Individual Voir Dire

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According to the *News and Observer*, the trial of Laurence Lovette begins today in Hillsborough. Lovette is charged with the first-degree murder of Eve Carson, who was, at the time of her death, the president of the student body at UNC - Chapel Hill. The case is non-capital, because Lovette was 17 at the time of the crime. Nonetheless, the paper reports, "jury selection is to begin . . . with prosecutors and defense lawyers interviewing potential jurors individually."

I've been asked about the reference to individual questioning. Individual voir dire -- the questioning and selection of jurors one at a time -- is authorized by statute for capital cases. G.S. 15A-1214(j). May it properly be employed in a non-capital case?

One might argue that the answer is no, based on the explicit statutory authorization of individual voir dire in capital cases together with the lack of any similar authorization regarding non-capital cases. The court of appeals seems to have endorsed this argument to some extent in *State v. McKisson*, 2003 WL 21649214 (N.C. Ct. App. July 15, 2003) (unpublished) (finding no abuse of discretion in trial court's denial of defendant's request for individual voir dire in a sexual assault case, and noting that "[t]he State points out that, under [G.S.] 15A-1214(j), individual juror *voir dire* is limited to capital cases, and the case law of this State has borne out that interpretation"). *Cf. State v. Watson*, 310 N.C. 384 (1984) (rejecting the defendant's argument that the trial judge should have employed individual voir dire in a non-capital murder case and emphasizing that G.S. 15A-1214(j) applies only in capital cases, but also stating that "[t]he trial judge has broad discretion in the manner and method of jury voir dire in order to assure that a fair and impartial jury is impaneled").

On the other hand, one might argue that the answer is yes, based on the inherent authority of trial judges to regulate voir dire. This conclusion may be implicit in *State v. Ysaguire*, 309 N.C. 780 (1983) (stating, albeit with little analysis, that whether to allow individual voir dire in a non-capital case "is a ruling within the trial court's discretion"). I lean towards this view myself.

At a minimum, it is clear that trial judges have the authority to allow individual voir dire as to particular sensitive issues in non-capital cases. In other words, a judge in a non-capital case certainly may allow individual questioning of jurors regarding specific topics, even while conducting the remainder of voir dire using the typical group method. *State v. Roache*, 358 N.C. 243 (2004) (discussing individual voir dire procedures in capital cases but also noting that "nothing in [the court's discussion of capital cases] should be interpreted to infringe upon the trial court's inherent authority to permit individual voir dire as to specific sensitive issues in any given case"). The most common subject of individual questioning is pretrial publicity. As the official commentary to G.S. 15A-1214 states, "an obvious [reason for individual voir dire] would exist when pretrial publicity required individual examination of jurors in order not to expose the remainder of the panel to the prior knowledge of the juror being questioned."

I should note that I don't have any first-hand knowledge of the Lovette case. Specifically, I don't know (a) whether the newspaper's report is accurate, (b) whether, when the story refers to individual questioning, it means full-fledged individual voir dire or simply individual questioning about selected issues, or (c) the positions of the parties regarding individual voir dire. Accordingly, nothing in this post is intended as a comment on the specific procedures being used in that case.

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