCES.

"The jury, over the centuries, has been an inspired, trusted, and effective instrument for resolving factual disputes and determining ultimate questions of guilt or innocence in criminal cases. Over the long course its judgments find acceptance in the community, an acceptance essential to respect for the rule of law." *Pena-Rodriguez v. Colorado,* 137 S. Ct. 855, 860 (2017). "A general rule has evolved to give substantial protection to verdict finality . . . and is referred to as the no-impeachment rule." *Id.* at 861.

To give "stability and finality to verdicts", the rule of "no-impeachment" "promotes full and vigorous discussion by providing jurors with considerable assurance that after being discharged they will not be summoned to recount their deliberations, and they will not otherwise be harassed or

annoyed by litigants seeking to challenge the verdict." *Id.* at 865. *See, State v. Lyles*, 94 N.C. App. 240, 244 (1989)(policy considerations supporting the rule include freedom of deliberation, stability and finality of verdicts, and protection of jurors from harassment and embarrassment). The rule of "no-impeachment" is both "long-standing and well-settled." *Cummings v. Ortega*, 365 N.C. 262, 266 (2011). The rule is vital to our justice system and recognized today in all jurisdictions of this country. *See, Pena-Rodriguez* at 865.

This rule of "no-impeachment" has been codified by North Carolina and is found in N.C.G.S. § 8C-1, Rule 606(b) and N.C.G.S. § 15A-1240.

Pursuant to Rule 606, a juror (1) may not testify as to any matter or statement occurring during the course of the jury's deliberations, (2) may not testify to the effect of anything upon his or any other juror's mind or emotions in deciding the verdict, (3) may not testify as to anything which influenced him in deciding the verdict, and (4) may not testify about his mental processes in connection with the verdict. N.C.G.S. § 8C-1, Rule 606(b). If called to testify, a juror may only testify to the limited question of whether extraneous information was brought to the jury's attention, or whether any outside influence was brought to bear upon any juror. *Id.* The North Carolina Supreme Court has interpreted the term "extraneous information" under Rule 606(b) "to mean information that reaches a juror without being introduced into evidence and that deals specifically with the defendant or the case being tried." *State v. Heatwole,* 344 N.C. 1, 12 (1996); *see also, State v. Rosier*, 322 N.C. 826, 832 (1998). Moreover, a juror's "affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying may [**not**] be received" for the purpose of impeaching the verdict. N.C.G.S. § 8C-1, Rule 606(b). (emphasis added).

Pursuant to N.C.G.S. § 15A-1240, a juror may testify to "matters not in evidence" which came to the attention of a juror under circumstances which would violate the defendant's constitutional right of confrontation but may not testify to the effect of any such matter on his mind or mental processes in determining the verdict. N.C.G.S. § 15A-1240(a),(c). Specifically directed at criminal cases, N.C.G.S. § 15A-1240 allows impeachment only concerning:

(1) whether the verdict was reached by lot;

(2) bribery, intimidation, or attempted bribery or intimidation of a juror; or

(3) matters not in evidence which came to the attention of one or more jurors under circumstances which would violate the defendant's constitutional right to confront the witnesses against him.

N.C.G.S. § 15A-1240(b), (c); *see also, Heatwole*, 344 N.C. 1 (juror's questions regarding whether paranoid schizophrenics were violent posed to third party did not implicate defendant's confrontation rights within the meaning of N.C.G.S. § 15A-1240(c)(1)).

Motions for a new trial based on misconduct affecting a jury's deliberation is addressed to the sound discretion of the trial judge, and unless his ruling is clearly erroneous or an abuse of discretion, it will not be disturbed. *State v. Johnson*, 295 N.C. 227 (1978), *State v. Sneeden*, 274 N.C. 498 (1968). "The circumstances must be such as not merely to put suspicion on the verdict, because there was opportunity and a chance for misconduct, but (that) **there was in fact misconduct.**" *Lewis v. Fountain*, 169 N.C. 277, 279 (1915). (emphasis added) Further, upon a showing of an event which is determined to come within the limited exceptions, the error is not automatically reversible but, rather, is subject to a harmless error analysis. *See, Sherman v. Smith*, 89 F.3d 1134, 1139 (4th Cir. 1996), *cert. denied*, 519 U.S. 1091 (1997); *see also, Smith v. Phillips*, 455 U.S. 299(1982).

II. THE DEFENANTS' ALLEGATIONS OF JUROR MISCONDUCT ARE NOT ENCOMPASSED BY THE LIMITED EXCEPTIONS OF THE NO-IMPEACHMENT RULE, THEREFORE, ANY STATEMENTS ATTRIBUTED TO THE JUOROS ARE "INTERNAL" IN NATURE, AND, THUS, INADMISSABLE.

Defense allegations of "private conversations" *(Defendants' a., pp 3-5)* by jurors are based on inadmissible evidence as they deal expressly with Rule 606(b)'s proscription against any "information coming from the jurors themselves – the effect of anything upon a juror's mind or emotions as

influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith." *State v. Quesinberry*, 325 N.C. 125, 134, *sentence vacated*, 494 U.S. 1022, *on remand* 328 N.C. 288 (1991).

The juror's statements to the media upon which the defendants' rely are clearly pertaining to "internal" mental processes of the jury. "Internal" influences, "information coming from the jurors themselves," may include "a juror not assenting to the verdict, a juror misunderstanding the instructions of the court,(and,) a juror being unduly influenced by the statements of his fellow-jurors." *Cummings*, 365 N.C. at 269.

The juror, quoted on page three of the defendants' motion, discusses how the jurors "felt," and what they "believe(d)." Both "felt" and "believed" are references to mental processes and mind-set, and thus admission of any conversations between jurors is inadmissible. "The notion that juror testimony may not be permitted to impeach a verdict is both long-standing and well-settled." *Id.* at 266. This proscription includes "alleged predeliberation misconduct" as well. *Id.* at 270. *See also, Tanner v. United States*, 483 U.S. 107, 116 (1985)(Evidence regarding jurors who were allegedly under the influence of impairing substances during the trial was determined to be an "internal influence" and did not survive 606(b) analysis.) *United States v. Cuthel*, 903 F.2d 1381, 1383 (11th Cir. 1990)(stating that Fed. R. Evid. 606(b) controls "even where the inquiry concerns misconduct prior to the deliberations") (North Carolina's Rule 606(b) is virtually identical to the Federal Rule and when construing the North Carolina Rules of Evidence, our courts may look to federal cases for "enlightenment and guidance." *Quesinberry* 325 N.C. at 133 n.1.). Therefore, any "evidence" of defendants' insinuated allegations of juror misconduct prior to deliberations is barred, as Rule 606 (b) encompasses alleged predeliberation misconduct by jurors. *Cummings* at 270.

Defendants' allegation of two jurors sitting in a car having an **unknown** conversation during an evening recess while deliberations were ongoing is wholly incompetent and irrelevant. "Where the witness did not hear the content of the conversation" between the two jurors, "the allegations are nebulous" and "an examination" of the "alleged misconduct" is generally not required. *State v. Drake*, 31 N.C. App. 187, 190-192 (1976)(trial court required to make inquiry as to potential prejudice when the content of juror conversations is known and refers specifically to the facts of the case).

Defendants' next alleged juror misconduct concerns the jurors "observ(ing) defendant Molly Corbett closely during trial," (*Defendants' b. pp 5-6.*) and forming opinions based upon their observations. The Defendants claim this is a violation of N.C.G.S. § 15A-1240 (c)(1): "Matters not in evidence which came to the attention of one or more jurors under circumstances which would violate the defendant's constitutional right to confront the witnesses against him."

All of the jurors' comments quoted in the defendants' motion contain language that indicates the comments concern what effect the defendant's courtroom demeanor had upon the mind of the jurors. Specifically the quotes contain the following: "I believe," "I think," and "I feel," all indicative of mental processes that are not to be received into evidence to impeach the jurors' verdict. N.C.G.S. § 15A-1240(a). Moreover, the defendant's demeanor is "before the jury at all times" regardless if the defendant testifies. *State v. Flippen*, 349 N.C. 264, 276 (1998). The jurors are to consider as evidence, "not only what they hear on the stand but what they witness in the courtroom." *State v. Brown*, 320 N.C. 179, 199 (1987). Nor does the jurors' consideration of the defendant's demeanor violate the defendant's constitutional and statutory privilege not to testify. *Id.* *See also, State v. Myers,* 299 N.C. 671, 679-80 (1980).

The defendants misstate the holding of *Pena-Rodriguez* to infer that jury conclusions based on **observations** of the defendant's race or gender rise to the level of a constitutional violation. (*Defendants' b p. 6*)(emphasis added). Not so. In *Pena-Rodriguez*, the United States Supreme Court recognized a narrow exception to the no-impeachment rule which concerns the "internal processes of the jury:" "[W]here a juror **makes a clear statement** that indicates he or she relied on **racial stereotypes or animus** to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement." *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 869. (emphasis added) In *Pena-Rodriguez*, jurors approached defense counsel immediately after their discharge and related the offending juror's repeated statements during deliberations of "overt" racial stereotyping and racial animus against the Hispanic defendant, and "that racial animus was a significant motivating factor in the juror's vote to convict." *Id.*

Defendant Corbett, a white female, was present during all phases of the trial. The jurors were well within the bounds of their duty to consider all the evidence when they observed the defendant Corbett and her demeanor during the lengthy trial. Any opinions they derived from their observations of the defendant are precisely the protected "internal" influences "effect(ing) the juror's mind or emotions," and "mental processes" that are protected by the "no-impeachment" rule. *See, Quesinberry*, 325 N.C. at 134.

The third allegation of juror misconduct by the defendants concerns statements made by the jurors regarding their thoughts and opinions that defendant Corbett struck the first blow. Opinions and discussions by the jurors have been consistently held to be "internal influences" even when they are contrary to the court's instructions. In *Robinson,* the jurors considered the possibility of parole in determining whether the defendant should receive a life sentence. *Robinson*, 336 N.C. at 124. The trial court concluded and our Supreme Court agreed, that discussions of parole eligibility are internal influences upon the jury coming from the jurors themselves. *Id.* at 124-25. The trial court correctly denied the defendant's motion for appropriate relief where the juror's affidavits could not be used to impeach the verdict because of the "internal" nature of the statements. *Id.* In *Berrier v. Thrift*, juror affidavits revealed that the jurors received information from a fellow juror contrary to the court's instructions regarding punitive damages. *Berrier*, 107 N.C. App. 362 (1992) Again the trial court properly excluded the juror's affidavits because "the information allegedly received by the jury was from an internal source." *Id.* at 365-66.

The jurors' statements regarding defendant Corbett are internal in nature and therefore inadmissible under Rule 606 (b). The jurors "drew upon their own beliefs or ideas, not an outside source of information." *State v. Bauberger*, 176 N.C. App. 465, 472 (2006)(Jurors use of a dictionary to define malice as contained in the trial court's instructions determined to be an internal influence, and the jurors' affidavits were not admissible under Rule 606(b).)

Defendants' fourth allegation addresses the fitness of Juror Number One to remain on the jury after she became ill viewing photographs of the victim, Jason Corbett. This Court conducted an investigation by examining juror number one without the other jurors present. This Court inquired if juror number one was "able to continue to view photographs and go forward." (*Defendants' d. p.* 7) This court further stated that juror one need not "make any apologies or explanations." (*Defendants' d. p.* 7). Any discharge and substitution of an incapacitated juror rests in the trial court's sound discretion and is not reversible error absent a showing of an abuse of discretion. *State v. Nelson*, 298 N.C. 573, 593 (1979) *see also*, 15A-1215(a). As this Court did not require "any apologies or explanations," juror number one's later explanations, which she alluded to in her discussions with the Court, are irrelevant to this Court's exercise of its sound decision to allow juror number one to remain. This Court as well as the defendants' four attorneys were able to observe juror number one throughout the trial. At no time did juror number one appear incapacitated even when multiple gruesome photographs continued to be displayed by the State and the defense. This allegation of juror misconduct is without merit.

Expression of opinions by jurors during the presentation of evidence is the defendants' fifth allegation of juror misconduct. (*Defendants' e. p. 8*) It is unsupported by any allegations or argument. The State requests thirty days to reply should any amendment be allowed by this Court. See, N.C.G.S. § 15-A-1415(g).

The final allegation of juror misconduct by the defendants addresses alleged bias by juror number one. (*Defendants' f. pp. 8-9*). In addressing alleged juror bias, the United States Supreme Court has outlined "existing, significant safeguards for the defendant's right to an impartial and competent jury beyond post-trial jury testimony. At the outset of the trial process, *voir dire* provides an opportunity for the court and counsel to examine members of the venire for impartiality. As a trial proceeds, the court, counsel, and court personnel have some opportunity to learn of any juror misconduct. And, before the verdict, jurors themselves can report misconduct to the court. These procedures do not undermine the stability of a verdict once rendered." Pena-Rodriguez 137 S. Ct. at 866. The defendants

had ample opportunity to question juror number one especially considering the generous parameters allowed by this Court during *voir dire*. This court, counsel and court personnel had ample opportunity to learn of any juror misconduct. Finally, no juror has reported any juror misconduct at any time.

The alleged bias is purportedly revealed in post-verdict social media posts and press interviews by juror number one. Each instance reveals the juror's mind-set and thought processes and opinions she reached after considering all the evidence, including defendant Martens' testimony and cross-examination. The alleged quotes include "I believe" and "I feel" indicating internal thoughts of the juror. The juror also uses the term "outwit" which was a term included in the State's cross-examination of the defendant Martens.

Juror number one's internal opinions formed during the course of the trial do not reflect any prior bias. The juror did not conceal any material information during voir dire; the defendants had ample opportunity to question the juror, and the juror's alleged post-verdict statements do not reflect any pre-existing bias that prejudiced the defendant. *See, State v. Maske*, 358 N.C.40, 48 (2004). Because juror number one's statements concern her opinions and beliefs as they were formed by the evidence presented by the defense and the State, they are internal matters subject to exclusion under Rule 606(b) and 15A-1240. "Whether a juror would have been struck from the jury because of incompetence or bias, the mere fact that a juror would have been struck does not make admissible evidence regarding that juror's conduct and statements during deliberations." *Warger v. Shauers*, 135 S. Ct. 521, 530 (2014)(in this civil case, affidavits from a juror were properly excluded as an "internal matter" that tended to show juror bias toward one of the parties).

III. ALL DOCUMENTS PRESENTED BY THE DEFENDANTS AND SPECULATIVE PROPOSED TESTIMONY BY THE JURORS ARE INADMISSABLE UNDER APPLICABLE PRINCIPLES OF LAW AND THIS COURT SHOULD DENY AN EVIDENTIARY HEARING.

An evidentiary hearing is not always necessary when allegations of jury misconduct have been made. If the evidence alleged to support a claim does not come squarely within an exception to the prohibition of impeachment of

verdicts, the trial court properly refuses to even consider affidavits or conduct a hearing on the claim. *See, State v. Quesinberry*, 325 N.C. 125, 136 (1989)(evidentiary hearing properly denied where documents and testimony by jurors were deemed inadmissible under applicable principles of law), *judgment vacated on other grounds*, 494 U.S. 1022 (1990); *see also, State v. Robinson*, 336 N.C. 78, 124-25 (1994)(trial court correctly refused to even consider juror's affidavit noting that "internal influences" could not be considered as a basis of relief); *State v. Harrington*, 335 N.C. 105, 113-115 (1993)(rejecting defendant's argument on appeal that a court must always hold a hearing to investigate an allegation of juror misconduct).

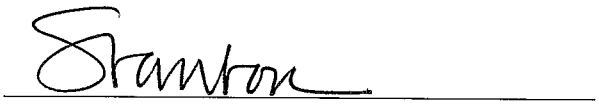
The documentary evidence submitted by the defendants to support their motion for appropriate relief is insufficient to show, by any standard, that jury misconduct occurred in the form of "external" influences. The North Carolina Supreme Court has unequivocally held that "allowing jurors to impeach their verdict by revealing their 'ideas' and 'beliefs' influencing their verdict is not supported by case law, nor is it sound public policy." *Robinson*, at 125-26. The motion filed by the defendants and their supporting documentation contain not a single affidavit by a juror. Moreover, the defendants have only provided general assertions and speculation and, as such, the motion contains insufficient admissible evidence to establish that jury misconduct has occurred. *See, State v. Rollins*, 224 N.C. App. 197 (2014).

Although the defendants' motion for appropriate relief does not contain an attorney certification as required by N.C.G.S. § 15A-1420(a)(1)c1, the State does not object to a supplemental filing of same by the defendants.

WHEREFORE, the State respectfully requests that this Court find that the defendants have not presented any competent evidence of "external" influence on the jury to support a finding of jury misconduct, deny the defendants' request for an evidentiary hearing and, further, deny their Motion for Appropriate Relief.

This the 21st day of August, 2017.

Respectfully submitted,



Ina Stanton, Assistant District Attorney 22B
District Attorney's Office 22B
P.O. Box 1854
Lexington, NC 27293

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the forgoing **STATE'S RESPONSE TO DEFENDANTS' MOTION FOR APPROPRIATE RELIEF** on all parties to this cause by:

✓ Placing in the United States mail receptacle a copy hereof to the attorney of each defendant addressed as follows:

David B. Freedman

Attorney for defendant Thomas Martens

860 West Fifth Street

Winston-Salem, NC 27101

(336) 725-1304

Walter C. Holton, Jr.

Attorney for defendant Molly Martens Corbett

857 West Fifth Street

Winston-Salem, NC 27101

(336) 777-3480