

TRIAL BOOT CAMP

By

Gary Presnell

STATE OF NORTH CAROLINA <u>WAKE</u> County	File No. _____ In The General Court Of Justice Superior Court Division
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STATE OF NORTH CAROLINA v.	REQUEST FOR ARRAIGNMENT G.S. 15A-941
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Offense(s) *(1) Bond Hearing + Any other Hearing*
(2) (A Will be brought over

In accordance with G.S. 15A-941, the undersigned defendant and attorney of record request arraignment in the Superior Court, and pursuant to G.S. 15A-952(b) will file all applicable motions at or before the time of arraignment.

The following motions have been filed and are pending in this matter:

The defendant ___ is ___ is not in custody. A copy of this request has been served on the prosecutor.

Date	Signature of Defendant
Date	Signature of Attorney for Defendant

Attorney Gary Presnell
 (919) 833-8333

CERTIFICATION OF ARRAIGNMENT

I certify that the defendant was arraigned on the case(s) referenced above on the date shown below and entered a plea of:

___ Guilty ___ Not Guilty ___ No Contest

Date
Signature
___ Deputy CSC ___ Assistant CSC ___ Clerk of Superior Court

STATE OF NORTH CAROLINA

File No.

WAKE County

In The General Court Of Justice
 District Superior Court Division

STATE OF NORTH CAROLINA

Additional File Numbers

VERSUS

SUBPOENA

G.S. 1A-1, Rule 45

Party Requesting Subpoena

State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

Name And Address Of Person Subpoenaed

Alternate Address

TO

Telephone No.

Telephone No.

YOU ARE COMMANDED TO: (check all that apply):

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
- appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
- produce and permit inspection and copying of the following items, at the place, date and time indicated below.
- See attached list. (List here if space sufficient)

Name And Location Of Court/Place Of Deposition/Place To Produce

WAKE COUNTY CRIMINAL SUPERIOR COURT
 WAKE COUNTY COURTHOUSE
 RALEIGH, NORTH CAROLINA

Date To Appear/Produce

Time To Appear/Produce

AM PM

Name And Address Of Applicant Or Applicant's Attorney

ATTY. GARY PRESNELL
 1094 NICHOLS DR., P.O. BOX 12668
 RALEIGH, NORTH CAROLINA 27605

Date

Signature

Telephone No.

(919) 833-8333

Deputy CSC

Assistant CSC

Clerk Of Superior Court

Superior Court Judge

Magistrate

Attorney/DA

District Court Judge

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- By personal delivery.
- registered or certified mail, receipt requested and attached.
- telephone communication (For use only by the sheriff's office for witness subpoenaed to appear and testify.)
- I was unable to serve this subpoena.

Service Fee

Paid

Date Served

Signature of Authorized Server

Title

\$

Due

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

RETURN OF SERVICE

I certify that this subpoena was received and served as follows:

Date Received

For First Person Named On Front:

- by delivering a copy of the subpoena to the first person named on the front
- this subpoena WAS NOT served for the following reasons:
- by telephone communication with the first person named on the front (use only with subpoena to appear in person)
- by registered or certified mail return receipt requested on the first party named on the front

Service Fee \$	<input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served	Signature Of Sheriff Or Other Officer
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For The Second Person Named on Front:

- by delivering a copy of the subpoena to the second person named on the front
- this subpoena WAS NOT served for the following reasons:
- by telephone communication with the second person named on the front (use only with subpoena to appear in person)
- by registered or certified mail return receipt requested on the second party named on the front

Service Fee \$	<input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served	Signature Of Sheriff Or Other Officer
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For The Third Person Named On Front:

- by delivering a copy of the subpoena to the third person named on the front
- this subpoena WAS NOT served for the following reasons:
- by telephone communication with the third person named on the front (use only with subpoena to appear in person)
- by registered or certified mail return receipt requested on the third party named on the front

Service Fee \$	<input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served	Signature Of Sheriff Or Other Officer
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INFORMATION FOR WITNESS

The Subpoena

The subpoena is a court order requiring you to appear in court on the day and at the time stated. You have been called (subpoenaed) to court to be a witness in a case.

Duties Of A Witness

- You must attend court on the day and at the time stated in the subpoena.
- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- Your answers to questions must be truthful.

If you have any questions about being subpoenaed as a witness, you should contact the attorney or official who had the subpoena issued. The name of that person is on the other side of this subpoena form.

Understand The Question And Speak Out

When you are on the witness stand, listen carefully to any question, and make sure that you understand the question before you try to answer it. If necessary, ask that the question be repeated.

In answering questions, speak out clearly and loudly enough to be heard. If you are testifying before a jury, speak out so that all of the jurors can hear you.

Bribing Or Threatening A Witness

It is a violation of state law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

Witness Fee

A witness is entitled to a small daily fee, and to travel expense reimbursement if it is necessary to travel from outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the clerk's office and certify to your attendance as a witness so that you will be paid any amount due you.

Purpose of Appearance

DEF. INFORMED IN OPEN COURT:

- DEF. ADVISED OF CHARGES AGAINST HIM AND EACH ELEMENT OF EACH CHARGE – FURNISHED W/EITHER PJI OR COPY OF STATUTE

- DEF. GIVEN A COPY OF SENTENCING CHART

- ALL PLEA OFFERS RELAYED TO DEF.

- DEF. ADVISED OF RULE 412

- DEF. ADVISED OF HIS RIGHT TO PLEAD GUILTY OR NOT GUILTY

- DEF. ADVISED OF HIS RIGHT TO TESTIFY OR NOT TESTIFY AT TRIAL (W/POSSIBLE EFFECTS ON CASE IS HE DOES TESTIFY

- PERMISSION GIVEN TO COUNSEL BY DEF TO (A) MAKE FOLLOWING STIPULATIONS, OR (B) CONCEDE GUILT AS TO THE FOLLOWING ELEMENTS OF THE CRIME(S) ALLEGED:

MOTIONS: MASTER LIST

___ **RULE 404(B)**

___ **RULE 609**

___ **BRUTON MOTION**

___ **JOINDER**

___ **ADOPT CO-D MOTION**

___ **REVEAL THE DEAL**

15-A-1254(C) - Do this w/ co-A's

___ **DJ**

___ **SUPPRESS**

___ **MOTION TO SEQUESTER**

___ **OTHER:**

*391 US 123 - also in G.S.
of Co-A made statement vs our guy - Co-A's statement should be covered
in or ask for sep trial*

Form B
DESIRED JUROR PROFILE

Characteristic Desired*	Characteristic to be Avoided*

* The characteristics desired will vary with each case; however, jurors with some characteristics should always be avoided. For example, law enforcement officers, district attorneys, and their friends and relatives should be avoided.

VS.

JURY

File No. _____

Film No. _____

1	2	3	4	5	6	
7	8	9	10	11	12	

BACK ROW

FRONT ROW

CHALLENGES

For Cause _____

State or Plaintiff _____

Defendant _____

I certify that in the abovesubscribed case the persons whose names appear above were called as jurors, that those whose names are marked through were excused, and that those whose names are not marked through were empaneled to serve as jurors.

This _____ day of _____, 19____

VOIR DIRE – SHORT LIST

- LAW ENFORCEMENT – MEMBER, RELATIVE, FRIEND
- FORMAL LEGAL TRAINING
- PRIOR JURY: 1) CIVIL 2) CRIMINAL
- BURDEN OF PROOF: 1) REASONABLE DOUBT 2) MUST BE FULLY SATISFIED OR ENTIRELY CONVINCED *Pattern jury instruction*
- PRIOR VICTIM? FRIEND OR RELATIVE VICTIM?
- AFFILIATED WITH ANY GROUP WITH STRONG BELIEFS *e.g. MADD.*
- OBJECTIONS – *Me or Adk might make an obj. shouldn't hold it vs. us*
- LIMITING INSTRUCTIONS *prob want to make sure you sub competent*
- STRONG MEDICATION – *or medical prob's look like a good guy & excuse*
- FOREIGN WITNESS? DOES NOT SPEAK ENGLISH? *excuse*
- EXPERTISE *evial!*
- ANY PROBLEM WEIGHING ON YOUR MIND *s/p.*
- PROMISE TO FOLLOW THE LAW AS THE JUDGE GIVES IT TO YOU
- ANY REASON WHY YOU CAN NOT BE FAIR & IMPARTIAL

• Burden of going forward is on the state

OPENING STATEMENT

- **ROADMAP OR PREVIEW**
- **DIFFICULT BECAUSE THE BURDEN IS ON THE STATE**
 - (A) TO PROVE BEYOND A REASONABLE DOUBT**
 - (B) TO GO FORWARD**
- **WE SHARE THE SAME INFO (WHICH IS NOT EVIDENCE) BUT NO WAY TO KNOW HOW THE STATE WILL PROCEED – WE REACT**
- **KEEP AN OPEN MIND – DON'T FORM AN OPINION UNTIL ALL THE EVIDENCE IS IN**
- **KEEP IN MIND THAT DEF MAY OR MAY NOT TESTIFY AND IF HE FEELS NO NEED TO DO SO, YOU SHOULD NOT HOLD THAT AGAINST HIM IN ANY WAY**

EYEWITNESS I.D. OF DEFENDANT

- **HOW LONG OBSERVED DEF?**
- **DISTANCE BETWEEN THE TWO OF YOU**
- **CLEAR, UNOBSTRUCTED VIEW**
- **LIGHTING**
- **DEGREE OF ATTENTION:**
 - OTHER ACTIVITY GOING ON (TALKING CELL PHONE, WALKING, DRIVING, ETC.)**
 - GUN POINTED AT YOU**
 - FEAR**
 - NO SPECIAL TRAINING IN I.D.**
 - PHYSICAL WELL-BEING (SICK, WEAR GLASSES, HEADACHE, TIRED, ETC.)**
 - EMOTIONAL WELL-BEING (UPSET ABOUT SOMETHING, ANGRY AT SOMEONE, TAKING MEDICATION, ETC.)**
- **PRIOR KNOWLEDGE OF DEF? IF SO, WHEN, WHERE, UNDER WHAT CIRCUMSTANCES**
- **ACCURACY OF PRIOR DESCRIPTIONS: HEIGHT, WEIGHT, AGE, SEX, RACE, HAIR COLOR, EYE COLOR, FACIAL HAIR, GLASSES, CLOTHING, SCARS, VOICE, ACCENT, VEHICLE DEF DRIVING, COMPANIONS, ETC.**
- **ANY PARTICULAR PHYSICAL CHARACTERISTICS OF DEF**
- **HAS DEF CHANGED HIS APPEARANCE**
- **PRIOR I.D. OF DEF BY WITNESS AT A "SHOW-UP", LINE-UP, OR PRIOR COURT APPEARANCE? IN COURT I.D. TAINED BY THIS?**
- **TIME BETWEEN CRIME AND TRIAL I.D.**

POINTERS ON CROSS-EXAMINATION

- ONLY THREE REASONS TO CROSS-EXAMINE

- IMPEACHMENT

- CORROBORATION

- TO GATHER EVIDENCE FOR YOUR CLOSING

- DON'T ASK QUESTIONS TO WHICH YOU DON'T KNOW THE ANSWER. *Even when tempted*

- PREDICATE QUESTIONS WITH PREVIOUSLY ELICITED POSITIVE EVIDENCE *Ex. 2 peo stand by one body + gun*

- 99% OF THE TIME LEOs DID NOT SEE THE CRIME COMMITTED

- OFFICER YOU DID NOT SEE THE CRIME COMMITTED, CORRECT?

- SO, OTHER THAN YOUR INVESTIGATION OF THE CRIME SCENE, YOU HAVE NO *PERSONAL* KNOWLEDGE AS TO WHO COMMITTED THIS VILE ACT?

- YOU ARE BASICALLY RELAYING TO THE JURY WHAT OTHERS HAVE TOLD YOU? (REMEMBER THAT THESE STATEMENTS SHOULD ONLY BE ADMITTED FOR IMPEACHMENT OR CORROBORATION AND NOT AS SUBSTANTIVE EVIDENCE)

- If s/o gave you bad info you'd only be relaying bad info to jury

- Even if s/o is gone to testify to what victim said before victim testify - limit testimony to corroboration + impeachment.

→ Then if victim is sketchy + member of it is close

MOTION TO DISMISS-
CLOSE OF STATE'S EVIDENCE

(G.S. 15-173 AND G.S. 15A-1227)

- for insufficient evid.
- Always have a copy of the indictment.
- 1. ↳ No evid of element 3.
- No evid of X in pattern jury instruction

§15A-1226

other party
to introduce
c. 711, s. 1.)

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§15A-1227

CRIMINAL JURY TRIAL

§15A-1227

heard defendant's voice as he testified on the stand, and the trial judge allowed defendant's request for a recess, tendered the victim for voir dire examination, and entered into the record extensive findings of fact. State v. Torian, 316 N.C. 111, 340 S.E.2d 465, cert. denied, — U.S. —, 107 S. Ct. 133, 93 L. Ed. 2d 76 (1986).

Refusal to Reopen Case Held Not Error. — Where defendant was given an opportunity to present evidence, was available, and could have been called to testify on his own behalf, but defendant did not move to reopen his case, but only moved for a mistrial, the trial judge did not abuse his discretion by refusing to allow defendant to reopen his case and testify and by denying defendant's motion for a mistrial. State v. Perkins, 57 N.C. App. 516, 291 S.E.2d 865 (1982).

Reversible Error Not Shown. — The trial court did not commit reversible

error when, at the request of the jury, it allowed a State witness to retake the stand and testify as to the date of a photographic lineup without the court acknowledging to the jury that the witness' earlier testimony as to the date thereof had been different. State v. Riggins, 321 N.C. 98, 361 S.E.2d 558 (1987).

Applied in State v. Person, 298 N.C. 765, 259 S.E.2d 867 (1979); State v. Yancey, 58 N.C. App. 52, 293 S.E.2d 298 (1982); State v. Waters, 308 N.C. 348, 302 S.E.2d 188 (1983); State v. Ziglar, 308 N.C. 747, 304 S.E.2d 206 (1983); State v. Bellamy, 64 N.C. App. 454, 308 S.E.2d 88 (1983); State v. Smith, 72 N.C. App. 630, 325 S.E.2d 295 (1985).

Quoted in State v. Sidden, 315 N.C. 539, 340 S.E.2d 340 (1986).

Stated in State v. Davis, 317 N.C. 315, 345 S.E.2d 175 (1986).

§ 15A-1227. Motion for dismissal.

- (a) A motion for dismissal for insufficiency of the evidence to sustain a conviction may be made at the following times:
 - (1) Upon close of the State's evidence.
 - (2) Upon close of all the evidence.
 - (3) After return of a verdict of guilty and before entry of judgment.
 - (4) After discharge of the jury without a verdict and before the end of the session.
- (b) Failure to make the motion at the close of the State's evidence or after all the evidence is not a bar to making the motion at a later time as provided in subsection (a).
- (c) The judge must rule on a motion to dismiss for insufficiency of the evidence before the trial may proceed.
- (d) The sufficiency of all evidence introduced in a criminal case is reviewable on appeal without regard to whether a motion has been made during trial, as provided in G.S. 15A-1446(d)(5). (1977, c. 711, s. 1.)

OFFICIAL COMMENTARY

Subsection (b) is new and changes a rule which the Commission believed had little utility.

The Commission believed the practice of reserving decision on a motion is little followed at present in North Carolina — and ought not to be encouraged. It therefore amended a draft provision based on the procedure of another jurisdiction, authorizing reservation of decision on the motion to dismiss, to bar such a procedure. This decision is reflected in subsection (c). Compare A.B.A. Standards, Trial by Jury, § 4.6.

Subsection (d) will allow appeal whether or not a motion has been made or renewed, and thus constitutes a change in the law. The phrase "all evidence" in that subsection, however, indicates that the reviewing court must consider the evidence of the defendant as well as that of the State in determining the question of sufficiency. In this respect the subsection represents a continuation of the rule presently followed by the Supreme Court of North Carolina.