Criminal Procedure

Guilty Pleas

State v. Jester, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 16, 2016). The trial court erred by sentencing the defendant as a habitual felon where the defendant stipulated to his habitual felon status but did not enter a plea to that effect. The trial court's colloquy with the defendant failed to comply with G.S. 15A-1022. [Author's note: For proper procedures for taking a plea, please see my judges Benchbook chapter here: http://benchbook.sog.unc.edu/criminal/pleas-and-plea-negotiations]

Sentencing

State v. Briggs, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 16, 2016). (1) Because the trial court resentenced the defendant to a longer prison sentence without him being present, the court vacated and remanded for resentencing. After the defendant was sentenced, the Division of Adult Correction notified the court that the maximum prison term imposed did not correspond to the minimum prison term under Structured Sentencing. The trial court issued an amended judgment in response to this notice, resentencing the defendant, without being present, to a correct term that included a longer maximum sentence. [Author's note: For the rules about trial and sentencing in the defendant's absence, please see my judges Benchbook chapter here: http://benchbook.sog.unc.edu/criminal/trial-defendants-absence] (2) The evidence supported sentencing the defendant as a PRL II offender where defense counsel's lack of objection to the PRL worksheet, despite the opportunity to do so, constituted a stipulation to the defendant's prior felony conviction.

State v. Jester, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 16, 2016). (1) There was sufficient evidence to sentence the defendant as a PRL IV offender. Defense counsel stipulated to the defendant's prior record level as stated on the prior record level worksheet where counsel did not dispute the prosecutor's description of the defendant's prior record or raise any objection to the contents of the proffered worksheet. Additionally, counsel referred to the defendant's record during his sentencing argument. (2) The trial court did not err by assigning points for two out-of-state felony convictions. "[B]ecause defendant stipulated to his prior record and the prosecutor did not seek to assign a classification more serious than Class I to his out-of-state convictions for second-degree burglary and breaking and entering, the State was not required to offer proof that these offenses were considered felonies in South Carolina or that they were substantially similar to specific North Carolina felonies."

Law of the Case

State v. Todd, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 16, 2016). The law of the case doctrine did not prevent the trial court from considering the defendant's motion for appropriate relief where the issue in question had not been raised or determined in the prior proceeding.

Evidence

404(b) Evidence

State v. Reed, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 16, 2016). In case where the defendant was convicted of misdemeanor child abuse and contributing to the delinquency of a minor, the court held, over a dissent, that although the trial court did not abuse its discretion in admitting 404(b) evidence, reference to the 404(b) evidence at trial created error. The evidence showed that when the defendant went to use the bathroom in her home for a few minutes, her toddler fell into their outdoor pool and

drown. The 404(b) evidence showed that some time earlier while the defendant was babysitting another child, Sadie Gates, the child got out of the house and drowned just outside of her home. Although the evidence was properly admitted under Rule 404(b), the State used the evidence of Sadie's death "far beyond the bounds allowed by the trial court's order." The prosecutor mentioned Sadie 12 times in its opening statement, while the actual victim was mentioned 15 times; during the State's direct examination Sadie was mentioned 28 times, while the actual victim was mentioned 33 times; and during closing Sadie was mentioned 12 times while the actual victim was mentioned 15 times. The court concluded: "The State's use of the evidence regarding Sadie went far beyond showing that defendant was aware of the dangers of water to small children or any other proper purpose as found by the trial court." [Author's note: For a discussion of 404(b) evidence, see my judges Benchbook chapter here: http://benchbook.sog.unc.edu/evidence/rule-404b-evidence-other-crimes-wrongs-or-acts]

Criminal Offenses

Armed Robbery

State v. Todd, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 16, 2016). Over a dissent the court held that the evidence was insufficient to support a conviction for armed robbery where it consisted of a single partial fingerprint on the exterior of a backpack worn by the victim at the time of the crime and that counsel rendered ineffective assistance by failing to raise this issue on the defendant's first appeal. Evidence showed that the assailants "felt around" the victim's backpack; the backpack however was not stolen. The backpack, a movable item, was worn regularly by the victim for months prior to the crime while riding on a public bus. Additionally, the defendant left the backpack unattended on a coat rack while he worked in a local restaurant. Reviewing the facts of the case and distinguishing cases cited by the State, the court concluded that the circumstances of the crime alone provide no evidence which might show that the fingerprint could only have been impressed at the time of the crime. The court went on to reject the State's argument that other evidence connected the defendant to the crime.

Possession of Stolen Property

State v. Jester, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 16, 2016). The evidence was sufficient to support a conviction for possession of stolen property. The defendant challenged only the sufficiency of the evidence that he knew or had reasonable grounds to believe that the items were stolen. Here, the defendant had possession of stolen property valued at more than $1,000, which he sold for only $114; although the defendant told a detective that he obtained the stolen property from a "white man," he could not provide the man's name; and the defendant did not specifically tell the detective that he bought the items from this unidentified man and he did not produce a receipt.

Child Abuse & Related Offenses

State v. Reed, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 16, 2016). Considering the defendant's evidence, along with the State's evidence, in this appeal from a denial of a motion to dismiss, the court held, over a dissent, that the evidence was insufficient to support a conviction of misdemeanor child abuse. The evidence showed that the defendant went to use the bathroom in her home for a few minutes, and her toddler, Mercadiez, managed to fall into their outdoor pool and drown. The defendant's evidence, which supplemented and did not contradict the State's evidence, showed that the defendant left the child in the care of another responsible adult while she used the bathroom. Although the concurring judge did not agree, the court went on to hold that the motion should also have been granted even without consideration of the defendant's evidence. Specifically, the State's evidence failed to establish

that the defendant's conduct was "by other than accidental means." Reviewing prior cases, the court found: "the State's evidence never crossed the threshold from 'accidental' to 'nonaccidental.'" It continued:

> The known danger here was an outdoor pool. The only purposeful action defendant took, even in the light most favorable to the State, was that defendant went to the bathroom for five to ten minutes. In choosing to go to the restroom, defendant did not leave her child in a circumstance that was likely to create physical injury. . . . If defendant's conduct herein is considered enough to sustain a conviction for misdemeanor child abuse, it seems that any parent who leaves a small child alone in her own home, for even a moment, could be prosecuted if the child is injured during that time, not because the behavior she engaged in was negligent or different from what all other parents typically do, but simply because theirs is the exceedingly rare situation that resulted in a tragic accident.

(2) With the same lineup of opinions, the court held that the evidence was insufficient to support a conviction of contributing to the delinquency of a minor where the evidence showed that the defendant left the victim the care of a competent adult while she used the bathroom.