

## **Criminal Procedure**

### **Bill of Particulars**

[State v. Hicks](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 2, 2015). In this first-degree murder case, the trial court did not abuse its discretion by denying the defendant's motion for a bill of particulars. The defendant argued that because the State used a short-form indictment to charge murder, he lacked notice as to which underlying felony supported the felony murder charge. Although a defendant is entitled to a bill of particulars under G.S. 15A-925, the bill of particulars provides factual information not legal theories. The court concluded: "the State's legal theories are not 'factual information' subject to inclusion in a bill of particulars, and no legal mandate requires the State to disclose the legal theory it intends to prove at trial."

### **Jury Instructions**

[State v. Hicks](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 2, 2015). In this first-degree murder case, the trial court did not err by denying the defendant's request for an instruction on second-degree murder. The evidence showed that the defendant acted with premeditation and deliberation and no evidence to the contrary was presented.

## **Arrest, Search and Investigation**

[State v. Leak](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 2, 2015). In a case in which there was a dissenting opinion, the court held that the defendant's Fourth Amendment rights were violated when an officer, who had approached the defendant's legally parked car without reasonable suspicion, took the defendant's driver's license to his patrol vehicle. Until the officer took the license, the encounter was consensual and no reasonable suspicion was required: "[the officer] required no particular justification to approach defendant and ask whether he required assistance, or to ask defendant to voluntarily consent to allowing [the officer] to examine his driver's license and registration." However, the officer's conduct of taking the defendant's license to his patrol car to investigate its status constituted a seizure that was not justified by reasonable suspicion. Citing the recent U.S. Supreme Court case *Rodriguez v. United States*, 135 S. Ct. 1609 (2015) (police may not extend a completed vehicle stop for a dog sniff, absent reasonable suspicion), the court rejected the suggestion that no violation occurred because any seizure was "de minimus" in nature.

## **Criminal Offenses**

### **Homicide**

[State v. Hicks](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 2, 2015). In this first-degree murder case, the evidence was sufficient to go to the jury on the theory of premeditation and deliberation. Among other things, there was no provocation by the victim, who was unarmed; the defendant shot the victim at least four times; and after the shooting the defendant immediately left the scene without aiding the victim.

[\*State v. Maldonado\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 2, 2015). In this first-degree murder case, the court rejected the defendant's argument that there was an insufficient relationship between the felony supporting felony-murder (discharging a firearm into occupied property) and the death. The law requires only that the death occur "in the perpetration or attempted perpetration" of a predicate felony; there need not be a causal "causal relationship" between the felony and the homicide. All that is required is that the events occur during a single transaction. Here, the defendant stopped shooting into the house after forcing his way through the front door; he then continued shooting inside. The defendant argued that once he was inside the victim attempted to take his gun and that this constituted a break in the chain of events that led to her death. Even if this version of the facts were true, the victim did not break the chain of events by defending herself inside her home after the defendant continued his assault indoors.

### **Assaults**

[\*State v. Hicks\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 2, 2015). The evidence was sufficient to support a conviction for discharging a firearm into occupied property (a vehicle), an offense used to support a felony-murder conviction. The defendant argued that the evidence was conflicting as to whether he fired the shots from inside or outside the vehicle. Citing prior case law, the court noted that an individual discharges a firearm "into" an occupied vehicle even if the firearm is inside the vehicle, as long as the individual is outside the vehicle when discharging the weapon. The court continued, noting that mere contradictions in the evidence do not warrant dismissal and that here the evidence was sufficient to go to the jury.

[\*State v. Maldonado\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 2, 2015). The trial court did not err by denying the defendant's request for a diminished capacity instruction with respect to a charge of discharging a firearm into occupied property that served as a felony for purposes of a felony-murder conviction. Because discharging a firearm into occupied property is a general intent crime, diminished capacity offers no defense.

### **Sex Offender Crimes**

[\*State v. Surratt\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 2, 2015). (1) The State presented sufficient evidence to support a conviction for failure to register as a sex offender. The court rejected the defendant's argument that he was not required to register in connection with a 1994 indecent liberties conviction. The court took judicial notice of the fact that the defendant's prison release date for that conviction was Sept. 24, 1995 but that he was not actually released until Jan. 24, 1999 because he was serving a consecutive term for crime against nature. Viewing the later date as the date of the defendant's release from prison, the court held that the registration requirements were applicable to him because they took effect in January 1996 and applied to offenders then serving time for a reportable sexual offense. The court further held that because the defendant was a person required to register when the 2008 amendments to the sex offender registration statute took effect, those

amendments applied to him as well. (2) Where there was no evidence that the defendant willfully gave an address he knew to be false, the evidence was insufficient to support a conviction for submitting information under false pretenses to the sex offender registry in violation of G.S. 14-208.9A(a)(1). The State's theory of the case was that the defendant willfully made a false statement to an officer, stating that he continued to reside at his father's residence. Citing prior case law, the court held that the statute only applies to providing false or misleading information on forms submitted pursuant to the sex offender law. Here, the defendant never filled out any verification form listing the address in question. It ruled: "An executed verification form is required before one can be charged with falsifying or forging the document."