

Criminal Procedure

Indictment Issues

[*State v. Huckelba*](#), ___ N.C. App. ___, ___ S.E.2d ___ (April 21, 2015). In a carrying a weapon on educational property case, the court rejected the defendant's argument that there was a fatal variance between the indictment, which alleged that the defendant possessed weapons at "High Point University, located at 833 Montlieu Avenue" and the evidence, which showed that the conduct occurred at "1911 North Centennial Street." The court concluded: "The indictment charged all of the essential elements of the crime: that Defendant knowingly possessed a Ruger pistol on educational property—High Point University. We agree with the State that the physical address for High Point University listed in the indictment is surplusage because the indictment already described the 'educational property' element as 'High Point University.'"

[*State v. Leaks*](#), ___ N.C. App. ___, ___ S.E.2d ___ (April 21, 2015). An indictment charging failing to notify the sheriff of a change in address was not defective. The indictment alleged, in relevant part, that the defendant "fail[ed] to register as a sex offender by failing to notify the Forsyth County Sheriff's Office of his change of address." The defendant argued that the indictment was defective because it failed to allege that he was required to provide "written notice" of a change of address. The court held: "we consider the manner of notice, in person or in writing, to be an evidentiary matter necessary to be proven at trial, but not required to be alleged in the indictment."

Sentencing

[*State v. Leaks*](#), ___ N.C. App. ___, ___ S.E.2d ___ (April 21, 2015). The trial court violated the defendant's right to be present during sentencing by entering a written judgment imposing a longer prison term than that which the trial court announced in his presence during the sentencing hearing. In the presence of the defendant, the trial court sentenced him to a minimum term of 114 months and a maximum term of 146 months imprisonment. Subsequently, the trial court entered written judgment reflecting a sentence of 114 to 149 months active prison time. The court concluded: "Given that there is no indication in the record that defendant was present at the time the written judgment was entered, the sentence must be vacated and this matter remanded for the entry of a new sentencing judgment."

Criminal Offenses

Larceny

[*State v. Hole*](#), ___ N.C. App. ___, ___ S.E.2d ___ (April 21, 2015). Following *State v. Ross*, 46 N.C. App. 338 (1980), the court held that unauthorized use of a motor vehicle "may be a lesser included offense of larceny where there is evidence to support the charge." Here, while unauthorized use may have been a lesser included of the charged larceny, the trial court did not commit plain error by failing to instruct on the lesser where the jury rejected the defendant's voluntary intoxication defense.

Weapons Offenses

[*State v. Huckelba*](#), ___ N.C. App. ___, ___ S.E.2d ___ (April 21, 2015). Deciding an issue of first impression, the court held that to be guilty of possessing or carrying weapons on educational property under G.S. 14-269.2(b) the State must prove that the defendant “both knowingly possessed or carried a prohibited weapon and knowingly entered educational property with that weapon.” With regard to proving that the defendant knowingly entered educational property, the court explained:

[T]he State is not saddled with an unduly heavy burden of proving a defendant’s subjective knowledge of the boundaries of educational property. Rather, the State need only prove a defendant’s knowledge of her presence on educational property “by reference to the facts and circumstances surrounding the case.” If, for example, the evidence shows that a defendant entered a school building and interacted with children while knowingly possessing a gun, the State would have little difficulty proving to the jury that the defendant had knowledge of her presence on educational property. If, however, the evidence shows that a defendant drove into an empty parking lot that is open to the public while knowingly possessing a gun—as in this case—the jury will likely need more evidence of the circumstances in order to find that the defendant knowingly entered educational property.

The court went on to hold that to the extent *State v. Haskins*, 160 N.C. App. 349 (2003), “conflicts with this opinion, it is now overruled.” It also held, over a dissent, that in light of the above, the trial court committed plain error by failing to instruct the jury that it must find that the defendant knowingly possessed the weapon on educational property. [Author’s note: This holding will require modification of the relevant pattern jury instructions, here N.C.P.I.—Crim 235.17.]