

## **Criminal Procedure**

### **Mutually Exclusive Offenses**

*State v. Melvin*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Dec. 20, 2010)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=2010/382PA09-1.pdf>). Reversing the court of appeals in \_\_ N.C. App. \_\_, 682 S.E.2d 238 (2009) (the trial court committed plain error by failing to instruct the jury that it could convict the defendant of either first-degree murder or accessory after the fact to murder, but not both), the court held that although the trial court erred by failing to give the instruction at issue, no plain error occurred. Citing its recent decision in *State v. Mumford*, 364 N.C. 394, 398-402 (2010), the court held that because guilty verdicts of first-degree murder and accessory after the fact to that murder would be legally inconsistent and contradictory, a defendant may not be punished for both. The court went on to explain that mutually exclusive offenses may be joined for trial; if substantial evidence supports each offense, both should be submitted to the jury with an instruction that the defendant only may be convicted of one of the offenses, but not both. Having found error, the court went on to conclude that no plain error occurred in light of the overwhelming evidence of guilt, the fact that the jury found the defendant guilty of both offenses, suggesting that it would have convicted him of the more serious offense, had it been required to choose between charges, and that the trial judge arrested judgment on the accessory after the fact conviction.