

Criminal Procedure

Counsel Issues

[State v. Holloman](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). The trial court did not abuse its discretion by denying an indigent defendant's request for substitute counsel. The court rejected the defendant's argument that the trial court erred by failing to inquire into a potential conflict of interest between the defendant and counsel, noting that the defendant never asserted a conflict, only that he was unhappy with counsel's performance.

Motion to Suppress Procedure

[State v. Bartlett](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). A written order is not required on a motion to suppress when the trial court gives its rationale from the bench and there are no material conflicts in the evidence. Thus, the court determined it need not reach the issue of whether a judge who had not heard the evidence at the suppression hearing had authority to sign a written order granting the suppression motion.

Jury Selection

[State v. Clark](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). The trial court did not err by informing prospective jurors, pursuant to G.S. 15A-1213, that the defendant had given notice of self-defense. Specifically, during jury selection, the trial court stated: "Defendant, ladies and gentlemen, has entered a plea of not guilty and given the affirmative defense of self-defense." The court rejected the defendant's argument that this was error under G.S. 15A-905(c), a discovery statute providing that on the State's motion, the defendant must give notice of an intent to offer certain defenses at trial, including self-defense, and that the defendant's notice of defense is inadmissible at trial.

Jury Argument

[State v. Jones](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). In this child sex case, the trial court did not err by failing to intervene ex mero motu when the prosecutor referred to the complainants as "victims."

Jury Instructions

[State v. Jones](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). In this child sex case, the trial court did not commit plain error by using the word "victim" in the jury instructions. The court distinguished *State v. Walston*, __ N.C. App. __, 747 S.E.2d 720, 726, 728 (2013) (trial court's use of the term "victim" in jury instructions was prejudicial error). First, in *Walston*, the trial court denied the defendant's request to modify the pattern jury instructions to use the term "alleged victim" in place of the term "victim," and objected repeatedly to the proposed instructions; here, no such request or objection was made. Second, in *Walston*, the evidence was conflicting as to whether the alleged sexual offenses occurred; here no

such conflict existed. Finally, in *Walston* the trial court committed prejudicial error; here, the defendant did not assert that he suffered any prejudice because of the use of the term “victim.”

Jail Fees

[*State v. Rowe*](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). The trial court erred by imposing jail fees of \$2,370 pursuant to G.S. 7A-313. The trial court orally imposed an active sentence of 60 days, with credit for 1 day spent in pre-judgment custody. The written judgment included a \$2,370.00 jail fee. Although the trial court had authority under G.S. 7A-313 to order the defendant to pay \$10 in jail fees the statute did not authorize an additional \$2,360 in fees where the defendant received an active sentence, not a probationary one.

Sentencing

Resentencing

[*State v. Paul*](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). On remand for resentencing, the trial court did not violate the law of the case doctrine. The resentencing was de novo and the trial court properly considered the State’s evidence of an additional prior felony conviction when calculating prior record level.

Credit for Time Served

[*State v. Lewis*](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). The trial court did not err by failing to grant the defendant credit for 18 months spent in federal custody prior to trial. After the defendant was charged in state court, the State dismissed the charges to allow for a federal prosecution based on the same conduct. After the defendant’s federal conviction was vacated, the State reinstated the state charges. The defendant was not entitled to credit for time served in federal custody under G.S. 15-196.1 because his confinement was in a federal institution and was a result of the federal charge.

Arrest, Search and Investigation

[*State v. Weaver*](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). In granting the defendant’s motion to suppress in a DWI case, the trial court erred by concluding that a licensed security officer was a state actor when he stopped the defendant’s vehicle. Determining whether a private citizen is a state actor requires consideration of the totality of the circumstances, with special consideration of the citizen’s motivation for the search or seizure; the degree of governmental involvement, such as advice, encouragement, and knowledge about the nature of the citizen’s activities; and the legality of the conduct encouraged by the police. Importantly, the court noted, once a private search or seizure has been completed, later involvement of government agents does not transform the original intrusion into a governmental search. In the alternative, the court held that even if the security officer was a state actor, reasonable suspicion existed for the stop. Separately, the court found that a number of the trial court’s factual findings were not supported by the record.

Criminal Offenses

Participants

[*State v. Rowe*](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). In an assault inflicting serious injury case, the evidence was sufficient to show that the defendant acted in concert with other assailants and thus that he was guilty of the offense even if the injuries he personally inflicted did not constitute “serious injury.”

Homicide

[*State v. Clark*](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). In a first-degree murder case, there was sufficient evidence of premeditation and deliberation. The court noted that the victim did not provoke the defendant and that the evidence was inconsistent with the defendant’s claim of self-defense.

Kidnapping

[*State v. Holloman*](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). The trial court erred by convicting the defendant of both first-degree kidnapping and the sexual assault that raised the kidnapping to first-degree. The trial court instructed the jury that to convict defendant of first-degree kidnapping, it had to find that the victim was not released in a safe place, had been sexually assaulted, or had been seriously injured. The jury returned guilty verdicts for both first-degree kidnapping and second-degree sexual offense but did not specify the factor that elevated kidnapping to first-degree. The court concluded that it must construe the ambiguous verdict in favor of the defendant and assume that the jury relied on the sexual assault in finding the defendant guilty of first-degree kidnapping.

Judicial Administration

Closing the Courtroom

[*State v. Rollins*](#), __ N.C. App. __, __ S.E.2d __ (Dec. 17, 2013). The trial court did not err on remand when it conducted a retrospective hearing to determine whether closure of the courtroom during the victim’s testimony was proper under *Waller v. Georgia* and decided that question in the affirmative. The court rejected the defendant’s argument that the trial court’s findings of fact had to be based solely on evidence presented prior to the State’s motion for closure; it also determined that the evidence supported the trial court’s factual findings.