

## **Criminal Procedure**

### **Discovery**

*State v. Allen*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Sept. 4, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS03NDQtMS5wZGY=>). (1) The trial court erred by entering a pretrial order dismissing, under G.S. 15A-954(a)(4), murder, child abuse, and sexual assault charges against the defendant. The statute allows a trial court to dismiss charges if it finds that the defendant's constitutional rights have been flagrantly violated causing irreparable prejudice so that there is no remedy but to dismiss the prosecution. The court held that the trial court erred by finding that the State violated the defendant's *Brady* rights with respect to: a polygraph test of a woman connected to the incident; a SBI report regarding testing for the presence of blood on the victim's underwear and sleepwear; and information about crime lab practices and procedures. It reasoned, in part, that the State was not constitutionally required to disclose the evidence prior to the defendant's plea. Additionally, because the defendant's guilty plea was subsequently vacated and the defendant had the evidence by the time of the pretrial motion, he received it in time to make use of it at trial. The court also found that the trial court erred by concluding that the prosecutor intentionally presented false evidence at the plea hearing by stating that there was blood on the victim's underwear. The court determined that whether such blood existed was not material under the circumstances, which included, in part, substantial independent evidence that the victim was bleeding and the fact that no one else involved was so injured. Also, because the defendant's guilty plea was vacated, he already received any relief that would be ordered in the event of a violation. Next, the court held that the trial court erred by concluding that the State improperly used a threat of the death penalty to coerce a plea while withholding critical information to which the defendant was entitled and thus flagrantly violating the defendant's constitutional rights. The court reasoned that the State was entitled to pursue the case capitally and no *Brady* violation occurred. (2) The trial court erred by concluding that the State's case should be dismissed because of statutory discovery violations. With regard to the trial court's conclusion that the State's disclosure was deficient with respect to the SBI lab report, the court rejected the notion that the law requires either an affirmative explanation of the extent and import of each test and test result. It reasoned: this "would amount to requiring the creation of an otherwise nonexistent narrative explaining the nature, extent, and import of what the analyst did." Instead it concluded that the State need only provide information that the analyst generated during the course of his or her work, as was done in this case. With regard to polygraph evidence, the court concluded that it was not discoverable.

### **Probation Violations**

*State v. Brown*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Sept. 4, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0xMTAtMS5wZGY=>). (1) The trial court did not abuse its discretion by revoking the defendant's probation. The defendant asserted that the revocation was improper because he never received a written statement containing the conditions of his probation, as required by G.S. 15A-1343(c). The court noted that the statute requires written notice. However, citing an unpublished opinion, it noted that a different approach applies when the violation is a failure to initially report for processing, as happened here. In this case the defendant walked away

from the probation office before he could be given the written notice. The court concluded that because the trial judge informed the defendant of his obligation to report and the defendant failed to do so, written confirmation was not necessary. (2) The court also rejected the defendant's argument that he could not have violated probation because he was not assigned a probation officer, reasoning that the defendant was not so assigned because he left in the middle of intake procedure.

## **Criminal Offenses**

### **Homicide**

*State v. Lewis*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Sept. 4, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0xMDAtMS5wZGY=>). The State presented sufficient evidence of involuntary manslaughter. The State proved that an unlawful killing occurred with evidence that the defendant committed the misdemeanor of improper storage of a firearm. Additionally, the State presented sufficient evidence that the improper storage was the proximate cause of the child's death.

### **Weapons Offenses**

*State v. Lewis*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Sept. 4, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0xMDAtMS5wZGY=>). The evidence was sufficient on a charge of improper storage of a firearm under G.S. 14-315.1. The defendant argued that the evidence failed to show that he stored or left the handgun in a condition and manner accessible to the victim. The court found sufficient circumstantial evidence on this issue.

### **Clerical Errors**

*State v. Lewis*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Sept. 4, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0xMDAtMS5wZGY=>). The court remanded for correction of a clerical error where the trial court announced a fine of \$100 but the judgment incorrectly reflected a \$500 fine.