

## **Criminal Procedure**

### **Indictment Issues**

[\*State v. Ellis\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). An information charging injury to personal property was fatally flawed where it failed to allege that one of the victims was a legal entity capable of owning property. The information alleged the victims as: “North Carolina State University (NCSU) and NCSU High Voltage Distribution.” Noting that G.S. 116-4 provides that NCSU is a constituent institution of UNC, “a body politic and corporate” expressly authorized under G.S. 116-3 to own property, the court found that the words “North Carolina State University” sufficiently allege a legal entity capable of owning property. However, the allegation “NCSU High Voltage Distribution” “does not identify a legal entity necessarily capable of owning property because the additional words after ‘NCSU’ do not indicate what type of organization it is.”

### **Joinder**

[\*State v. Jenrette\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). The trial court did not abuse its discretion by joining charges for trial. The defendant was indicted for: two counts of possession of a firearm by a felon; first-degree murder of Frink; two counts of assault with a deadly weapon with intent to kill inflicting serious injury; two counts of conspiracy to commit first-degree murder; first-degree murder of Jones; first-degree kidnapping; conspiracy to commit first-degree kidnapping; possession with intent to sell and/or deliver cocaine; and possession of a stolen firearm. Although the charges stemmed from a series of events that occurred over two months, they were factually related. The defendant participated in the shooting of Frick, with two accomplices, Reaves and Jones. The next night the defendant and Reaves were pulled over, and two firearms were recovered from their possession, one of which turned out to have been used in the earlier shooting. This evidence shows a direct link between the possession of a firearm by a felon charges and the charges arising directly out of the shooting. The discovery of the cocaine forming the basis for the drug charge occurred during the traffic stop. The charges related to the Jones murder were connected where the evidence showed that the defendant killed Jones to prevent Jones from implicating him in the earlier Frink murder.

### **Recordation**

[\*State v. Foster\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). In a case where the trial court granted the defendant’s motion for complete recordation, the defendant was not prejudiced by the fact that the trial court conducted unrecorded bench conferences. The court was able to discern the evidentiary objections at issue during the bench conferences. The defense objection was sustained in connection with the first conference and the State’s objection properly was sustained in connection with the second.

### **Jury Instructions**

[State v. Jenrette](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). (1) No plain error occurred with respect to the trial court’s final mandate to the jury on a first-degree murder charge. The trial court instructed the jury that it could find the defendant guilty of first-degree murder as to victim Frink under the following theories: premeditation and deliberation, felony-murder, and lying in wait. After instructing the jury on all theories, the trial court continued: “If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.” The defendant argued that the jury could have construed this not guilty mandate as applying solely to the theory of lying in wait—the last theory explained in the instructions—as opposed to the overall charge of first-degree murder. The court rejected that argument, concluding first that “[w]hile the better practice would have been for the trial court to make clear to the jury that its final not guilty mandate applied to all three theories of first-degree murder, this — by itself — is not sufficient to establish plain error.” Next the court examined the verdict sheet and concluded that it “clearly informed the jury of its option of returning a not guilty verdict regarding this charge.” Finally, the court compared the not guilty mandate at issue with the analogous mandate regarding the first-degree murder charge as to a second victim, Jones. In the course of this examination, the court noted that “the final not guilty mandate in the Frink instruction is worded more appropriately than that in the Jones instruction,” because the “former informed the jury of its ‘duty’ to return a verdict of not guilty while the latter merely stated that the jury ‘would’ return a not guilty verdict if the State failed to prove the defendant’s guilt beyond a reasonable doubt.” In the end, the court concluded that even if the trial court erred, the error did not rise to the level of plain error. (2) Where the defendant was charged with two counts of felony assault on two separate victims, no error occurred where in its jury instruction the trial court referred to “the victim.” The defendant argued that the trial court erred by failing to instruct the jury to consider each offense individually. The court disagreed, noting that the charges were clearly separated on the verdict sheets and the trial court referred to the two victims by name and stated that they were separate victims of two different counts of assault. (3) The court came to the same conclusion with respect to two counts of conspiracy to commit murder.

[State v. Ott](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). In this drug case, the trial court erred by denying the defendant’s request for an instruction on entrapment. The court agreed with the defendant that the plan to sell the pills originated in the mind of the defendant’s friend Eudy, who was acting as an agent for law enforcement, and the defendant was only convinced to do so through trickery and persuasion. It explained:

[A]ccording to defendant’s evidence, Eudy was acting as an agent for the Sherriff’s office when she approached defendant, initiated a conversation about selling pills to her buyer, provided defendant the pills, and coached her on what to say during the sale. While it is undisputed that defendant was a drug user, defendant claimed that she had never sold pills to anyone before. In fact, the only reason she agreed to sell them was because she was “desperate for some pills,” and she believed Eudy’s story that she did not want her husband to find out what she was doing. Defendant’s testimony established that Eudy told defendant exactly what to say such that, during the encounter, defendant was simply playing a role which was defined and created by an agent of law enforcement. In sum, this evidence, if believed, shows that Eudy not only came up with the entire plan to sell the drugs but also persuaded defendant, who denied being a drug dealer, to sell the pills to [the undercover officer] by promising her

pills in exchange and by pleading with her for her help to keep the sale secret from her husband. Furthermore, viewing defendant's evidence as true, she had no predisposition to commit the crime of selling pills.

### **Sentencing**

[\*State v. Edmonds\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). Although the trial court erred in accepting the defendant's admission to an aggravating factor without complying with G.S. 15A-1022, as required by G.S. 15A-1022.1, the error was harmless beyond a reasonable doubt based on the uncontroverted and overwhelming evidence of the relevant factor.

### **Error Correction**

[\*State v. Edmonds\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). The court remanded for correction of a clerical error. Specifically, the trial court found at the sentencing hearing that the defendant was a PRL IV offender and ordered him to pay \$6,841.50 in attorney's fees. However, the judgment incorrectly listed him at PRL II and stated that the defendant owes \$13,004.45 in attorney's fees (the amount owed by his co-defendant).

### **Evidence**

#### **Corroboration**

[\*State v. Moore\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). The trial court did not abuse its discretion by allowing the State to admit, for purposes of corroboration, a prior consistent statement made by a State's witness. The court rejected the defendant's argument that the prior statement differed significantly from the witness's trial testimony.

### **Criminal Offenses**

#### **Homicide**

[\*State v. Jenrette\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (Oct. 7, 2014). In a case where the defendant was convicted of first-degree murder based upon three separate theories (premeditation and deliberation, felony murder, and lying in wait), the court held that even if the trial court erred by submitting the theory of lying in wait to the jury, no prejudice resulted because the jury found the defendant guilty on two other theories as well.