Criminal Procedure

Pleas and Plea Agreements

State v. Anderson, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 1, 2017). Where a negotiated plea agreement involving several charges included a plea to a crime later held to be unconstitutional, the entire agreement must be set aside. After the jury convicted the defendant of being a sex offender on the premises of a daycare, the defendant pled guilty based on a negotiated plea arrangement to being a sex offender unlawfully within 300 feet of a daycare, failing to report a new address as a sex offender, and three counts of attaining habitual felon status. While his direct appeal was pending, the statute prohibiting a sex offender from being within 300 feet of a daycare was held to be unconstitutional. The court thus held that the defendant's conviction for that offense must be vacated. Having determined that the defendant's guilty plea to violating the unconstitutional statute must be vacated the essential and fundamental terms of the plea agreement became unfulfillable and that the entire plea agreement must be set aside.

State v. Arrington, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 1, 2017). Over a dissent, the court held that where the trial court erred by accepting the defendant's stipulation to his prior record level as part of a plea agreement, the plea agreement must be set aside.

Jury Instructions

Self-Defense

State v. Fitts, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 1, 2017). In this felony-murder case where the underlying felony was discharging a firearm into an occupied vehicle, the trial court did not err by declining to instruct on self-defense. The court rejected the defendant's argument that a reasonable jury could have found that the shooting constituted perfect self-defense. Viewing the facts in the light most favorable to the defendant, the first three elements of self-defense were present: the defendant testified that he believed two individuals were about to shoot him or another person; a reasonable person would have so concluded; and until he fired, the defendant had not attacked or threatened the victim in any way. However, the defendant's own testimony indicated that he did not shoot to kill. "Such an intent is required for a trial court to instruct a jury on perfect self-defense."

Sentencing

State v. Arrington, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 1, 2017). Over a dissent, the court held that the defendant's stipulation to his prior record level was invalid. The defendant purported to stipulate in his prior record level worksheet and during his plea colloquy both to the existence of several prior convictions and to his designation as a Level V offender. One of the convictions contributing to his total points was a 1994 second-degree murder conviction, which the defendant stipulated was a Class BI felony. On appeal, the defendant argued that the calculation of his prior record level was incorrect because the 1994 conviction should have counted as a Class B2 felony, for which only six points should have been assessed. At the time of the 1994 conviction, the murder statute placed all second-degree murder convictions in the same felony class. However, between 1994 and the date of the offenses in question, the statute was amended dividing the offense into two classes: B1 and B2, based on the type of malice involved. Thus, the amended version of the statute—creating two classes of second-degree murder—controlled classification of the 1994 conviction for prior record level purposes. The defendant's stipulation went beyond the factual admission that the 1994 conviction existed and constituted a stipulation as to whether that conviction should be treated as a Class B1 or B2 felony. Because the

defendant's stipulation involved a question of law, it should not have been accepted by the trial court. The court went on to emphasize that the case "constitutes a narrow exception the general rule regarding a defendant's ability to stipulate to matters in connection with his prior record level." It explained:

> A stipulation as to the classification of a prior conviction is permissible so long as it does not attempt to resolve a question of law. In the great majority of cases in which a defendant makes such a stipulation, the stipulation will be valid because it does not concern an issue requiring legal analysis.
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> The present case falls within a small minority of cases in which the stipulation did concern a question of law. Here, because Defendant's purported stipulation that his prior conviction was a B1 felony went beyond a factual admission that the 1994 Conviction existed and instead constituted a stipulation as to the legal issue of how that conviction should be treated under the current version of N.C. Gen. Stat. § 14- 17, the stipulation should not have been accepted by the trial court . . . .

Habitual Felon

State v. Cannon, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 1, 2017). The State conceded, and the court held, that the trial court should not have sentenced the defendant as a habitual felon where the issue was not submitted to the jury and no formal guilty plea was made. Here, the defendant only stipulated to habitual felon status.

Probation Revocation

State v. Trent, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 1, 2017). The trial court did not err by revoking the defendant's probation based on its finding that he willfully absconded from supervision. In so ruling, the court rejected the defendant's argument that the trial court abused its discretion by making its oral findings of fact without explicitly stating the legal standard of proof. Noting that it has held that a trial court's failure to state the standard of proof underlying its findings may constitute reversible error when certain protected interests are involved, it has never so held in the context of a probation hearing. The court noted that "Although the trial court failed to employ the best practice and explicitly state the legal standard of proof," the totality of the trial court's statements indicate that it was reasonably satisfied in light of all the evidence presented that a willful violation had occurred. Reviewing the facts of the case, the court also rejected the defendant's argument that there was insufficient evidence that he willfully absconded from supervision.

Criminal Offenses

Participants in Crime

State v. Cannon, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 1, 2017). Over a dissent, the court held that the trial court did not err by denying the defendant's motion to dismiss a charge of aiding and abetting larceny. The charges arose out of the defendant's involvement with store thefts. A Walmart loss prevention officer observed Amanda Eversole try to leave the store without paying for several clothing items. After apprehending Eversole, the loss prevention officer reviewed surveillance tapes and discovered that she had been in the store with William Black, who had taken a number of items from store shelves without paying. After law enforcement was contacted, the loss prevention officer went to the parking lot and saw Black with the officers. Black was in the rear passenger seat of an SUV, which was filled with goods from the Walmart. A law enforcement officer testified that when he approached

Black's vehicle the defendant asked what the officers were doing. An officer asked the defendant how he knew Black and the defendant replied that he had only just met "them" and had been paid $50 to drive "him" to the Walmart. The defendant also confirmed that he owned the vehicle. Citing this and other evidence, the court held that the trial court did not err by denying the motion to dismiss.

Sex Offenders

State v. Anderson, ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 1, 2017). (1) The evidence was insufficient to support a conviction under G.S. 14-208.18(a)(1), for being a sex offender on the premises of a daycare. The defendant was seen in a parking lot of a strip mall containing a daycare, other businesses, and a restaurant. Next-door to the daycare was a hair salon; next to the hair salon was a tax business. The three businesses shared a single building as well as a common parking lot. A restaurant in a separate, freestanding building shared the same parking lot. None of the spaces in the parking lot were specifically reserved or marked as intended for the daycare. The daycare, including its playground area, was surrounded by a chain-link fence. The court agreed with the defendant that the State failed to present sufficient evidence that the shared parking lot was part of the premises of the daycare. It stated: "[T]he shared parking lot is located on premises that are not intended primarily for the use, care, or supervision of minors. Therefore, we conclude that a parking lot shared with other businesses (especially with no designation(s) that certain spaces "belong" to a particular business) cannot constitute "premises" as set forth in subsection (a)(1) of the statute." (2) The defendant's guilty plea to unlawfully being within 300 feet of a daycare must be vacated in light of a Fourth Circuit's decision holding G.S. 14-208.18(a)(2) to be unconstitutional. The defendant was indicted and pled guilty to violating G.S. 14-208.18(a)(2), which prohibits certain persons from being within 300 feet a location intended primarily for the use, care, or supervision of minors. While his direct appeal was pending, the Fourth Circuit held that statute to be unconstitutionally overbroad in violation of the First Amendment. Thus the conviction must be vacated.