

Evidence

[*State v. Young*](#), ___ N.C. ___, ___ S.E.2d ___ (Aug. 21, 2015). In this murder case the court held that the court of appeals erred by concluding that the trial court committed reversible error in allowing into evidence certain materials from civil actions. The relevant materials included a default judgment and complaint in a wrongful death suit stating that the defendant killed the victim and a child custody complaint that included statements that the defendant had killed his wife. The court of appeals had held that admission of this evidence violated G.S. 1-149 (“[n]o pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in it”) and Rule 403. The court held that the defendant did not preserve his challenge to the admission of the child custody complaint on any grounds. It further held that the defendant failed to preserve his G.S. 1-149 objection as to the wrongful death evidence and that his Rule 403 objection as to this evidence lacked merit. As to the G.S. 1-149 issue, the court found it dispositive that the defendant failed to object at trial to the admission of the challenged evidence on these grounds and concluded that the court of appeals erred by finding that the statutory language was mandatory and allowed for review absent an objection. On the 403 issue as to the wrongful death evidence, the court rejected the court of appeals’ reasoning that substantial prejudice resulting from this evidence “irreparably diminished” defendant’s presumption of innocence and “vastly outweighed [its] probative value.” Instead, the court found that evidence concerning the defendant’s response to the wrongful death and declaratory judgment action had material probative value. Although the evidence posed a significant risk of unfair prejudice, the trial court “explicitly instructed the jury concerning the manner in which civil cases are heard and decided, the effect that a failure to respond has on the civil plaintiff’s ability to obtain the requested relief, and the fact that ‘[t]he entry of a civil judgment is not a determination of guilt by any court that the named defendant has committed any criminal offense.’”

[*State v. Triplett*](#), ___ N.C. ___, ___ S.E.2d ___ (Aug. 21, 2015). Reversing the court of appeals in this murder and robbery case, the court held that the trial court did not abuse its discretion by prohibiting the defendant from introducing a tape-recorded voice mail message by the defendant’s sister, a witness for the State, to show her bias and attack her credibility. Although the court found that the voice mail message was minimally relevant to show potential bias, the trial court did not abuse its discretion in its Rule 403 balancing. Because the sister was not a key witness for the State, any alleged bias on her part “becomes less probative.” The trial court properly weighed the evidence’s weak probative value against the confusion that could result by presenting the evidence, which related to a family feud that was tangential to the offenses being tried.

Arrest, Search and Investigation

[*State v. McKinney*](#), ___ N.C. ___, ___ S.E.2d ___ (Aug. 21, 2015). Reversing the court of appeals in this drug case, the court held that the trial court properly denied the defendant’s motion to suppress, finding that probable cause existed to justify issuance of a search warrant authorizing a search of defendant’s apartment. The application was based on the following evidence: an anonymous citizen reported observing suspected drug-related activity at and around the apartment; the officer then saw

an individual named Foushee come to the apartment and leave after six minutes; Foushee was searched and, after he was found with marijuana and a large amount of cash, arrested; and a search of Fouchée's phone revealed text messages between Foushee and an individual named Chad proposing a drug transaction. The court rejected the defendant's argument that the citizen's complaint was unreliable because it gave no indication when the citizen observed the events, that the complaint was only a "naked assertion" that the observed activities were narcotics related, and that the State failed to establish a nexus between Foushee's vehicle and defendant's apartment, finding none of these arguments persuasive, individually or collectively. The court held that "under the totality of circumstances, all the evidence described in the affidavit both established a substantial nexus between the marijuana remnants recovered from Foushee's vehicle and defendant's residence, and also was sufficient to support the magistrate's finding of probable cause to search defendant's apartment."