

Criminal Procedure Pleadings

[State v. Wall](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). The superior court lacked jurisdiction to try the defendant for resisting arrest where the defendant was tried on a misdemeanor statement of charges filed in superior court. The State filed the statement of charges on its own, without an objection to the magistrate's order having been made by the defendant. Under G.S. 15A-922, "the State has a limited window in which it may file a statement of charges on its own accord, and that is prior to arraignment" in district court. After arraignment, the State may only file a statement of charges when the defendant objects to the sufficiency of the pleading and the trial court rules that the pleading is insufficient.

Counsel Issues

[State v. Williams \(No. COA14-1\)](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). Defense counsel did not render ineffective assistance by failing to move to dismiss felony hit and run charges where the State presented sufficient evidence as to each element of the offense and therefore the defendant could not show prejudice.

[State v. King](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). No error occurred when the trial court denied defense counsel's request for an overnight recess after having to defend himself against the State's motion for contempt based on an allegation that counsel violated the court's order regarding the rape shield rule in connection with his examination of the victim in this child sexual abuse case. After the trial court denied the State's motion, defense counsel requested an overnight recess to "calm down" about the contempt motion. The trial court denied this request but at 11:38 am called a recess until 2 pm that day. The court rejected the defendant's arguments that there was a conflict of interest between the defendant and defense counsel and that the trial court's denial of the overnight recess resulted in ineffective assistance of counsel.

Witnesses

[State v. Hurt](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). The trial court did not abuse its discretion by granting the State's motion to quash the subpoena of a prosecutor involved in an earlier hearing on the defendant's guilty plea. The court rejected the defendant's argument that the prosecutor's recitation of the factual basis for the plea was a judicial admission. Thus, the court rejected the defendant's argument that the trial court's decision to quash the subpoena deprived him of the opportunity to elicit binding admissions on the State. Additionally, the defendant could have proffered the prosecutor's statements through a transcript of the plea proceeding, which he introduced with respect to other matters.

Sentencing

[*State v. Hill*](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). Remanding for a new sentencing hearing, the court held that the trial court erred when it failed to hold a charge conference before instructing the jury during the sentencing phase of the trial, as required by G.S. 15A-1231(b). The court concluded that holding a charge conference is mandatory, and a trial court's failure to do so is reviewable on appeal even in the absence of an objection at trial. The court rejected the State's argument that the statute should not apply to sentencing proceedings in non-capital cases. It concluded:

If, as occurred in this case, the trial court decides to hold a separate sentencing proceeding on aggravating factors as permitted by [G.S.] 15A-1340.16(a1), and the parties did not address aggravating factors at the charge conference for the guilt-innocence phase of the trial, [G.S.] 15A-1231 requires that the trial court hold a separate charge conference before instructing the jury as to the aggravating factor issues.

Although G.S. 15A-1231(b) provides that "[t]he failure of the judge to comply fully with the provisions of this subsection does not constitute grounds for appeal unless his failure, not corrected prior to the end of the trial, materially prejudiced the case of the defendant," in this case, the court noted, the trial court did not comply with the statute at all.

[*State v. Hurt*](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). (1) In this murder case, the trial court did not err by denying the defendant's motion to dismiss for insufficient evidence as to the aggravating factor that the offense was especially heinous, atrocious, or cruel. Relying on prior N.C. Supreme Court case law, the court rejected the defendant's argument that the State's failure to submit any evidence showing that he played an active role in the murder precludes a finding by the jury beyond a reasonable doubt that the murder was especially heinous, atrocious, or cruel as to him. The court continued, finding that in this case, a reasonable inference can be drawn that the defendant did in fact actively participate in the murder. (2) The trial court did not err by refusing to admit during the sentencing hearing the defendant's evidence consisting of a notebook prepared in connection with earlier sentencing proceedings and containing recitations of an accomplice's confessions, a forensic blood spatter expert report, and medical reports. The trial court declined to admit the notebook and instead asked that the defendant call live witnesses from his witness list, expressing concern about the "unsupported" and "unauthenticated" nature of the writings.

Sex Offenders

[*State v. Williams \(No. COA13-1280\)*](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). The trial court did not err by ordering the defendant to enroll in lifetime SBM. The court rejected the defendant's argument that the SBM statute violates substantive due process by impermissibly infringing upon his right to be free from government monitoring of his location. The court also rejected the defendant's argument that as applied to him the statute violates substantive due process because it authorizes mandatory lifetime participation without consideration of his risk of reoffending.

Evidence

Opinions in Child Sex Cases

[*State v. King*](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). In this child sex abuse case, the trial court did not err by allowing the State's expert in pediatric medicine and the evaluation and treatment of sexual abuse to testify about common characteristics she observed in sexually abused children and a possible basis for those characteristics. The court rejected the defendant's argument that the expert's testimony constituted opinion testimony on the victim's credibility.

Arrest, Search and Investigation

Warrantless Blood Draw

[*State v. Granger*](#), __ N.C. App. __, __ S.E.2d __ (July 15, 2014). In this DWI case, the court held that under *Missouri v. McNeely* (the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant), exigent circumstances justified the warrantless blood draw. The officer was concerned about the dissipation of alcohol from the defendant's blood because it took over an hour for the officer to establish probable cause to make his request for the defendant's blood. The delay occurred because the defendant's injuries and need for medical care prevented the officer from investigating the matter until he arrived at the hospital, where the defendant was taken after his accident. The officer was concerned about the delay in getting a warrant (about 40 minutes), including the need to wait for another officer to come to the hospital and stay with the defendant while he left to get the warrant. Additionally, the officer was concerned that if he waited for a warrant, the defendant would receive pain medication for his injuries, contaminating his blood sample.