

Criminal Procedure

Counsel Issues

[State v. Mee](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). The defendant forfeited his right to counsel where he waived the right to appointed counsel, retained and then fired counsel twice, was briefly represented by an assistant public defender, repeatedly refused to state his wishes with respect to representation, instead arguing that he was not subject to the court's jurisdiction, would not participate in the trial, and ultimately chose to absent himself from the courtroom during the trial. The court rejected the defendant's argument that he should not be held to have forfeited his right to counsel because he did not threaten counsel or court personnel and was not abusive. The court's opinion includes extensive colloquies between the trial court and the defendant.

Jury Instructions

[State v. Allen](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). The trial court did not commit plain error by failing to instruct the jury on self-defense with respect to a charge of discharging a firearm into an occupied vehicle. The trial court instructed the jury regarding self-defense in its instructions for attempted first-degree murder and assault. For the discharging a firearm charge, the trial court did not give the full self-defense instruction, but rather stated that the jury must find whether the defendant committed the offense without justification or excuse. At the jury instruction conference the defendant agreed to this instruction. The court found that the trial court placed the burden of proof on the State to satisfy the jury beyond a reasonable doubt that the defendant did not act in self-defense when he shot at the car. It also noted that the defendant agreed to the proposed instruction and that the jury found the defendant guilty of the other charges even though each included a self-defense instruction.

[State v. Monroe](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). Over a dissent, the court held that even assuming arguendo that the rationale in *United States v. Deleveaux*, 205 F.3d 1292 (11th Cir. 2000), applies in North Carolina, the trial court did not err by denying the defendant's request to give a special instruction on self-defense as to the charge of possession of a firearm by a felon. The majority concluded that the evidence did not support a conclusion that the defendant possessed the firearm under unlawful and present, imminent, and impending threat of death or serious bodily injury.

Costs

[State v. Velazquez-Perez](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). The trial court erred by ordering costs for fingerprint examination as lab fees. G.S. 7A-304(a)(8) does not allow recovery of lab costs for fingerprint analysis.

Evidence

404(b) Evidence

[State v. Parker](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). In a case where the defendant was charged with embezzling from a school, trial court did not err by admitting evidence that the defendant misappropriated funds from a church to show absence of mistake, opportunity, motive, intent, and/or common plan or scheme. The record supported the trial court’s conclusion of similarity and temporal proximity.

Arrest Search and Investigation

Vehicle Stops

[State v. Velazquez-Perez](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). In a drug trafficking case, the trial court did not err by denying the defendant’s motion to suppress drugs seized from a truck during a vehicle stop. The defendant argued that once the officer handed the driver the warning citation, the purpose of the stop was over and anything that occurred after that time constituted unconstitutionally prolonged the stop. The court noted that officers routinely check relevant documentation while conducting traffic stops. Here, although the officer had completed writing the warning citation, he had not completed his checks related to the licenses, registration, insurance, travel logs, and invoices of the commercial vehicle. Thus, “The purpose of the stop was not completed until [the officer] finished a proper document check and returned the documents to [the driver and the passenger, who owned the truck].” The court noted that because the defendant did not argue the issue, it would not address which documents may be properly investigated during a routine commercial vehicle stop.

Criminal Offenses

General Crimes

[State v. Cousin](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). (1) The trial court did not err by denying the defendant’s motion to dismiss a charge of accessory after the fact to murder where the defendant gave eight different written statements to authorities providing a wide array of scenarios surrounding the victim’s death. In his statements the defendant identified four different individuals as being the perpetrator. He also admitted that he had not been truthful to investigators. The court concluded: “The jury could rationally have concluded that his false statements were made in an effort to shield the identity of the actual shooter.” The court noted that competent evidence suggested that the defendant knew the identity of the shooter and was protecting that person, including knowledge of the scene that could only have been obtained by someone who had been there and statements made by the defendant to his former girlfriend. Additionally, the defendant admitted to officers that he named one person “as a block” and acknowledged that his false statement made the police waste time. (2) No double jeopardy violation occurred when the trial court sentenced the defendant for obstruction of justice and accessory after the fact arising out of the same conduct. Comparing the elements of the offenses, the court noted that each contains an element not in the other and thus no double jeopardy violation occurred.

Sexual Assaults

[*State v. Henderson*](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). The court affirmed a conviction for second-degree sexual offense in a case where the defendant surprised a Target shopper by putting his hand up her skirt and penetrating her vagina. The court rejected the defendant's argument that because his action surprised the victim, he did not act by force and against her will.

Embezzlement

[*State v. Parker*](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). The evidence was sufficient to establish that the defendant embezzled funds from a school. The defendant contended that the State failed to offer substantial evidence that she used the school system's property for a wrongful purpose. The defendant's responsibilities included purchasing food and non-food items for school meetings and related events. The State's evidence showed numerous questionable purchases made by the defendant, consisting of items that would not be purchased by or served at school system events. Also, evidence showed that the defendant had forged her supervisors' signatures and/or changed budget code information on credit card authorization forms and reimbursement forms at least 29 times, and submitted forms for reimbursement with unauthorized signatures totaling \$6,641.02. This evidence showed an intent to use the school's property for a wrongful purpose, even if the forged signatures did not constitute embezzlement.

Obstruction of Justice

[*State v. Cousin*](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). (1) The trial court did not err by denying the defendant's motion to dismiss a charge of felonious obstruction of justice where the defendant gave eight written contradictory statements to law enforcement officers concerning a murder. In his first statements, the defendant denied being at the scene but identified individuals who may have been involved. In his next statements he admitted being present and identified various alternating persons as the killer. At the end of one interview, he was asked if he was telling the truth and he responded "nope." A SBI agent testified to the significant burden imposed on the investigation because of the defendant's conflicting statements. He explained that each lead was pursued and that the SBI ultimately determined that each person identified by the defendant had an alibi. (2) No double jeopardy violation occurred when the trial court sentenced the defendant for obstruction of justice and accessory after the fact arising out of the same conduct. Comparing the elements of the offenses, the court noted that each contains an element not in the other and thus no double jeopardy violation occurred.

Drug Offenses

[*State v. Velazquez-Perez*](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). (1) In a case involving trafficking and possession with intent charges, the evidence was insufficient to establish that the defendant Villalvavo knowingly possessed the controlled substance. The drugs were found in secret compartments of a truck. The defendant was driving the vehicle, which was owned by a passenger, Velazquez-Perez, who hired Villalvavo to drive the truck. The court found insufficient incriminating circumstances to support a conclusion that Villalvavo acted knowingly with respect to the drugs; while evidence regarding

the truck's log books may have been incriminating as to Velazquez-Perez, it did not apply to Villalvavo, who had not been working for Velazquez-Perez long and had no stake in the company or control over Velazquez-Perez. The court was unconvinced that Villalvavo's nervousness during the stop constituted adequate incriminating circumstances. (2) For similar reasons, the court held that the evidence was insufficient to support trafficking by conspiracy convictions against both defendants.

[*State v. Blakney*](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). The trial court did not err by denying the defendant's motion to dismiss a charge of possession with intent to sell or deliver. The defendant argued that the amount of marijuana found in his car—84.8 grams—was insufficient to show the required intent. The court rejected this argument noting that the marijuana was found in multiple containers and a box of sandwich bags and digital scales were found in the vehicle. This evidence shows not only a significant quantity of marijuana, but the manner in which the marijuana was packaged raised more than an inference that defendant intended to sell or deliver the marijuana. Further, it noted, the presence of items commonly used in packaging and weighing drugs for sale—a box of sandwich bags and digital scales—along with a large quantity of cash in small denominations provided additional evidence that defendant intended to sell or deliver marijuana.

Post-Conviction

Ineffective Assistance of Counsel

[*State v. Allen*](#), __ N.C. App. __, __ S.E.2d __ (April 15, 2014). Considering the defendant's ineffective assistance of counsel claim on appeal the court rejected his contention that counsel was ineffective by eliciting hearsay evidence that conflicted with his claim of self-defense, concluding that the evidence did not contradict this defense. It also rejected his contention that counsel was ineffective by failing to object to evidence that the defendant sold drugs on a prior occasion, concluding that even if this constituted deficient representation, there was no reasonable possibility that the error affected the outcome of the case. Finally, the court rejected the defendant's contention that counsel was ineffective by failing to move to dismiss the charges at the close of the evidence, concluding that given the evidence there was no likelihood that the trial court would have granted the motion.