

Criminal Procedure

Indictment Issues

[State v. Campbell](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015). Reversing the decision below, [State v. Campbell](#), ___ N.C. App. ___, 759 S.E.2d 380 (2014), the court held that a larceny indictment was not fatally flawed even though it failed to specifically allege that a church, the co-owner of the property at issue, was an entity capable of owning property. The indictment named the victim as Manna Baptist Church. The supreme court held: “[A]lleging ownership of property in an entity identified as a church or other place of religious worship, like identifying an entity as a ‘company’ or ‘incorporated,’ signifies an entity capable of owning property, and the line of cases from the Court of Appeals that has held otherwise is overruled.”

Expression of Opinion by Judge

[State v. Berry](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015), In this child sexual assault case and for the reasons stated in the dissenting opinion below, the supreme court reversed the decision below, [State v. Berry](#), ___ N.C. App. ___, 761 S.E.2d 700 (2014), which had held that the trial court did not express an opinion on a question of fact to be decided by the jury in violation of G.S. 15A-1222 or express an opinion as to whether a fact had been proved in violation of G.S. 15A-1232 when instructing the jury on how to consider a stipulation. The dissenting judge believed that the trial court’s instruction could have been reasonably interpreted by the jury as a mandate to accept certain disputed facts in violation of G.S. 15A-1222 and 15A-1232. The stipulation at issue concerned a report by a clinical social worker who had interviewed the victim; in it the parties agreed to let redacted portions of her report come in for the purpose of corroborating the victim’s testimony. The dissenting judge interpreted the trial court’s instructions to the jury as requiring them to accept the social worker’s report as true.

Jury Instructions

[State v. May](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015). The court reversed [State v. May](#), ___ N.C. App. ___, 749 S.E.2d 483 (2013), which had held that the trial court committed reversible error when charging a deadlocked jury. The court of appeals held that the trial court erred when it instructed the deadlocked jury to resume deliberations for an additional thirty minutes, stating: “I’m going to ask you, since the people have so much invested in this, and we don’t want to have to redo it again, but anyway, if we have to we will.” The court of appeals concluded that instructing a deadlocked jury regarding the time and expense associated with the trial and a possible retrial is error. Additionally, court of appeals held that the trial court erred by giving only a portion of the G.S. 15A-1235(b) instruction. It reasoned that although the trial court is not required to reinstruct the jury under G.S. 15A-1235(b), if it chooses to do so it must give all of the statutory instructions. The court of appeals went on to hold that the State had failed to show that the error was harmless beyond a reasonable doubt. The State petitioned for discretionary review on whether the court of appeals had erred in holding that the State had the burden of proving that the purported error in the trial court’s instructions was harmless beyond a reasonable doubt. The supreme court reversed, distinguishing *State v. Wilson*, 363 N.C. 478, 484 (2009), and concluding that because the defendant failed to raise the constitutional coercive verdict issue below, it was waived on appeal. Nevertheless, the supreme court continued, because the alleged constitutional error occurred during the trial court’s instructions to the jury, it could review for plain error. With regard to the alleged statutory violation that the defendant also failed to raise at trial, the supreme court held that because the relevant provisions in G.S. 15A-1235 were permissive and not mandatory, plain error review applied to that claim as well. Turning to the substance of the defendant’s claims, the supreme

court concluded that most of the trial court's instructions were not coercive. With respect to the remaining challenged instructions, it held: "Assuming without deciding that the court's instruction to continue deliberations for thirty minutes and the court's isolated mention of a retrial were erroneous, these errors do not rise to the level of being so fundamentally erroneous as to constitute plain error."

[State v. Galaviz-Torres](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015). Reversing an unpublished opinion below in this drug trafficking case, the supreme court held the trial court did not err in its jury instructions regarding the defendant's knowledge. The court noted that "[a] presumption that the defendant has the required guilty knowledge exists" when "the State makes a prima facie showing that the defendant has committed a crime, such as trafficking by possession, trafficking by transportation, or possession with the intent to sell or deliver, that lacks a specific intent element." However, the court continued: "when the defendant denies having knowledge of the controlled substance that he has been charged with possessing or transporting, the existence of the requisite guilty knowledge becomes 'a determinative issue of fact' about which the trial court must instruct the jury." As a result of these rules, footnote 4 to N.C.P.I. Crim. 260.17 (and parallel footnotes in related instructions) states that, "[i]f the defendant contends that he did not know the true identity of what he possessed," the italicized language must be added to the jury instructions

For you to find the defendant guilty of this offense the State must prove two things beyond a reasonable doubt:

First, that the defendant knowingly possessed cocaine *and the defendant knew that what he possessed was cocaine*. A person possesses cocaine if he is aware of its presence and has (either by himself or together with others) both the power and intent to control the disposition or use of that substance.

The defendant argued that the trial court erred by failing to add the "footnote four" language to the jury instructions. The supreme court disagreed, reasoning:

In this case, defendant did not either deny knowledge of the contents of the gift bag in which the cocaine was found or admit that he possessed a particular substance while denying any knowledge of the substance's identity. Instead, defendant simply denied having had any knowledge that the van that he was driving contained either the gift bag or cocaine. As a result, since defendant did not "contend[] that he did not know the true identity of what he possessed," the prerequisite for giving the instruction in question simply did not exist in this case. As a result, the trial court did not err by failing to deliver the additional instruction contained in footnote four . . . in this case. (citation omitted).

The court went on to distinguish the case before it from *State v. Coleman*, ___ N.C. App. ___, 742 S.E.2d 346 (2013).

Arrest, Search and Investigation

Searches

[State v. Elder](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015). Modifying and affirming the decision below, [State v. Elder](#), ___ N.C. App. ___, 753 S.E.2d 504 (2014), the supreme court held that the district court exceeded its statutory authority under G.S. 50B-3 by ordering a search of defendant's person, vehicle, and residence pursuant to an ex parte civil Domestic Violence Order of Protection ("DVPO") and that the ensuing search violated the defendant's constitutional rights. Relying on G.S. 50B-3(a)(13) (authorizing the court to order "any additional prohibitions or requirements the court deems necessary to protect any party or any minor child") the district court included in the DVPO a provision stating: "[a]ny Law

Enforcement officer serving this Order shall search the Defendant's person, vehicle and residence and seize any and all weapons found." The district court made no findings or conclusions that probable cause existed to search the defendant's property or that the defendant even owned or possessed a weapon. Following this mandate, the officer who served the order conducted a search as instructed. As a result of evidence found, the defendant was charged with drug crimes. The defendant unsuccessfully moved to suppress, was convicted and appealed. The supreme court concluded that the catch all provision in G.S. 50B-3 "does not authorize the court to order law enforcement, which is not a party to the civil DVPO, to proactively search defendant's person, vehicle, or residence." The court further concluded "by requiring officers to conduct a search of defendant's home under sole authority of a civil DVPO without a warrant or probable cause, the district court's order violated defendant's constitutional rights" under the Fourth Amendment.

Stops

[State v. Jackson](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015). Reversing the decision below, [State v. Jackson](#), ___ N.C. App. ___, 758 S.E.2d 39 (2014), the court held that an officer had reasonable suspicion for the stop. The stop occurred at approximately 9:00 pm in the vicinity of Kim's Mart. The officer knew that the immediate area had been the location of hundreds of drug investigations. Additionally, the officer personally had made drug arrests in the area and was aware that hand to hand drug transactions occurred there. On the evening in question the officer saw the defendant and another man standing outside of Kim's Mart. Upon spotting the officer in his patrol car, the two stopped talking and dispersed in opposite directions. In the officer's experience, this is typical behavior for individuals engaged in a drug transaction. The officer tried to follow the men, but lost them. When he returned to Kim's Mart they were standing 20 feet from their original location. When the officer pulled in, the men again separated and started walking in opposite directions. The defendant was stopped and as a result contraband was found. The court found these facts sufficient to create reasonable suspicion to justify the initial investigatory stop. The court noted that its conclusion was based on more than the defendant's presence in a high crime and high drug area.

[State v. Benton](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015). In this companion case to *Jackson* (above), the court vacated and remanded to the court of appeals in light *Jackson*. The opinion below in this case was unpublished.

Criminal Offenses

[State v. Campbell](#), ___ N.C. ___, ___ S.E.2d ___ (June 11, 2015). Reversing the decision below, [State v. Campbell](#), ___ N.C. App. ___, 759 S.E.2d. 380 (2014), the court held that the State presented sufficient evidence of the defendant's intent to commit larceny in a place of worship to support his conviction for felonious breaking or entering that facility. The evidence showed that the defendant unlawfully broke and entered the church; he did not have permission to be there and could not remember what he did while there; and the church's Pastor found the defendant's wallet near the place where some of the missing items previously had been stored.