

Criminal Procedure

Counsel Issues

State v. Lane, __ N.C. __ (Mar. 11. 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS82MDZBMDUtMS5wZGY>). This capital case came back before the N.C. Supreme Court after that court remanded in *State v. Lane*, 362 N.C. 667 (Dec. 12, 2008) (*Lane I*), for consideration under *Indiana v. Edwards*, 554 U.S. 164 (2008), as to whether the trial judge should have exercised discretion to deny the defendant's request to represent himself. *Edwards* held that states may require counsel to represent defendants who are competent to stand trial but who suffer from severe mental illness to the extent that they are not competent to represent themselves. At trial, the trial court had accepted the defendant's waiver of counsel and allowed the defendant to proceed pro se. Following a hearing, held on remand after *Lane I*, the trial court concluded that the defendant was competent to stand trial and to discharge his counsel and proceed pro se. The N.C. Supreme Court held that because the defendant never was denied his constitutional right to self-representation (he was allowed to proceed pro se), the U.S. "Supreme Court's holding in *Edwards*, that the State may deny that right if a defendant falls into the "gray area" of competence, does not guide our decision here." Slip op. at 22. Rather, the N.C. Supreme Court clarified, because the trial court found the defendant competent to stand trial, the issue was whether the defendant made a knowing and voluntary waiver of his right to counsel. On that issue, and after a detailed review of the trial court's findings, the court concluded that the trial court's inquiry was sufficient to support its determination that the defendant knowingly and voluntarily waived his right to counsel. In the course of that ruling, the court reaffirmed that a defendant's technical legal knowledge is not relevant to an assessment of a valid waiver of counsel.

While *Lane I* could be read to suggest that the trial court always must undertake an *Edwards* inquiry before allowing a defendant to proceed pro se, *Lane II* suggests otherwise. In *Lane II*, the court clarified the options for the trial court, stating:

For a defendant whose competence is at issue, he must be found [competent] before standing trial. If that defendant, after being found competent, seeks to represent himself, the trial court has two choices: (1) it may grant the motion to proceed *pro se*, allowing the defendant to exercise his constitutional right to self-representation, if and only if the trial court is satisfied that he has knowingly and voluntarily waived his corresponding right to assistance of counsel . . . ; or (2) it may deny the motion, thereby denying the defendant's constitutional right to self-representation because the defendant falls into the "gray area" and is therefore subject to the "competency limitation" described in *Edwards*. The trial court must make findings of fact to support its determination that the defendant is "unable to carry out the basic tasks needed to present his own defense without the help of counsel."

Slip op. at 21 (citations omitted).

Discovery

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(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS82MDZBMDUtMS5wZGY>). In a capital murder case, the trial court did not abuse its discretion by excluding expert testimony by a neuropharmacologist and research scientist who studies the effects of drugs and alcohol on the brain, proffered by the defense as relevant to the jury's determination of the reliability of the defendant's confession. The trial court barred the expert's testimony on grounds that the expert's report provided to the State was insufficient to satisfy the discovery rules; repeated requests were made by the State for

the report and the trial court had ordered production. Relevant to the court's finding of no abuse of discretion was its separate conclusion that the expert's testimony was not relevant.

Verdict

State v. Sargeant, __ N.C. __ (Mar. 11, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zNTVBMTAtMS5wZGY>). The court agreed with the court of appeals' decision in *State v. Sargeant*, __ N.C. App. __, 696 S.E.2d 786 (Aug. 3, 2010), which had held, over a dissent, that the trial court erred by taking a partial verdict. However, because the court concluded that a new trial was warranted on account of a prejudicial ruling on an unrelated evidence issue, it did not analyze whether the verdict error was prejudicial. The court of appeals' decision described the verdict issue as follows. The defendant was convicted of first-degree murder, first-degree kidnapping, robbery with a dangerous weapon, and burning of personal property. At the end of the first day of deliberations, the jury had not reached a unanimous decision as to each of the charges. The trial court asked the jury to submit verdict sheets for any of the charges for which it had unanimously found the defendant guilty. The trial court then received the jury's verdicts finding the defendant guilty of first-degree kidnapping, robbery with a dangerous weapon, and burning of personal property, as well as first-degree murder on the bases of both felony murder and lying in wait. The only issue left for the jury to decide was whether the defendant was guilty of first-degree murder on the basis of premeditation and deliberation. The next morning, the court gave the jury a new verdict sheet asking only whether the defendant was guilty of first-degree murder on the basis of premeditation and deliberation. The jury returned a guilty verdict later that day. The court of appeals concluded that the trial court erred by taking a verdict as to lying in wait and felony murder when the jury had not yet agreed on premeditation and deliberation. It reasoned that premeditation and deliberation, felony murder, and lying in wait are not crimes, but rather theories of first-degree murder and the trial court cannot take a verdict on a theory. Therefore, the court of appeals concluded, the trial court erred by taking partial verdicts on theories of first-degree murder. As noted above, the supreme court agreed that error occurred but declined to assess whether it was prejudicial.

Evidence

Relevancy

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(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS82MDZBMDUtMS5wZGY>). In a capital murder case, the trial court did not abuse its discretion by excluding expert testimony from a neuropharmacologist and research scientist who studies the effects of drugs and alcohol on the brain, proffered by the defense as relevant to the jury's determination of the reliability of the defendant's confession. The expert would have testified concerning the defendant's pattern of alcohol use and the potential consequences of alcohol withdrawal, including seizures. However, the expert repeatedly stated that he could not opine as to whether the confession was false or true or what the defendant's condition was at the time of the confession. Evidence had been presented indicating that the defendant was not intoxicated at the time of the interrogation and that he was an alcoholic. Given this evidence, the jury could assess how alcohol withdrawal affected the reliability of the confession, if at all.

Hearsay

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(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zNTVBMTAtMS5wZGY>). Modifying and

affirming *State v. Sargeant*, __ N.C. App. __, 696 S.E.2d 786 (Aug. 3, 2010), the court held that the trial court committed prejudicial error by excluding defense evidence of hearsay statements made by a participant in the murder, offered under the Rule 804(b)(5) residual exception. The court noted that the only factor in dispute under the six-factor residual exception test was circumstantial guarantees of trustworthiness. To evaluate that factor, a court must assess, among other things, (1) the declarant's personal knowledge of the event; (2) the declarant's motivation to speak the truth; (3) whether the declarant recanted; and (4) the reason for the declarant's unavailability. Because the record established that the declarant had personal knowledge and never recanted, the court focused its analysis on factors (2) and (4). The court found that the trial court's conclusions that these considerations had not been satisfied were made on the basis of inaccurate and incomplete findings of fact used to reach unsupported conclusions of law.

Capital

Mitigating Circumstances

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(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS82MDZBMDUtMS5wZGY>). The trial court did not err by failing to submit the G.S. 15A-2000(f)(1) (no significant history of prior criminal activity) mitigating circumstance. A forecast of evidence suggested that the defendant had violently abducted his former wife and forced her to engage in sexual activity.