

AVOIDING CONTROVERSY OVER THE STANDARD OF REVIEW

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I. INTRODUCTION

Effective September 1, 2005, the Supreme Court of North Carolina amended the Rules of Appellate Procedure to include a new provision regarding standards of review. Pursuant to Appellate Rule 28(b)(6):

The argument shall contain a concise statement of the applicable standard(s) of review for each question presented, which shall appear either at the beginning of the discussion of each question presented or under a separate heading placed before the beginning of the discussion of all the questions presented.

The body of the argument and the statement of the applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies.

There has been a fair amount of confusion over what standard of review means and what the appellate courts want in the standard of review section. The best way to avoid confusion and conflict is to understand three things: 1) what a standard of review is; 2) how the standard of review differs from other aspects of your argument; and, 3) the common pitfalls regarding standards of review.

In this discussion, I will address these three issues, as well as provide you with an Appendix containing citations for various standards of review.

II. WHAT IS A STANDARD OF REVIEW?

A. General principles

Although “standard of review” is a common legal term, defining the term is difficult. Our new appellate rules neither define the term “standard of review,” nor offer any sample standards of review in the Appendix. No United States Supreme Court opinion before 1951 includes the phrase “standard of review.” Moreover, the principal legal dictionaries - Black’s & Ballentine’s – do not define it. Charles A. Borek, *Social Science Explanations for Disparate Outcomes in Tax Court Abuse of Discretion Cases: A Tax Justice Perspective*, 33 Cap. U.L. Rev. 623, 634, n. 46 (2005).

The best definition I could locate is as follows: “The essence of a standard of review is that it constitutes the lens through which a tribunal will evaluate the determination of a prior authority. *Id.*, citing Concrete Pipe and Prod. Of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602, 623 (1993). When thinking of the standard of review, it is helpful to think of it as the measure of deference the appellate court will extend to the ruling of the trial court. When a court reviews an argument under an abuse of discretion standard of review, the appellate court gives the trial court’s decision great deference. Conversely, when the appellate court reviews an argument under the *de novo* standard of review, there is considerably less deference afforded to the trial court’s decisions.

B. North Carolina standards of review

In North Carolina criminal cases, the standard of review is almost always going to be either abuse of discretion, *de novo*, or plain error. There are also a few specialized standards such as “gross impropriety” for unobjected to comments made during closing arguments and the standard of review for motions to suppress. A definition for these major standards is as follows:

1) Abuse of discretion has been defined by our courts as “a test which requires the reviewing court to determine whether the decision of the trial court is manifestly unsupported by reason or is so arbitrary that it cannot be the result of a reasoned decision.” State v. Locklear, 331 N.C. 239 (1992).

2) De novo is a standard of review typically applied to a trial court’s legal decisions, as opposed to findings of fact, which do not involve an exercise of discretion. Under a *de novo* standard of review, the reviewing court considers the matter anew and freely substitutes its own judgment for that of the lower court. NC Dept. of Env’t. & Natural Resources v. Carroll, 358 N.C. 649 (2004).

3) Plain error is error which is so fundamental that, absent the error, the jury would have reached a different result. State v. Odom, 307 N.C. 655 (1985). Plain error review is

reserved for unobjected to evidentiary issues and jury instruction issues. However, plain error can be the standard of review, the test for prejudice, and the vehicle by which unpreserved errors are given review. Plain error will most often be your only standard of review (e.g., failure to object to jury instructions is reviewed for plain error, State v. Tirado, 358 N.C. 551 (2004)), but in some limited circumstances it may be coupled with one of the usual standards of review (e.g., failure to object to the trial court's decision that a very young child was competent to be a witness is reviewed for an abuse of discretion on the part of the judge and error that amounted to plain error, State v. Frye, COA05-1042, N.C. App. 5/16/06). However, it is rare that plain error will be coupled with another standard of review. See, State v. Steen, 352 N.C. 227, 256 (2000) (plain error review does not apply to decisions made at the trial court's discretion).

4) Gross impropriety is a specialized standard of review which our courts have created for a certain class of issues. When assessing alleged improper closing arguments that were not objected to the standard of review is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*. State v. Davis, 353 N.C. 1 (2000); State v. Meyer, 353 N.C. 92 (2000).

5) Motions to suppress, like unobjected to remarks during closing arguments, are reviewed under another specialized standard of review in our state. On appeal from the denial of a motion to suppress, the trial court's findings of fact are binding if supported by any competent evidence, even if it is conflicting, but the trial court's conclusions of law are subject to *de novo* review and must be legally correct as well as supported by the findings of fact. State v. Barnhill, 166 N.C.App. 228 (2004).

III. STANDARD OF REVIEW VERSUS OTHER ASPECTS OF YOUR ARGUMENT

A. OVERVIEW

The standard of review is a discrete entity separate from the other aspects of an argument. To help isolate the standard of review in your mind, it is helpful to think of the following checklist for each potential issue:

- What is the issue?
- Is it preserved? If not, can I otherwise get review of the claim?
- What is the court's standard of review?
- What is the legal test that I have to argue and the appellate court looks at to analyze this claim?
- What is the prejudice?

Each part of the checklist is separate and distinct from the others and should not overlap.¹ Attorneys and the appellate courts routinely conflate the standard of review with one of these other factors and that is the root of the majority of standard of review problems. Defining each part of the checklist can help to clarify the differences and avoid problems.

B. DEFINITIONS

1) What is the issue?

Your issue is obviously the argument you make to the appellate court regarding the error you have isolated. For example, you may argue that the trial court erroneously denied defense counsel's motion for a continuance, or the indictment was defective, or that your client was denied his right to a public trial, or that the judge improperly instructed the jury.

2) Is it preserved?

Preservation of the claim involves determining whether trial counsel did or said the right thing at the right time during trial to give the trial court the opportunity to rule on the issue. If the trial court was given the opportunity to rule on the issue, then the appellate court will review the error. If the trial court was not afforded the opportunity to rule on the issue, often the appellate court will decline to review the error, although there are some exceptions. For example, if an error relating to jury instructions or improperly admitted evidence is not brought to the trial court's attention, the client can get review, despite the lack of preservation, under plain error.

¹ The only exception to this is plain error. If you have an unobjected to evidentiary issue or jury instruction issue, the appellate court's standard of review is plain error. The test for prejudice is plain error and the issue gets review, although it is unpreserved, through plain error.

Preservation of the claim is entirely separate from the standard of review. For example, violations of a statutory mandate are automatically preserved for appeal without objection, but the standard of review might be *de novo* or abuse of discretion, depending on the violation.

3) What is the standard of review?

This is the legal term – most often either abuse of discretion, *de novo* review or plain error review – which guides the appellate court regarding the degree of deference it must afford the trial court’s ruling.

4) What is the test for this issue?

These are the factors, prongs, test, analysis, etc, that you must address, argue, and prevail upon for the appellate court to conclude an error occurred. Most people think of this as the heart of their argument. This is where you will discuss the relevant facts, the applicable law, and where you will apply the facts of your case to the law in order to show that your client is entitled to relief.

For example, if you are arguing that the trial court erred in granting the State’s motion for joinder of multiple offenses in one trial against your client, there are two questions to resolve: was there a transactional connection between the separate criminal offenses (the court looks at the totality of the circumstances, paying attention to several key factors) and did joinder of the offenses hinder the defendant’s ability to present a defense or deprive the defendant of a fair trial? Obviously you will argue that there was not a transactional connection, based upon the totality of the circumstances, and that joinder hindered your client’s ability to present a defense, or deprived him of a fair trial.

The standard of review on appeal for evaluating whether two or more charges were appropriately joined for trial involves both the *de novo* and abuse of discretion standards. Whether or not the offenses share a transactions connection is a question of law which is fully reviewable on appeal under a *de novo* standard of review. State v. Montford, 137 N.C. App. 495 (2000). Whether joinder of the offenses hindered your client’s ability to present a defense or deprive him of a fair trial is addressed to the trial court’s discretion and is reviewed for an abuse of discretion. Id.

4) Prejudice

The prejudice analysis requires you to prove (or in some instances the State to disprove) that the error harmed your client to some degree at trial. The various prejudice standards and tests include: structural error (prejudice is presumed); prejudicial error for non-constitutional claims (see N.C. Gen. Stat. §15A-1443(a)); prejudicial error for constitutional claims (see N.C. Gen. Stat. §15A-1443(b)); and, plain error (which requires the Appellant to prove that absent the error the jury would have reached a different result).

IV. COMMON STANDARD OF REVIEW MISTAKES

Both attorneys and the courts make mistakes regarding standards of review. Attorney errors regarding standards of review are primarily limited to two areas – conflation of the standard of review with the test for reviewing the claim or the prejudice standard and over application of a specific standard of review.

The appellate courts usually make three types of errors regarding standards of review. First, the courts often fail to state the standard of review in their opinions. Second, when the standard of review is stated, the courts often make the same mistake that attorneys do – conflate the standard of review with the test for evaluating the issue or with the prejudice prong. Lastly, there are a certain category of issues for which the courts have so repeatedly misstated the standard of review that it is virtually impossible to find a citation to the actual standard of review.

A. ATTORNEY ERRORS

1. Conflation

The most common mistake attorneys make is conflating the standard of review with the test for reviewing the claim or the preservation element. Some examples of erroneous statements of standard of review are as follows:

The standard of review in an issue of denial of the right to counsel & improper advisement under 15A-1242:

Denial of the right to counsel is structural error. *State v. Allen*, 359 N.C. 425, 615 S.E.2d 256 (2005); *Johnson v. United States*, 520 U.S. 461, 468, 137 L.Ed.2d 718, 728 (1997). The statutory inquiry contained within N.C. Gen. Stat. § 15A-1242 (2004) is mandatory and failure to conduct such an inquiry constitutes prejudicial error. *State v. Thomas*, 331 N.C. 671, 417 S.E.2d 473 (1992); *State v. Pruitt*, 322 N.C. 600, 603, 369 S.E.2d 590, 592 (1988); *State v. Lamb*, 103 N.C. App. 646, 406 S.E.2d 654 (1991). When a trial court violates a statutory mandate, error is preserved as a matter of law. *State v. Hucks*, 323 N.C. 574, 374 S.E.2d 240 (1988). The appellate court reviews a trial court's section 15A-1242 inquiry *de novo*.

The standard of review for a claim that the trial judge made improper comments in the jury's presence:

The standard of review is reasonable probability that the conduct was prejudicial and whether that conduct can survive a harmless error analysis.

The standard of review for a claim that the trial judge erroneously denied defendant's motion for a mistrial:

Did the judge's actions cause the defendant substantial and irreparable prejudice.

The standard of review for a claim that the trial court erred in allowing the State to cross-examine a defense witness regarding prior convictions:

When a defendant challenges the admission of evidence on non-constitutional grounds, the defendant bears the burden of proving that the prejudicial impact of that evidence creates a reasonable probability that a different result would have been reached had the error not been committed. N.C. Gen. Stat. 15A-1443(a).

2. Over-application

The second mistake attorneys make, albeit with far less frequency than the first, is over-application and over-simplification of the standard of review. We all want a quick and easy answer for the standard of review. Most of us do not see the new appellate rules regarding standards of review as something that will help our clients. Rather we see it as a burden and another way for the court to avoid reviewing claims on the merits. Because of that, we sometimes tend to over-simplify standards of review. For example, attorneys tend to automatically think of all issues relating to discovery as being reviewed for an abuse of discretion. This is not true, as some discovery issues are reviewed for an abuse of discretion and some are reviewed *de novo*. Even within a single legal issue – such as joinder of multiple charges against a single defendant at trial, as discussed *supra* Section III B 4- there can be different standards of review for different aspects of the claim.²

² The courts also make this error. For example, the Court of Appeals recently stated, “The standard of review for the Court of Appeals in assessing evidentiary rulings is an abuse of discretion.” State v. Hagans, 628 S.E.2d 776 (2006). This is clearly incorrect. See part 6 of the Appendix.

B. APPELLATE COURT ERRORS

1. Failure to state the standard of review

The appellate courts have been imprecise in stating the standard of review. The majority of the Court of Appeals' decisions are unpublished and the Court of Appeals, rarely, if ever, states the standard of review in its opinions. This makes it extremely difficult for appellate counsel to locate and cite to the appropriate standard. If the Supreme Court and the Court of Appeals do mention the standard of review, the overwhelming majority of the time it is discussed in the context of motions to dismiss, or motions to suppress, or unobjected to prosecutorial closing arguments in capital cases. Finding a published opinion discussing any other standard of review is difficult.

2. Conflation

When the opinions do contain a standard of review, the standard is often erroneous because the courts do what most appellate attorneys have done – conflate the standard of review with the test for reviewing the claim or the prejudice standard. The following examples illustrate this point:

The Supreme Court recently held that structural error is the appropriate “standard of review” for Blakely errors. State v. Allen, 359 N.C. 425 (2005). This is not the standard of review, but is the test for prejudice.

In State v. Anderson, 627 S.E.2d 501 (2006), the North Carolina Court of Appeals stated, “Presuming without deciding that the 404(b) evidence was improperly admitted, our standard of review becomes whether a reasonable probability exists that the evidence, if excluded, would have altered the result at trial.” This is the prejudice analysis, not the standard of review.

In State v. Jones, 346 N.C. 704 (1997), our Supreme Court held that a violation of a capital defendant's non-waivable right to be present at all stages of a capital trial is subject to a harmless error standard of review. This is not the standard of review, but the test for prejudice.

In State v. Johnson, 317 N.C. 343 (1986), our Supreme Court held that “denial of defense counsel's motion to continue due to pretrial publicity is reviewed under the traditional standard of review which requires defendant to show that the jurors had prior knowledge of the case, he exhausted his preemptory challenges, and an objectionable juror sat on the case.” This is not the standard of review. This is a statement of the analysis the Appellant must engage in to demonstrate that error occurred.

3. Repeated misstatements of the standard of review

For certain issues (insufficiency of the evidence, motions to withdraw guilty pleas, and ineffective assistance of counsel) the Courts have so repeatedly misstated the standard of review, it is almost impossible to find a case citing the correct standard.³

The Court of Appeals and Supreme Court have both held that an appellate court's "standard of review for the right to withdraw a pre-sentence guilty plea is whether, after conducting an independent review of the record and considering the reasons given by the defendant and any prejudice to the State, it would be fair and just to allow the motion to withdraw." State v. Wall, 167 N.C. App. 312, 314 (2004), *citing*, State v. Handy, 326 N.C. 532, 539 (1990). This is not the standard of review. This is the error analysis. Because the court clearly reviews this matter anew, the standard of review is *de novo*.

The Court of Appeals and Supreme Court have repeatedly held that the "standard of review" for motions to dismiss in criminal trials is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied. State v. Powell, 299 N.C. 95 (1980). If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion should be allowed. Id. at 98. Again, this is the error analysis, not the standard of review. The court clearly reviews this matter anew, therefore the standard of review is *de novo*.

The Court of Appeals and our Supreme Court repeatedly state that the standard of review for reviewing an ineffective assistance of counsel claim is whether trial counsel's conduct fell below an objective standard of reasonableness and whether that deficient performance prejudiced the defendant. *See, e.g.*, State v. Fisher, 318 N.C. 512 (1986). Again, this is the error analysis, not the standard of review, and it is clearly a *de novo* review.

³ In fact, I have been able to locate only one case that actually correctly discusses a standard of review for any of these claims. In Leary v. N.C. Forest Products, Inc., 157 N.C. App. 396, 400 (2003), the North Carolina Court of Appeals held, "We review the trial court's grant of a motion to dismiss *de novo*."

V. DETERMINING THE APPROPRIATE STANDARD OF REVIEW

I can offer three suggestions for avoiding problems when formulating the standard of review which will hopefully assist you:

1) Think of the argument in terms of a checklist. Each part of the checklist is separate and distinct from the others and should not overlap:

- Issue
- Preservation
- Standard of Review
- Legal test for analyzing the claim
- Prejudice

2) Your standard of review section is almost always going to be either a brief sentence referring to either *de novo* review, abuse of discretion review, or plain error or a few unique ones such as gross impropriety for unobjected to closing arguments and the standard of review for motions to suppress.

If you have a sentence at the beginning of your argument stating, “The standard of review applicable to this issue is ----,” you will have complied with the rule. Even if you and the Court do not agree on the correct standard of review, the Court will not (i.e., should not) decline to review your argument for non-compliance with the rule.

3) The Brief Bank Index⁴ now has a section titled standards of review. There are links to briefs and case citations for various standards of review. This can be a useful place to start your research. Moreover, I have attached an Appendix to this document which contains case cites for numerous standards of review.

⁴ Go to: www.ncids.org and click on the Brief Bank link on the lower left-hand corner of the page.

VI. APPENDIX

1. Plain error

Admission of certain evidence which the defendant did not object to at trial and which is being complained about on appeal is reviewed for plain error.

State v. Locklear, 172 N.C. App. 249 (2005).

Where a criminal defendant fails to object to the admission of certain evidence, the plain error analysis, rather than the *ex mero motu* or grossly improper analysis, is the applicable standard of review.

State v. Ridgeway, 137 N.C. App. 144 (2000).

Cross-examination of a witness which elicited inadmissible evidence, but provoked no objection by trial counsel, is reviewed for plain error.

State v. Morganherring, 350 N.C. 701 (1998).

Jury instructions which the defendant did not object to at trial and which are being complained about on appeal are reviewed for plain error.

State v. Goforth, 170 N.C. App. 584 (2005); State v. Tirado, 358 N.C. 551 (2004).

Failure to object to the trial court's decision that a very young child was competent to be a witness reviewed for abuse of discretion on the part of the judge and error that amounted to plain error.

State v. Frye, (COA05-1042, N.C. App. 5/16/06).

A constitutional issue which was not objected to during a capital trial can be reviewed under Rule 2 of the Rules of Appellate Procedure using a plain error standard of review.

State v. Lemmons, 352 N.C. 87 (2000) (confrontation clause issue regarding the introduction of a co-defendant's statement).

State v. Wiley, 355 N.C. 592 (2002) (use of prior juvenile adjudication as an aggravating factor was an *ex post facto* violation.)

Admission of a confession for which defense counsel did not file a motion to suppress and did not object to is reviewed for plain error.

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

2. Closing arguments

When assessing alleged improper closing arguments that were not objected to, the standard of review is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*.

State v. Davis, 353 N.C. 1 (2000); State v. Meyer, 353 N.C. 92 (2000).

When assessing alleged improper closing arguments that were objected to, the standard of review is whether the trial court abused its discretion in overruling the objection. State v. Walters, 357 N.C. 68 (2003).

3. Sentencing

An issue involving the State's failure to produce sufficient evidence to prove the existence of a defendant's prior record points and prior record level is reviewable *de novo*. See, State v. Canady, 330 N.C. 398 (1991); State v. Jeffrey, 167 N.C. App. 575 (2004).

The question whether an out-of-state offense used in Structured Sentencing is substantially similar to a North Carolina offense is a question of law that must be resolved by the trial court and is reviewed *de novo* on appeal. State v. Hanton, 623 S.E.2d 600, 604, 2006 N.C. App. LEXIS 45 (2006).

An appellate court reviews *de novo* whether a trial court's award of restitution is supported by competent evidence adduced at trial or sentencing. State v. Wilson, 340 N.C. 720, 726 (1995).

The trial court's decision to depart from the presumptive range when sentencing a defendant under Structured Sentencing is reviewed for an abuse of discretion. State v. Hagans, 628 S.E.2d 776 (2006).

Trial court's failure to find a non-statutory mitigating or aggravating factor is reviewed for an abuse of discretion. State v. Hayes, 323 N.C. 306 (1988).

4. Jury selection

The decision to grant to deny a challenge for cause is reviewed for an abuse of discretion State v. Campbell, 359 N.C. 644 (2005).

Morgan, Witherspoon and Witt issues are reviewed for an abuse of discretion, State v. Garcia, 358 N.C. 382 (2004); they do not receive *de novo* review. State v. Frye, 341 N.C. 479 (1995).

5. Motions

The standard of review of a trial court's ruling on a motion for continuance is addressed to the discretion of the trial court, and absent a gross abuse of that discretion, the trial court's ruling is not subject to review. When a motion to continue raises a constitutional issue, the trial court's ruling is fully reviewable on appeal. State v. Jones, 616 S.E.2d 15 (2005).

On appeal from the denial of a motion to suppress,⁵ the trial court's findings of fact are binding if supported by any competent evidence, even if it is conflicting, but the trial court's conclusions of law are subject to *de novo* review and must be legally correct as well as supported by the findings of fact.

State v. Barnhill, 166 N.C. App. 228 (2004) (physical evidence).

State v. Buchanan, 353 N.C. 332 (2001) (confession).

A trial court's conclusion of law regarding the existence, or absence, of a conflict of interest, is reviewed *de novo*. Trial courts must be given substantial latitude in granting or denying a motion for attorney disqualification based upon conflicts of interest.

State v. Taylor, 155 N.C. App. 251, 260 (2002).

The trial court's grant or denial of a motion for mistrial is reviewed for an abuse of discretion.

State v. Upchurch, 332 N.C. 439 (1992).

In considering a motion for joinder under N.C. Gen. Stat. 15A-926(a), the trial court applies a two step analysis to determine: (1) if there is a transactional connection between the separate criminal offenses; and (2) if joinder of the offenses would hinder the defendant's ability to present a defense or deprive the accused of a fair trial. Whether or not the offenses share a transactions connection is a question of law which is fully reviewable on appeal under a *de novo* standard of review. State v. Montford, 137 N.C. App. 495 (2000). Whether joinder of the offenses would hinder the defendant's ability to present a defense or deprive him of a fair trial is addressed to the trial court's discretion and is reviewed for an abuse of discretion. Id.

A trial court's decision to join multiple defendants for trial under N.C. Gen. Stat. 15A-926(b), is reviewed for an abuse of discretion.

State v. Hayes, 314 N.C. 460 (1985).

A trial court's decision to deny defendant's motion for substitute counsel is reviewed for an abuse of discretion.

State v. Rehm, 2004 N.C.App. LEXIS 1298 (2004).

A trial court's decision to grant a motion for a new trial based upon newly discovered evidence is reviewed for an abuse of discretion. State v. Stukes, 153 N.C. App. 770 (2002).

6. Evidentiary issues

A trial court's relevance determinations pursuant to Rule 401 are reviewed *de novo*.

State v. Moctezuma, 141 N.C. App. 90 (2000).

⁵ Note this includes motions to suppress physical evidence, as well as motions to suppress confessions.

A trial court's relevance determinations present a question of law and are reviewed *de novo*, but are accorded deference.
See, State v. Wallace, 104 N.C. App. 498 (1992).

The trial court's grant or denial of a motion pursuant to Rule 106 is reviewed for an abuse of discretion.
State v. Thompson, 332 N.C. 204 (1992).

A trial court's Rule 403 determinations are reviewed for an abuse of discretion.
State v. Clark, 138 N.C. App. 392 (2000).

When a trial court admits evidence over objection, it creates a question of law that is reviewable *de novo*.
State v. Barber, 335 N.C. 120 (1993).
State v. Bell, 164 N.C. App. 83 (2004).

The question whether a specific witness or class of witnesses is an expert is a question of law for the trial court to decide and one which is reviewed *de novo*.
Pridgen v. Gibson, 194 N.C. 289, 291 (1927).

The standard of review for admissibility of expert and lay opinion is abuse of discretion.
State v. Washington, 141 N.C. App. 354 (2000).

A trial court's determination of an expert witness's qualifications, whether that person is qualified to give an opinion, and what expert testimony is admissible at trial is reviewed for and abuse of discretion.
Howerton v. Arai Helmet, 358 N.C. 440 (2004).

A trial court's Rule 608(b) determinations are reviewed for an abuse of discretion.
State v. Bishop, 346 N.C. 365 (1997)

The trial court's ruling on the admission of 404(b) evidence is reviewed for an abuse of discretion.
State v. Robinson, 2003 N.C. App. LEXIS 2295 (2003).

7. Discovery code

The trial court's determination that there was no discovery code violation is reviewed *de novo*.
State v Patterson, 335 N.C. 437 (1994).

The trial court's decision regarding sanctions for a discovery code violation is reviewed for an abuse of discretion.
State v. Alston, 307 N.C. 321 (1983).

8. Revocation of Probation

A trial court's determination that the evidence was sufficient to show a willful violation is reviewed for an abuse of discretion.

State v. Lucas, 58 N.C. App. 141 (1982).

Appellate court reviews a trial court's decision to revoke probation for an abuse of discretion.

State v. Hewitt, 270 N.C. 348, 356 (1967).

Appellate court reviews the record *de novo* to determine whether the trial court had jurisdiction over the matter.

State v. Coltrane, 307 N.C. 511, 516 (1983).

9. Judges and Jurors

The determination of the existence and effect of jury misconduct is primarily for the trial court whose decision will be reviewed for an abuse of discretion and given great weight on appeal.

State v. Buckom, 126 N.C. App. 368 (1997).

Whether a judge violated the duty of impartiality with his/her comments, questions, or behavior is reviewed for an abuse of discretion.

State v. Goldman, 311 N.C. 338, 350 (1984); State v. Coleman, 65 N.C. App. 23, 29 (1983).

10. Statutory Interpretation

An alleged error in statutory interpretation is an error of law, and thus the reviewing court's standard of review for this question is *de novo*.

Armstrong v. N.C. State Board of Dental Examiners, 129 N.C. App. 153 (1998).

11. Motions for Appropriate Relief

When a trial court's findings on a motion for appropriate relief are reviewed, these findings are binding if they are supported by competent evidence and may be disturbed only upon a showing of manifest abuse of discretion. However, the trial court's conclusions are reviewed *de novo*.

State v. Wilkins, 131 N.C. App. 220, 223, 506 S.E.2d 274, 275 (1998)