

Criminal Procedure

Appellate Issues

[*State v. Jones*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). Under G.S. 15A-1444(e) the defendant had a right to seek the issuance of a writ of certiorari to obtain appellate review of a sentencing proceeding conducted upon his entry of a guilty plea and the court had jurisdiction to issue the writ. The court held that Appellate Rule 21 did not require a holding to the contrary, noting that a defendant's statutory right to seek issuance of a writ is not abridged by Rule 21.

Indictment Issues

[*State v. Mostafavi*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). Citing prior case law the court held, over a dissent, that an indictment alleging obtaining property by false pretenses was defective where it described the property obtained as "United States Currency." The court stated: the cases instruct that where money is the thing obtained, "the money must be described at least by the amount, as, for instance, so many dollars and cents" (quotation omitted). Noting prior opinions of the court that approved of such language, the court found that it was bound to follow Supreme Court precedent. The court further rejected the notion that G.S. 15-149 compelled a different holding.

[*State v. Scaturro*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). A fatal variance issue that is not raised at trial is waived for purposes of appeal.

Motion to Continue

[*State v. Bass*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). In this assault case involving self-defense the court held, over a dissent, that the trial court committed prejudicial error by denying the defendant's motion to continue, made after the prosecutor provided defense counsel with additional reports of the victim's assaultive behavior on the evening before trial, where that behavior was relevant to the defendant's self-defense assertion that the victim was the aggressor. The defendant should have been permitted adequate time to investigate these additional instances of the victim's violent and explosive conduct in order to adequately prepare his defense. The court concluded: "Failure to allow counsel any time to investigate after the State's disclosures, provided the night before trial, . . . violated Defendant's rights to effective assistance of counsel and to present a complete defense."

Sentencing

[*State v. Jones*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). The defendant is entitled to a new sentencing hearing where the trial court violated his right to speak on his own behalf at sentencing. G.S. 15A-1334(b) provides that a defendant may make a statement on his behalf at sentencing. Here, defense counsel clearly informed the court that the defendant wanted to make a statement. Nevertheless, the defendant was sentenced without being afforded that opportunity.

[*State v. Riley*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). To the extent the State failed to meet its burden at sentencing to establish that the defendant's prior conviction in federal court was substantially similar to a Class G felony in North Carolina, the error was harmless. The court found that there is sufficient information in the record to conclude that the federal offense of being a felon in possession of a firearm is substantially similar to the North Carolina offense of possession of a firearm by a felon, a Class G felony.

Evidence

Character Evidence

[*State v. Bass*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). In this assault case involving self-defense the court held, over a dissent, that the trial court committed prejudicial error by excluding the testimony of three character witnesses pertaining to the victim's past instances of violent conduct. Under Rule 405(b), the defendant was entitled to present evidence of specific acts of the victim's violent conduct to show that the victim, not the defendant, was the aggressor. This right applies regardless of whether the victim's specific instances of conduct were known or unknown to the defendant. Here, the excluded evidence tends to show that the victim had a history not only of violence, but of explosive, unprovoked, and irrational violence, even with strangers. Citing *Holmes v. South Carolina*, 547 U.S. 319 (2006), the court held that by excluding this evidence the defendant was denied his constitutional right to present a complete defense.

Criminal Offenses

Obtaining Property by False Pretenses

[*State v. Buchanan*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). (1) The evidence was sufficient to sustain a conviction for obtaining property by false pretenses. After the defendant falsely reported that his girlfriend had written 3 checks on his account without authorization, he received a provisional credit on his bank account with respect to one of the checks. He asserted, in part, that the provisional credit did not constitute a "thing of value." The court disagreed, concluding that the provisional credit was the equivalent of money placed into his account, to which the defendant had access, at least temporarily. (2) The trial court did not commit plain error by failing to instruct the jury that the defendant could not be convicted of obtaining property by false pretenses and of attempting to obtain property by false pretenses based on a single transaction. The defendant attempted to obtain \$900 from his bank by making a false representation in an affidavit that 3 unauthorized checks were written on his account. He obtained \$600 of the \$900 he had attempted to obtain; this amount was attributable to one of the checks. He was charged and convicted of both obtaining property by false pretenses and of an attempted version of the crime with respect to the money he did not obtain. Construing the statute, the court concluded: "the General Assembly did not intend to subject a defendant to multiple counts of obtaining property by false pretenses where he obtains multiple items in a single transaction. Rather, the statute provides for an increase in punishment if the value of the property taken exceeds \$100,000." Here, the defendant attempted to collect the value of three checks in a single transaction but was successful only in obtaining credit for one of the checks. Notwithstanding this, the court concluded that the trial court did not err in its jury instructions. The court reasoned that the error was a double jeopardy issue and because the defendant failed to object at trial, the issue was waived on appeal.

Motor Vehicle Offenses

[*State v. Scaturro*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). In a hit and run case involving failure to remain at the scene, the trial court committed plain error by failing to instruct the jury with respect to willfulness where the defendant's sole defense was that his departure was authorized and required to get assistance for the victim. The court continued:

To prevent future confusion and danger, we also take this opportunity to address the State's argument that N.C.G.S. § 20-166 prohibits a driver from leaving the scene of an accident to obtain medical care for himself or others and instead only

authorizes a driver to temporarily leave to in order to call for help. While it is true that subsection (a) instructs that a driver may not leave the scene of an accident “for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment,” we do not read statutory subsections in isolation. Instead, statutes dealing with the same subject matter must be *construed in pari materia* and reconciled, if possible.

Applying that principle here leads us to conclude that, even though N.C.G.S. §20-166(a) instructs that drivers may only leave for the limited purpose of calling for aid, that authorization is expanded by N.C.G.S. § 20-166(b)’s requirement that drivers, among other things, “*shall render to any person injured in such crash reasonable assistance, including the calling for medical assistance*” permitted by subsection (a). (Emphasis added). The plain language of this provision indicates that a driver’s obligation to an injured person permits him to take action including but not limited to that which is authorized by subsection (a). Accordingly, it is clear that taking a seriously injured individual to the hospital to receive medical treatment is not prohibited by the statute in the event that such assistance is reasonable under the circumstances. In fact, the violation of that directive is itself a Class 1 misdemeanor.

Defenses

Self-Defense

[*State v. Bass*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 6, 2017). In this assault case, the court held, over a dissent, that the trial court committed reversible error by failing to instruct the jury that the defendant had no duty to retreat before using deadly force in self-defense and by later instructing the jury that the law regarding no duty to retreat “does not apply to this case.” Under G.S. 14-51.3, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has a lawful right to be if he or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm or under circumstances permitted by G.S. 14-51.2. G.S. 14-51.2(b) in turn provides that the lawful occupant of the home, motor vehicle or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm when using defensive force intended to cause death or serious bodily harm under certain conditions. The trial court, concluding that the defendant was not within the curtilage of his home, declined the defendant’s requests for a no duty to retreat instruction. The court concluded that the trial court was under the erroneous impression that the no duty to retreat language only applies when the defendant acts in self-defense while in his home, workplace or motor vehicle in fact there is no duty to retreat whenever a defendant is in a place where he or she has a lawful right to be. During deliberations, the jury sent a note to the trial court asking for further explanation on the law regarding no duty to retreat. The trial court instructed the jury, in part, that law “does not apply in this case.” The court found this “clearly contrary to law.” It concluded:

Not only did the initial instructions fail to inform the jury that Defendant statutorily had no duty to retreat under the circumstances set forth in N.C. Gen. Stat. § 14-51.3(a)(1), the further instruction stated the “no duty to retreat” statute “does not apply,” and may have required the jury to conclude Defendant would have had a duty to retreat under the circumstances to avoid criminal liability.

The court went on to reject the argument made in the dissenting opinion that *State v. Lee*, ___ N.C. App. ___, *disc. review allowed*, ___ N.C. ___, 797 S.E.2d 301 (2017), controlled.