

Criminal Procedure

Jury Instructions

[State v. Epps](#), ___ N.C. ___, ___ S.E.2d ___ (April 10, 2015). The court per curiam affirmed the decision below, [State v. Epps](#), ___ N.C. App. ___, 752 S.E.2d 733 (2014), which held, in a first-degree murder case, that the trial court did not err by declining to instruct the jury on involuntary manslaughter. The evidence showed that the defendant fought with the victim in the yard. Sometime later the defendant returned to the house and the victim followed him. As the victim approached the screen door, the defendant stabbed and killed the victim through the screen door. The knife had a 10-12 inch blade, the defendant's arm went through the screen door up to the elbow, and the stab wound pierced the victim's lung, nearly pierced his heart and was approximately 4 1/2 inches deep. The court of appeals rejected the defendant's argument that his case was similar to those that required an involuntary manslaughter instruction where the "defendant instinctively or reflexively lashed out, involuntarily resulting in the victim's death." The court of appeals held that the "defendant's conduct was entirely voluntary."

[State v. Edgerton](#), ___ N.C. ___, ___ S.E.2d ___ (April 10, 2015). In a case where the defendant was found guilty of violation of a DVPO with a deadly weapon, the court per curiam reversed and remanded for the reasons stated in the dissenting opinion below. In the decision below, [State v. Edgerton](#), ___ N.C. App. ___, 759 S.E.2d 669 (2014), the court held, over a dissent, that the trial court committed plain error by failing to instruct the jury on the lesser included offense, misdemeanor violation of a DVPO, where the court had determined that the weapon at issue was not a deadly weapon per se. The dissenting judge did not agree with the majority that any error rose to the level of plain error.

Capital Litigation

[State v. Hembree](#), ___ N.C. ___, ___ S.E.2d ___ (April 10, 2015). In this capital case, the court held that the cumulative effect of several errors at trial denied the defendant a fair trial; the court vacated the conviction and sentence and remanded for a new trial. Specifically, and as discussed in more detail in the summaries that follow, the trial court erred by admitting an excessive amount of 404(b) evidence pertaining to another murder; by admitting evidence of the 404(b) murder victim's good character; and by allowing the prosecution to argue without basis to the jury that defense counsel had in effect suborned perjury.

Closing Statements

[State v. Hembree](#), ___ N.C. ___, ___ S.E.2d ___ (April 10, 2015). During closing arguments at the guilt-innocence phase of this capital murder trial, the State improperly accused defense counsel of suborning perjury. The prosecutor argued in part: "Two years later, after [the defendant] gives all these confessions to the police and says exactly how he killed [the victims] . . . the defense starts. The defendant, along with his two attorneys, come together to try and create some sort of story." Although the trial court sustained the defendant's objection to this statement it gave no curative instruction to

the jury. The prosecutor went to argue that the defendant lied on the stand in cooperation with defense counsel. These latter statements were grossly improper and the trial court erred by failing to intervene ex mero motu.

Post-Conviction

[*State v. Stubbs*](#), ___ N.C. ___, ___ S.E.2d ___ (April 10, 2015). Under G.S. 15A-1422, the court of appeals had subject matter jurisdiction to review the State's appeal from a trial court's order granting the defendant relief on his motion for appropriate relief. The court rejected the defendant's argument that Appellate Rule 21 required a different conclusion. In the decisions below, [*State v. Stubbs*](#), ___ N.C. App. ___, 754 S.E.2d 174 (2014), the court of appeals held, over a dissent that the trial court erred by concluding that the defendant's sentence of life in prison with the possibility of parole violated of the Eighth Amendment.

Evidence

Relevancy

[*State v. Hembree*](#), ___ N.C. ___, ___ S.E.2d ___ (April 10, 2015). In this capital murder case in which the State introduced 404(b) evidence regarding a murder of victim Saldana to show common scheme or plan, the trial court erred by allowing Saldana's sister to testify about Saldana's good character. Evidence regarding Saldana's character was irrelevant to the charged crime. For this reason the trial court also abused its discretion by admitting this evidence over the defendant's Rule 403 objection.

404(b) Evidence

[*State v. Hembree*](#), ___ N.C. ___, ___ S.E.2d ___ (April 10, 2015). In this capital murder case, the trial court erred by admitting an excessive amount of 404(b) evidence pertaining to the murder of another victim, Saldana. The court began by concluding that the trial court properly admitted evidence of the Saldana murder under Rule 404(b) to show common plan or design. However, the trial court abused its discretion under Rule 403 by admitting "so much" 404(b) evidence given the differences between the two deaths and the lack of connection between them, the uncertainty regarding the cause of the victim's death, and the nature and extent of the 404(b) evidence (among other things, of the 8 days used by the State to present its case, 7 were spent on the 404(b) evidence; also, the jury viewed over a dozen photographs of Saldana's burned remains). The court stated: "Our review has uncovered no North Carolina case in which it is clear that the State relied so extensively, both in its case-in-chief and in rebuttal, on Rule 404(b) evidence about a victim for whose murder the accused was not currently being tried."