

Criminal Procedure

Competency

[State v. Chukwu](#), __ N.C. App. __, __ S.E.2d __ (Nov. 19, 2013). The court rejected the defendant's argument that his due process rights were violated when the trial court failed to *sua sponte* conduct a second competency hearing. The court held that the record demonstrated the defendant's competency, that there was no evidence that his competency was temporal in nature, and that the trial court did not err by failing to *sua sponte* conduct another competency hearing. It further found that the trial court's findings were supported by competent evidence.

Sentencing

Prior Record Level

[State v. Martin](#), __ N.C. App. __, __ S.E.2d __ (Nov. 19, 2013). Although the trial court erred by assigning the defendant one point for a misdemeanor breaking and entering conviction when it also assigned two points for a felony possession of a stolen vehicle conviction that occurred on the same date, the error did not increase the defendant's PRL and thus was harmless.

[State v. Northington](#), __ N.C. App. __, __ S.E.2d __ (Nov. 19, 2013). Although the trial court erred by accepting the defendant's stipulation that a Tennessee conviction for "theft over \$1,000" was substantially similar to a NC Class H felony, the error did not affect the computation of the defendant's PRL and thus was not prejudicial.

Probation violations

[State v. Williams](#), __ N.C. App. __, __ S.E.2d __ (Nov. 19, 2013). (1) The trial court erred by revoking the defendant's probation where the State failed to present evidence that the violation report was filed before the termination of the defendant's probation. As a result, the trial court lacked jurisdiction to revoke. (2) The court declined to consider the defendant's argument that the trial court had no jurisdiction to revoke his probation in another case because the sentencing court failed to make findings supporting a probation term of more than 30 months. It reasoned that a defendant cannot re-litigate the legality of a condition of probation unless he or she raises the issue no later than the hearing at which his probation is revoked.

Criminal Offenses

Intimidating a Witness

[State v. Shannon](#), __ N.C. App. __, __ S.E.2d __ (Nov. 19, 2013). Over a dissent, the court extended G.S. 14-226(a) (intimidating witnesses) to apply to a person who was merely a prospective witness. The local DSS filed a juvenile petition against the defendant and obtained custody of his daughter. As part of that case, the defendant was referred to the victim for counseling. The defendant appeared at the victim's office, upset about a letter she had written to DSS about his treatment. The defendant grabbed the

victim's forearm to stop her and stated, in a loud and aggravated tone, that he needed to speak with her. The defendant asked the victim to write a new letter stating that he did not require the recommended treatment; when the victim declined to do so, the defendant "became very loud." The victim testified, among other things, that every time she wrote a letter to DSS, she was "opening [her]self up to have to testify" in court. The court found the evidence sufficient to establish that the victim was a prospective witness and thus covered by the statute.

Burglary and Related Offenses

[State v. Northington](#), __ N.C. App. __, __ S.E.2d __ (Nov. 19, 2013). Evidence of missing items after a breaking or entering can be sufficient to prove the defendant's intent to commit a larceny therein, raising the offense to a felony. When such evidence is presented, the trial court need not instruct on the lesser offense of misdemeanor breaking or entering.