

Criminal Procedure

Competency

[State v. Ashe](#), __ N.C. App. __, __ S.E.2d __ (Oct. 1, 2013). The trial court erred by failing to sua sponte order a hearing to evaluate the defendant's competency to stand trial. Although no one raised an issue of competency, a trial court has a constitutional duty to sua sponte hold a competency hearing if there is substantial evidence indicating that the defendant may be incompetent. Here, that standard was satisfied. The defendant proffered evidence of his extensive mental health treatment history and testimony from a treating psychiatrist showing that he has been diagnosed with paranoid schizophrenia, anti-social personality disorder, and cocaine dependency in remission. Additionally, his conduct before and during trial suggests a lack of capacity, including, among other things, refusing to get dressed for trial and nonsensically interrupting. The court rejected the remedy of a retrospective competency hearing and ordered a new trial.

Indictment Issues

[State v. Davis](#), __ N.C. App. __, __ S.E.2d __ (Oct. 1, 2013). In a food stamp fraud case, the State is not required to allege in the indictment that the defendant aided and abetted the crime; aiding and abetting is a theory of liability that need not be included in the indictment.

Jury Argument

[State v. Monroe](#), __ N.C. App. __, __ S.E.2d __ (Oct. 1, 2013). The trial court did not abuse its discretion by overruling the defendant's objection to the prosecutor's closing argument during the habitual felon phase of a trial. The prosecutor said that he thought the defendant would argue in closing "for a little sympathy." The prosecutor's statement asked the jury not to allow sympathy to overshadow the application of the law to the evidence presented.

Evidence

Crawford & the Confrontation Clause

[State v. Call](#), __ N.C. App. __, __ S.E.2d __ (Oct. 1, 2013). (1) In a larceny by merchant case, statements made by a deceased Wal-Mart assistant manager to the store's loss prevention coordinator were non-testimonial. The loss prevention coordinator was allowed to testify that the assistant manager had informed him about the loss of property, triggering the loss prevention coordinator's investigation of the matter. The court stated:

[The] statement was not made in direct response to police interrogation or at a formal proceeding while testifying. Rather, [the declarant] privately notified his colleague . . . about a loss of product at the Wal-Mart store. This statement was made outside the presence of police and before defendant was arrested and charged. Thus, the statement falls outside the purview of the Sixth Amendment. Furthermore, [the] statement was not aimed at defendant, and it is unreasonable to believe that his conversation with [the

loss prevention coordinator] would be relevant two years later at trial since defendant was not a suspect at the time this statement was made.

(2) Any assertions by the assistant manager contained in a receipt for evidence form signed by him were non-testimonial. The receipt—a law enforcement document—established ownership of the baby formula that had been recovered by the police, as well as its quantity and type; its purpose was to release the property from the police department back to the store.

404(b) Evidence

[State v. Grooms](#), __ N.C. App. __, __ S.E.2d __ (Oct. 1, 2013). In a second-degree murder case arising after the defendant drove while impaired and hit and killed two bicyclists, the trial court did not err by admitting Rule 404(b) evidence. Specifically, Thelma Shumaker, a woman defendant dated, testified regarding an incident where the defendant drove while impaired on the same road two months before the collision in question. Shumaker also testified that the defendant habitually drank alcohol, drank alcohol while driving 20 times, and drove while impaired one or two additional times. The trial court found that Shumaker’s testimony regarding the specific incident was admissible to show malice. With regard to Shumaker’s other testimony, the court held that even if the evidence was inadmissible, the defendant could not establish the requisite prejudice, given the other evidence.

Criminal Offenses

Homicide

[State v. Grooms](#), __ N.C. App. __, __ S.E.2d __ (Oct. 1, 2013). In a second-degree murder case arising after the defendant drove impaired and hit and killed two bicyclists, there was sufficient evidence of malice. The defendant’s former girlfriend previously warned him of the dangers of drinking and driving; the defendant’s prior incident of drinking and driving on the same road led the girlfriend to panic and fear for her life; the defendant’s blood alcohol level was .16; the defendant consumed an illegal controlled substance that he knew was impairing; the defendant swerved off the road three times prior to the collision, giving him defendant notice that he was driving dangerously; despite this, the defendant failed to watch the road and made a phone call immediately before the collision; the defendant failed to apply his brakes before or after the collision; and the defendant failed to call 911 or provide aid to the victims.

Frauds

[State v. Davis](#), __ N.C. App. __, __ S.E.2d __ (Oct. 1, 2013). In this food stamp fraud case, the trial court did not err by denying the defendant’s motion to dismiss where the evidence showed that the defendant knowingly submitted a fraudulent wage verification form to obtain food benefits to which he was not entitled.

Judicial Administration

[*In re Cline*](#), __ N.C. App. __, __ S.E.2d __ (Oct. 1, 2013). (1) In a proceeding for removal of an elected district attorney (DA) from office, the trial court did not err by denying the DA's motion to continue where the statute, G.S. 7A-66, mandated that the matter be heard within 30 days. (2) In the absence of a statutory or rule-based provision for discovery in proceedings under the statute, the DA did not have a right to discovery. (3) Where the trial court put the burden of proof in the removal proceeding on the party who had initiated the action by clear, cogent and convincing evidence, no error occurred. (4) The court held that the trial court's rulings in the removal proceeding did not violate the DA's right to due process, noting that the DA had no right to discovery and that the trial court properly allocated the burden of proof. (5) The standard in the relevant provision of the removal statute of conduct prejudicial to the administration of justice which brings the office into disrepute is not unconstitutionally vague. (6) No violation of the prosecutor's First Amendment free speech rights occurred where the DA's removal was based on statements she made about a judge. The statements were made with actual malice and thus were not protected speech by the First Amendment. (7) Qualified immunity does not insulate the DA from removal based on statements made with actual malice. (8) Where the matter was heard without a jury, it is presumed that the trial court considered only admissible evidence, and the trial court did not err in admitting lay testimony.