

Criminal Procedure Jurisdiction

[*State v. Goins*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 15, 2015). Based on the victim’s testimony that the alleged incident occurred in his bedroom, there was sufficient evidence that the charged offense, crime against nature, occurred in the state of North Carolina.

Appeal/Certiorari Review After Guilty Plea

[*State v. Biddix*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 15, 2015). (1) The defendant, who pleaded guilty in this drug case, had no statutory right under G.S. 15A-1444 to appeal where his appeal pertained to the voluntariness of his plea. (2) Notwithstanding prior case law, and over a dissent, the court held that the defendant could not seek review by way of certiorari where the defendant’s claim did fall within any of the three grounds set forth in Appellate Rule 21(a)(1). The court distinguished prior cases in which certiorari had been granted, noting that none addressed the requirements of Rule 21. (3) The court declined to exercise its discretion under Appellate Rule 2 to suspend the rules of appellate procedure, finding that the defendant had not demonstrated exceptional circumstances warranting such action.

[*State v. McGee*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 15, 2015). The defendant’s assertions in his MAR, filed more than seven years after expiration of the appeal period, that his plea was invalid because the trial court failed to follow the procedural requirements of G.S. 15A-1023 and -1024 were precluded by G.S. 15A-1027 (“Noncompliance with the procedures of this Article may not be a basis for review of a conviction after the appeal period for the conviction has expired.”).

Motions to Dismiss—Corpus Delicti

[*State v. Ballard*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 15, 2015). (1) In a case involving two perpetrators, the trial court properly denied the defendant’s motion to dismiss a robbery charge, predicated on the corpus delicti rule. Although the defendant’s own statements constituted the only evidence that he participated in the crime, “there [wa]s no dispute that the robbery happened.” Evidence to that effect included “security footage, numerous eyewitnesses, and bullet holes and shell casings throughout the store.” The court concluded: “corpus delicti rule applies where the confession is the only evidence that the crime was committed; it does not apply where the confession is the only evidence that the defendant committed it.” The court continued, citing *State v. Parker*, 315 N.C. 222 (1985) for the rule that “ ‘the perpetrator of the crime’ is not an element of corpus delicti.” (2) The trial court properly denied the defendant’s motion to dismiss a conspiracy charge, also predicated on the corpus delicti rule. The court found that there was sufficient evidence corroborating the defendant’s confession. It noted that “the fact that two masked men entered the store at the same time, began shooting at employees at the same time, and then fled together in the same car, strongly indicates that the men had previously agreed to work together to commit a crime.” Also, “as part of his explanation for how he helped plan the robbery, [the defendant] provided details about the crime that had not been released to the public, further corroborating his involvement.” Finally, as noted by the *Parker* Court,

“conspiracy is among a category of crimes for which a ‘strict application’ of the corpus delicti rule is disfavored because, by its nature, there will never be any tangible proof of the crime.”

Evidence

404(b) Evidence

[*State v. Goins*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 15, 2015). (1) In this sexual assault case involving allegations that the defendant, a high school wrestling coach, sexually assaulted wrestlers, the trial court did not err by admitting, under Rule 404(b), evidence that the defendant engaged in hazing techniques against his wrestlers. The evidence involved testimony from wrestlers that the defendant choked-out and gave extreme wedgies to his wrestlers, and engaged in a variety of hazing activity, including instructing upperclassmen to apply muscle cream to younger wrestlers’ genitals and buttocks. The evidence was properly admitted to show that the defendant engaged in “grooming behavior” to prepare his victims for sexual activity. The court so concluded even though the hazing techniques were not overtly sexual or pornographic, noting: “when a defendant is charged with a sex crime, 404(b) evidence ... does not necessarily need to be limited to other instances of sexual misconduct.” It concluded: “the hazing testimony tended to show that Defendant exerted great physical and psychological power over his students, singled out smaller and younger wrestlers for particularly harsh treatment, and subjected them to degrading and often quasi-sexual situations. Whether sexual in nature or not, and regardless of whether some wrestlers allegedly were not victimized to the same extent as the complainants, the hazing testimony had probative value beyond the question of whether Defendant had a propensity for aberrant behavior (quotations and citations omitted).” (2) The trial court did not abuse its discretion by admitting the hazing testimony under Rule 403, given that the evidence was “highly probative” of the defendant’s intent, plan, or scheme to carry out the charged offenses. The court noted however “that the State eventually could have run afoul of Rule 403 had it continued to spend more time at trial on the hazing testimony or had it elicited a similar amount of 404(b) testimony on ancillary, prejudicial matters that had little or no probative value regarding the Defendant’s guilt” (citing *State v. Hembree*, 367 N.C. 2 (2015) (new trial where in part because the trial court “allow[ed] the admission of an excessive amount” of 404(b) evidence regarding “a victim for whose murder the accused was not currently being tried”)). However, the court concluded that did not occur here.

Bias

[*State v. Goins*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Dec. 15, 2015). (1) In this sexual assault case involving allegations that the defendant, a high school wrestling coach, sexually assaulted wrestlers, the trial court erred by excluding evidence that one of the victims was biased. The defendant sought to introduce specific evidence showing that the victim had a motive to falsely accuse the defendant. The trial court found the evidence irrelevant because it did not fit within one of the exceptions of the Rape Shield Statute. The court concluded that this was error, noting that the case was “indistinguishable” “in any meaningful way” from *State v. Martin*, ___ N.C. App. ___, 774 S.E.2d 330 (2015) (trial court erred by concluding that evidence was per se admissible because it did not fall within one of the Rape Shield Statute’s exceptions). (2) The trial court abused its discretion by excluding the bias evidence under Rule

403, because the evidence in question had a direct relationship to the incident at issue. Here, the defendant did not seek to introduce evidence of completely unrelated sexual conduct at trial. Instead, the defendant sought to introduce evidence that the victim told “police and his wife that he was addicted to porn . . . [and had] an extramarital affair[,] . . . [in part] because of what [Defendant] did to him.” The defendant sought to use this evidence to show that the victim “had a reason to fabricate his allegations against Defendant – to mitigate things with his wife and protect his military career.” Thus, there was a direct link between the proffered evidence and the incident in question. (3) The court went on to hold, however, that because of the strong evidence of guilt, no prejudice resulted from the trial court’s errors.