

Criminal Procedure

Jury Instructions & Deliberations

[State v. Harvell](#), __ N.C. App. __, __ S.E.2d __ (Sept. 5, 2014). (1) In this felony breaking and entering and larceny case where the victim discovered the defendant in his home, the trial court did not err by instructing the jury regarding flight where the victim testified that when he approached his front door and saw the defendant in his living room, the defendant looked at the victim and ran out the back door. (2) The trial court did not violate G.S. 15A-1234 when responding to a question by the deliberating jury. The defendant argued that the trial failed to afford counsel an opportunity to be heard before responding the jury's question about the difference between "taking" and "carrying away." After receiving the question from the jury, the trial court told the parties that it was "going to tell [the jury] the definition of taking is to lay hold of something with one's hands;" neither party objected to the proposed instructions. The trial court then instructed the jury on this definition, demonstrated the difference between the two terms with a coffee cup, and repeated the elements of felony larceny. Although the trial court did not inform the parties of its visual demonstration, the statute only requires that the trial court inform the parties "generally" of the instruction that it intends to give, as was done here.

Arrest, Search and Investigation

Identification

[State v. Harvell](#), __ N.C. App. __, __ S.E.2d __ (Sept. 5, 2014). In this felony breaking and entering and larceny case, the trial court did not commit plain error by denying the defendant's motion to suppress the victim's show-up identification of the defendant as the person he found in his home on the date in question. Among other things, the court noted that the victim viewed the defendant's face three separate times during the encounter and that during two of those observations was only 20 feet from the defendant. Additionally, the identification occurred within 15-20 minutes of the victim finding the suspect in his home. Although the show-up identification was suggestive, it was not so impermissibly suggestive as to cause irreparable mistaken identification and violate defendant's constitutional right to due process.