Criminal Procedure

Indictment Issues

State v. Ellis, ___ N.C. ___, ___ S.E.2d ___ (Sept. 25, 2015). Reversing the opinion below, *State v. Ellis,* __ N.C. App. __, 763 S.E.2d 574 (Oct. 7, 2014), the court held that an information charging injury to personal property was not fatally flawed. The information alleged the victims as: "North Carolina State University (NCSU) and NCSU High Voltage Distribution." The court noted that the defendant did not dispute that North Carolina State University is expressly authorized to own property by statute, G.S. 116-3, "and is, for that reason, an entity inherently capable of owning property." Rather, the defendant argued that the information was defective because "NCSU High Voltage Distribution" was not alleged to be an entity capable of owning property. The court held: "Assuming, without deciding, that the … information did not adequately allege that 'NCSU High Voltage Distribution' was an entity capable of owning property, that fact does not render the relevant count facially defective." In so holding the court rejected the defendant's argument that when a criminal pleading charging injury to personal property lists two entities as property owners, both must be adequately alleged to be capable of owning property. The court continued:

> [A] criminal pleading purporting to charge the commission of a property-related crime like injury to personal property is not facially invalid as long as that criminal pleading adequately alleges the existence of at least one victim that was capable of owning property, even if the same criminal pleading lists additional victims who were not alleged to have been capable of owning property as well.

State v. Pendergraft, ___ N.C. ___, ___ S.E.2d ___ (Sept. 25, 2015) (per curiam). Because the participating Justices were equally divided, the decision below, *State v. Pendergraft*, ___ N.C. App. ___, 767 S.E.2d 674 (Dec. 31, 2014), was left undisturbed and without precedential value. In the decision below the court of appeals had held, over a dissent, that an indictment alleging obtaining property by false pretenses was not fatally defective. After the defendant filed false documents purporting to give him a property interest in a home, he was found to be occupying the premises and arrested. The court of appeals rejected the defendant's argument that the indictment was deficient because it failed to allege that he made a false representation. The indictment alleged that the false pretense consisted of the following: "The defendant moved into the house … with the intent to fraudulently convert the property to his own, when in fact the defendant knew that his actions to convert the property to his own were fraudulent." Acknowledging that the indictment did not explicitly charge the defendant with having made any particular false representation, the court of appeals found that it "sufficiently apprise[d] the defendant about the nature of the false representation that he allegedly made," namely that he falsely represented that he owned the property as part of an attempt to fraudulently obtain ownership or possession of it. The court of appeals also rejected the defendant's argument that the indictment was defective in that it failed to allege the existence of a causal connection between any false representation by him and the attempt to obtain property, finding the charging language sufficient to imply causation.

Suppression Motions—Procedural Issues

State v. Bartlett, ___ N.C. ___, ___ S.E.2d ___ (Sept. 25, 2015). The court reversed the decision below, *State v. Bartlett,* __ N.C. App. __, 752 S.E.2d 237 (Dec. 17, 2013), holding that a new suppression hearing was required. At the close of the suppression hearing, the superior court judge orally granted the defendant's motion and asked counsel to prepare a written order. However, that judge did not sign the proposed order before his term ended. The defendant presented the proposed order to a second superior court judge, who signed it, over the State's objection, and without conducting a hearing. The order specifically found that the defendant's expert was credible, gave weight to the expert's testimony, and used the expert's testimony to conclude that no probable cause existed to support defendant's arrest. The State appealed, contending that the second judge was without authority to sign the order. The court of appeals found it unnecessary to reach the State's contention because that court considered the first judge's oral ruling to be sufficient. Reviewing the law, the Supreme Court clarified, "our cases require findings of fact only when there is a material conflict in the evidence and allow the trial court to make these findings either orally or in writing." It added that to the extent that cases such as *State v. Williams*, 195 N.C. App. 554 (2009), "suggest otherwise, they are disavowed." Turning to the case at hand, the court concluded that at the suppression hearing in this case, disagreement between the parties' expert witnesses created a material conflict in the evidence. Thus, a finding of fact, whether written or oral, was required. Here, however, the first judge made no such finding. The court noted that while he did attempt to explain his rationale for granting the motion, "we cannot construe any of his statements as a definitive finding of fact that resolved the material conflict in the evidence." Having found the oral ruling was inadequate, the Court considered whether the second judge had authority to resolve the evidentiary conflict in his written order even though he did not conduct the suppression hearing. It held that he did not, reasoning that G.S. 15A-977 contemplates that the same trial judge who hears the evidence must also find the facts. The court rejected the defendant's argument that G.S. 15A-1224(b) authorized the second judge to sign the order, concluding that provision applies only to criminal trials, not suppression hearings.

Evidence

State v. Taylor, ___ N.C. ___, ___ S.E.2d ___ (Sept. 25, 2015) (per curiam). The court reversed the opinion below, *State v. Taylor*, ___ N.C. App. ___, 767 S.E.2d 585 (Dec. 16, 2014), for the reasons stated in the dissenting opinion. Over a dissent, the court of appeals had held that the trial court committed plain error by permitting a Detective to testify that she moved forward with her investigation of obtaining property by false pretenses and breaking or entering offenses because she believed that the victim, Ms. Medina, "seemed to be telling me the truth." The court of appeals held that the challenged testimony constituted an impermissible vouching for Ms. Medina's credibility in a case in which the only contested issue was the relative credibility of Ms. Medina and the defendant. The dissenting judge did not believe that admission of the testimony in question met the threshold needed for plain error.

Criminal Offenses

State v. Blow, ___ N.C. ___, ___ S.E.2d ___ (Sept. 25, 2015). For the reasons stated in the dissenting opinion, the court reversed the opinion below, *State v. Blow,* ___ N.C. App. ___, 764 S.E.2d 230 (Nov. 4, 2014). In this child sexual assault case in which the defendant was convicted of three counts of first-degree rape, the court of appeals had held that the trial court erred by failing to dismiss one of the rape charges. The court of appeals agreed with the defendant that because the victim testified that the defendant inserted his penis into her vagina "a couple" of times, without identifying more than two acts of penetration, the State failed to present substantial evidence of three counts of rape. The court of appeals found that the defendant's admission to three instances of "sex" with the victim was not an admission of vaginal intercourse because the defendant openly admitted to performing oral sex and other acts on the victim but denied penetrating her vagina with his penis. The dissenting judge believed that the State presented substantial evidence that was sufficient, if believed, to support the jury's decision to convict of three counts of first degree rape. The dissenting judge agreed with the majority that the victim's testimony about penetration "a couple" of times would have been insufficient to convict the defendant of three counts, but noted that the record contains other evidence, including the defendant's admission that he "had sex" with the victim "about three times."