Criminal Procedure

Indictment Issues

State v. Spivey, ___ N.C. ___, ___ S.E.2d ___ (Mar. 18, 2016). On discretionary review of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 769 S.E.2d 841 (2015), the court reversed, holding that an indictment charging the defendant with injury to real property "of Katy's Great Eats" was not fatally defective. The court rejected the argument that the indictment was defective because it failed to specifically identify "Katy's Great Eats" as a corporation or an entity capable of owning property, explaining: "An indictment for injury to real property must describe the property in sufficient detail to identify the parcel of real property the defendant allegedly injured. The indictment needs to identify the real property itself, not the owner or ownership interest." The court noted that by describing the injured real property as "the restaurant, the property of Katy's Great Eats," the indictment gave the defendant reasonable notice of the charge against him and enabled him to prepare his defense and protect against double jeopardy. The court also rejected the argument that it should treat indictments charging injury to real property the same as indictments charging crimes involving personal property, such as larceny, embezzlement, or injury to personal property, stating:

> Unlike personal property, real property is inherently unique; it cannot be duplicated, as no two parcels of real estate are the same. Thus, in an indictment alleging injury to real property, identification of the property itself, not the owner or ownership interest, is vital to differentiate between two parcels of property, thereby enabling a defendant to prepare his defense and protect against further prosecution for the same crime. While the owner or lawful possessor's name may, as here, be used to identify the specific parcel of real estate, it is not an essential element of the offense that must be alleged in the indictment, so long as the indictment gives defendant reasonable notice of the specific parcel of real estate he is accused of injuring.

The court further held that to the extent that *State v. Lilly*, 195 N.C. App. 697 (2009), is inconsistent with this opinion, it is overruled. Finally, the court noted that although "[i]deally, an indictment for injury to real property should include the street address or other clear designation, when possible, of the real property alleged to have been injured," if the defendant had been confused as to the property in question, he could have requested a bill of particulars.

Verdict

State v. Walters, ___ N.C. ___, ___ S.E.2d ___ (Mar. 18, 2016). On discretionary review from a unanimous unpublished Court of Appeals decision, the court reversed in part, concluding that the trial court's jury instructions regarding first-degree kidnapping did not violate the defendant's constitutional right to be convicted by the unanimous verdict. The trial court instructed the jury, in part, that to convict the defendant it was required to find that he removed the victim for the purpose of facilitating commission of *or* flight after committing a specified felony assault. The defendant was convicted and appealed arguing that the disjunctive instruction violated his right to a unanimous verdict. Citing its decision in *State v. Bell*, 359 N.C. 1, 29-30, the Supreme Court disagreed, stating: "our case law has long embraced a distinction between unconstitutionally vague instructions that render unclear the offense

for which the defendant is being convicted and instructions which instead permissibly state that more than one specific act can establish an element of a criminal offense." It also found that, contrary to the opinion below, the evidence was sufficient to support a jury finding that the defendant had kidnapped the victim in order to facilitate an assault on the victim.

Entry of Order or Judgment

State v. Miller, ___ N.C. ___, ___ S.E.2d ___ (Mar. 18, 2016). On discretionary review of a unanimous, unpublished decision, the court held that the Court of Appeals improperly dismissed the State's appeal on grounds that the trial court's order had not been properly entered. The court noted that in a criminal case, a judgment or order is entered when the clerk of court records or files the judge's decision; entry of an order does not require that the trial court's decision be reduced to writing. Here, after the superior court announced its decision to affirm the district court order, the courtroom clerk noted in the minutes that "Court affirms appeal. State appeals court ruling." As a result, the order from which the State noted its appeal was properly entered.

Sex Offenders

State v. Crockett, ___ N.C. ___, ___ S.E.2d ___ (Mar. 18, 2016). On discretionary review of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 767 S.E.2d 78 (2014), the court affirmed the defendant's convictions, finding the evidence sufficient to prove that he failed to register as a sex offender. The defendant was charged with failing to register as a sex offender in two indictments covering separate offense dates. The court held that G.S. 14-208.9, the "change of address" statute, and not G.S. 14-208.7, the "registration" statute, governs the situation when, as here, a sex offender who has already complied with the initial registration requirements is later incarcerated and then released. The court continued, noting that "the facility in which a registered sex offender is confined after conviction functionally serves as that offender's address." Turning to the sufficiency the evidence, the court found that as to the first indictment, the evidence was sufficient for the jury to conclude that defendant had willfully failed to provide written notice that he had changed his address from the Mecklenburg County Jail to the Urban Ministry Center. As to the second indictment, the evidence was sufficient for the jury to find that the defendant had willfully changed his address from Urban Ministries to Rock Hill, South Carolina without providing written notice to the Sheriff's Department. As to this second charge, the court rejected the defendant's argument that G.S. 14-208.9(a) applies only to in-state address changes. The court also noted that when a registered offender plans to move out of state, appearing in person at the Sheriff's Department and providing written notification three days before he intends to leave, as required by G.S. 14-208.9(b) would appear to satisfy the requirement in G.S. 14-208.9(a) that he appear in person and provide written notice not later than three business days after the address change. Having affirmed on these grounds, the court declined to address the Court of Appeals' alternate basis for affirming the convictions: that Urban Ministry is not a valid address at which the defendant could register because the defendant could not live there.

State v. Barnett, ___ N.C. ___, ___ S.E.2d ___ (Mar. 18, 2016). On discretionary review of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 768 S.E.2d 327 (2015), the court reversed, holding that the evidence was sufficient to sustain the defendant's conviction to failing to register as a sex offender. Following *Crockett* (summarized immediately above), the court noted that G.S. 14-208.7(a) applies solely to a sex offender's initial registration whereas G.S. 14-208.9(a) applies to instances in which an individual previously required to register changes his address from the address. Here, the evidence showed that the defendant failed to notify the Sheriff of a change in address after his release from incarceration imposed after his initial registration.

State v. James, ___ N.C. ___, ___ S.E.2d ___ (Mar. 18, 2016). In an appeal from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 774 S.E.2d 871 (2015), the court per curiam affirmed for the reasons stated in *State v. Williams*, ___ N.C. ___, ___ S.E. 2d ___ (Jan. 29, 2016) (in a case where the defendant, a sex offender, was charged with violating G.S. 14-208.11 by failing to provide timely written notice of a change of address, the court held that the indictment was not defective; distinguishing *State v. Abshire*, 363 N.C. 322 (2009), the court rejected the defendant's argument that the indictment was defective because it alleged that he failed to register his change of address with the sheriff's office within three days, rather than within three business days).

Arrest, Search & Investigation

Stops

State v. Warren, ___ N.C. ___, ___ S.E.2d ___ (Mar. 18, 2016). On appeal pursuant from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 775 S.E.2d 362 (2015), the court per curiam affirmed. In this post-*Rodriguez* case, the court of appeals had held, over a dissent, that the officer had reasonable suspicion to extend the scope and duration of a routine traffic stop to allow a police dog to perform a drug sniff outside the defendant's vehicle. The court of appeals noted that under *Rodriguez v. United States*, ___ U.S. ___, 191 L.Ed. 2d 492 (2015), an officer who lawfully stops a vehicle for a traffic violation but who otherwise does not have reasonable suspicion that any crime is afoot beyond a traffic violation may execute a dog sniff only if the check does not prolong the traffic stop. It further noted that earlier N.C. case law applying the de minimus rule to traffic stop extensions had been overruled by Rodriguez. The court of appeals continued, concluding that in this case the trial court's findings support the conclusion that the officer developed reasonable suspicion of illegal drug activity during the course of his investigation of the traffic offense and was therefore justified to prolong the traffic stop to execute the dog sniff. Specifically:

> Defendant was observed and stopped "in an area [the officer] knew to be a high crime/high drug activity area[;]" that while writing the warning citation, the officer observed that Defendant "appeared to have something in his mouth which he was not chewing and which affected his speech[;]"that "during his six years of experience [the officer] who has specific training in narcotics detection, has made numerous 'drug stops' and has observed individuals attempt to hide drugs in their mouths and . . . swallow drugs to destroy evidence[;]" and that during their conversation Defendant denied being involved in drug activity "any longer."