

## Evidence

### Self-Incrimination

[\*Herndon v. Herndon\*](#), \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 10, 2016). Reversing the Court of Appeals, the court held that the trial court did not violate the defendant's Fifth Amendment rights in connection with a civil domestic violence protective order hearing. During the defendant's case-in-chief, but before the defendant took the stand, the trial court asked defense counsel whether the defendant intended to invoke the Fifth Amendment, to which counsel twice responded in the negative. While the defendant was on the stand, the trial court posed questions to her. The court noted that at no point during direct examination or the trial court's questioning did the defendant, a voluntary witness, give any indication that answering any question posed to her would tend to incriminate her. "Put simply," the court held, the "defendant never attempted to invoke the privilege against self-incrimination." The court continued: "We are not aware of, and the parties do not cite to, any case holding that a trial court infringes upon a witness's Fifth Amendment rights when the witness does not invoke the privilege." The court further noted that in questioning the defendant, the trial court inquired into matters within the scope of issues that were put into dispute on direct examination by the defendant. Therefore, even if the defendant had attempted to invoke the Fifth Amendment, the privilege was not available during the trial court's inquiry.

### Experts

[\*State v. McGrady\*](#), \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 10, 2016). Affirming the decision below, the court held that the trial court did not abuse its discretion by ruling that the defendant's proffered expert testimony did not meet the standard for admissibility under Rule 702(a). The defendant offered its expert to testify on three principal topics: that, based on the "pre-attack cues" and "use of force variables" present in the interaction between the defendant and the victim, the defendant's use of force was a reasonable response to an imminent, deadly assault that the defendant perceived; that the defendant's actions and testimony are consistent with those of someone experiencing the sympathetic nervous system's "fight or flight" response; and that reaction times can explain why some of the defendant's defensive shots hit the victim in the back. Holding (for reasons discussed in detail in the court's opinion) that the trial court did not abuse its discretion by excluding this testimony, the court determined that the 2011 amendment to Rule 702(a) adopts the federal standard for the admission of expert witness articulated in the *Daubert* line of cases. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

## Arrest, Search, and Investigation

### *Miranda*

[\*State v. Hammonds\*](#), \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 10, 2016). Vacating the opinion of the Court of Appeals and the trial court's order denying the defendant's motion to suppress, the court ordered the case certified to the trial court for a new hearing on the defendant's motion to suppress for the trial court to apply the totality of the circumstances test as set out in *Howes v. Fields*, 132 S. Ct. 1181, 1194

(2012). At issue was whether the defendant was in custody when he made statements to law enforcement officers while under an involuntary commitment order. The court further stated that the trial court “shall consider all factors, including the important factor of whether the involuntarily committed defendant was told that he was free to end the questioning.” (quotation omitted).

## **Criminal Offenses**

### **Cyberbullying**

[\*State v. Bishop\*](#), \_\_\_ N.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 10, 2016). Reversing the Court of Appeals, the court held that the cyberbullying statute, G.S. 14-458.1, was unconstitutional under the First Amendment. It concluded that the statute “restricts speech, not merely nonexpressive conduct; that this restriction is content based, not content neutral; and that the cyberbullying statute is not narrowly tailored to the State’s asserted interest in protecting children from the harms of online bullying.”