

Criminal Procedure

Bond Forfeiture

[*State v. Cobb*](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 5, 2017). Over a dissent, the court held that where a motion to set aside the forfeiture of an appearance bond did not contain the required documentation to support a ground in G.S. 15A-544.5, the trial court lacked statutory authority to set aside the forfeiture. When the defendant failed to appear on a \$30,000 bond, the trial judge ordered that the bond be forfeited. A bail agent for the surety moved to set aside the forfeiture, asserting that the defendant had been surrendered. Specifically, the motion stated that the “defendant has been surrendered by a surety on the bail bond as provided by G.S. 15A-540, as evidenced by the attached ‘Surrender of Defendant By Surety’ (AOC-CR-214)” (ground (b)(3) under G.S. 15A-544.5). However, no AOC form was attached to the motion. Instead, an ACIS printout was attached. The printout pertained to a traffic offense but included no reference to the case in which the bond was forfeited; nor did the printout indicate that the defendant had been surrendered. The information in the ACIS printout does not meet the requirement of a sheriff’s receipt contemplated by the statute.

Jury Selection

[*State v. Lynch*](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 5, 2017). In this drug trafficking case, the trial court did not abuse its discretion by declining to declare a mistrial because of a prospective juror’s comment. In the presence of the rest of the jury pool, the prospective juror stated that he had seen the defendant “around” and “I believe she did it.” The defendant moved for a mistrial. The trial judge denied the motion but indicated that it would instruct the jury to cure any potential for prejudice. The trial judge immediately dismissed the prospective juror and gave a lengthy curative instruction to the jury pool. The court rejected the defendant’s argument that the comment required a mistrial as a matter of law. The court held that in light of the trial court’s curative instruction, the trial court acted well within its discretion in denying the defendant’s motion for a mistrial.

Clerical Errors

[*State v. Lynch*](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 5, 2017). Over a dissent, the court rejected the defendant’s argument that there was a clerical error in the judgment. Although the trial court stated after the jury returned the verdict that it was “going to arrest judgment” on the trafficking by delivery charge, the trial court did not pronounce the sentence at that time because the defendant failed to appear. At a sentencing hearing held several weeks later, the trial court noted that the defendant had been found guilty on three trafficking counts—including trafficking by delivery--and consolidated the trafficking offenses into one judgment. The judgment form reflects that the three offenses were so consolidated. The trial court’s failure to arrest judgment on the trafficking by delivery offense was not a clerical error.

Criminal Offenses

Conversion

[*State v. Falana*](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 5, 2017). Where there was insufficient evidence as to the ownership of the property in question, a vehicle, the evidence was insufficient to convict the defendant of felony conversion under G.S. 14-168.1. The indictment alleged that the vehicle was owned by a natural person named as Ezuma Igwe but the State failed to provide substantial evidence that Igwe

owned the vehicle. North Carolina law defines a vehicle owner as the person holding legal title to it but here, Igwe never received title to the vehicle in question.