

Criminal Procedure

Sentencing—Restitution

State v. Moore, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS85NEExMS0xLnBkZg==>). The court reversed *State v. Moore*, __ N.C. App. __, 705 S.E.2d 797 (2011) (holding that the evidence was insufficient to support an award of restitution of \$39,332.49), and held that while there was some evidence to support the restitution award the evidence did not adequately support the particular amount awarded. The case involved a conviction for obtaining property by false pretenses; specifically, the defendant rented premises owned by the victim to others without the victim's permission. The defendant collected rent on the property and the "tenants" caused damage to it. At trial, a witness testified that a repair person estimated that repairs would cost "[t]hirty-something thousand dollars." There was also testimony that the defendant received \$1,500 in rent. Although the court rejected the State's argument that testimony about costs of "thirty-something thousand dollars" is sufficient to support an award "anywhere between \$30,000.01 and \$39,999.99," it concluded that the testimony was not too vague to support any award. The court remanded to the trial court to calculate the correct amount of restitution.

Criminal Offenses

Homicide

State v. Pastuer, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zMjdQQTEwLTEucGRm>). An equally divided court left undisturbed the court of appeals' decision in *State v. Pastuer*, __ N.C. App. __, 697 S.E.2d 381 (2010) (holding that the trial court erred by denying the defendant's motion to dismiss a charge alleging that he murdered his wife; the State's case was based entirely on circumstantial evidence; the court held that although the State may have introduced sufficient evidence of motive, evidence of the defendant's opportunity and ability to commit the crime was insufficient to show that he was the perpetrator; according to the court, no evidence put the defendant at the scene; although a trail of footprints bearing the victim's blood was found at her home and her blood was found on the bottom of one of the defendant's shoes, the court concluded that the State failed to present substantial evidence that the victim's DNA could only have gotten on the defendant's shoe at the time of the murder; evidence that the defendant was seen walking down a highway sometime around the victim's disappearance and that her body was later found in the vicinity did not supply substantial evidence that he was the perpetrator). The court noted that the effect of its decision is that the court of appeals' opinion stands without precedential value.

Larceny and Related Offenses

State v. Nickerson, __ N.C. __, __ S.E.2d __ (Oct 7, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80NThQQTEwLTEucGRm>). Reversing *State v. Nickerson*, __ N.C. App. __, 701 S.E.2d 685 (2010), the court held that unauthorized use of a motor vehicle is not a lesser included offense of possession of stolen goods. The court applied the definitional test and concluded that unauthorized use of a motor vehicle contains at least one element not present

in the crime of possession of stolen goods and that therefore the former offense is not a lesser included offense of the latter offense.

Robbery

State v. Hill, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8xMzRBMTEtMS5wZGY=>). Affirming the court of appeals, the court held the State presented substantial evidence that the victim's money was taken through the use or threatened use of a dangerous weapon. The court noted that the investigating officer had testified that the victim reported being robbed by a man with a knife. The court also held that the evidence was sufficient to establish that the victim's life was endangered or threatened by the assailant's possession, use, or threatened use of a dangerous weapon, relying on the testimony noted above and the victim's injuries. The court rejected the defendant's argument that the evidence failed to support this element because the victim never indicated that he was afraid or felt threatened, concluding that the question is whether a person's life was in fact endangered or threatened by the weapon, not whether the victim was scared or in fear of his or her life.