Criminal Procedure

Jury Instructions

State v. Stepp, ___ N.C. ___, ___ S.E.2d ___ (Jan. 23, 2015) (per curiam). For reasons stated in the dissenting opinion below, the court reversed the court of appeals. In the decision below, *State v. Stepp*, __ N.C. App. __, 753 S.E.2d 485 (Jan. 21, 2014), the majority held that the trial court committed reversible error by failing to instruct the jury on an affirmative defense to a felony that was the basis of a felony-murder conviction. The jury convicted the defendant of first-degree felony-murder of a 10-month old child based on an underlying sexual offense felony. The jury's verdict indicated that it found the defendant guilty of sexual offense based on penetration of the victim's genital opening with an object. At trial, the defendant admitted that he penetrated the victim's genital opening with his finger; however, he requested an instruction on the affirmative defense provided by G.S. 14-27.1(4), that the penetration was for "accepted medical purposes," specifically, to clean feces and urine while changing her diapers. The trial court denied the request. The court of appeals found this to be error, noting that the defendant offered evidence supporting his defense. Specifically, the defendant testified at trial to the relevant facts and his medical expert stated that the victim's genital opening injuries were consistent with the defendant's stated purpose. The court of appeals reasoned:

> We believe that when the Legislature defined "sexual act" as the penetration of a genital opening with an object, it provided the "accepted medical purposes" defense, in part, to shield a parent – or another charged with the caretaking of an infant – from prosecution for engaging in sexual conduct with a child when caring for the cleanliness and health needs of an infant, including the act of cleaning feces and urine from the genital opening with a wipe during a diaper change. To hold otherwise would create the absurd result that a parent could not penetrate the labia of his infant daughter to clean away feces and urine or to apply cream to treat a diaper rash without committing a Class B1 felony, a consequence that we do not believe the Legislature intended.

(Footnote omitted). The court of appeals added that in this case, expert testimony was not required to establish that the defendant's conduct constituted an "accepted medical purpose." The dissenting judge did not believe that there was sufficient evidence that the defendant's actions fell within the definition of accepted medical purpose and thus concluded that the defendant was not entitled to an instruction on the affirmative defense. The dissenting judge reasoned that for this defense to apply, there must be "some direct testimony that the considered conduct is for a medically accepted purpose" and no such evidence was offered here.

State v. Monroe, ___ N.C. ___, ___ S.E.2d ___ (Jan. 23, 2015) (per curiam). The court affirmed the decision below in *State v. Monroe*, __ N.C. App. __, 756 S.E.2d 376 (April 15, 2014) (holding, over a dissent, that even assuming arguendo that the rationale in *United States v. Deleveaux*, 205 F.3d 1292 (11th Cir. 2000), applies in North Carolina, the trial court did not err by denying the defendant's request to give a special instruction on self-defense as to the charge of possession of a firearm by a felon; the majority concluded that the evidence did not support a conclusion that the defendant possessed the firearm under unlawful and present, imminent, and impending threat of death or serious bodily injury).

Arrest, Search and Investigation

Search & Seizure

State v. Grice, ___ N.C. ___, ___ S.E.2d ___ (Jan. 23, 2015). (1) Reversing the court of appeals, the court held that officers did not violate the Fourth Amendment by seizing marijuana plants seen in plain view. After receiving a tip that the defendant was growing marijuana at a specified residence, officers went to the residence to conduct a knock and talk. Finding the front door inaccessible, covered with plastic, and obscured by furniture, the officers noticed that the driveway led to a side door, which appeared to be the main entrance. One of the officers knocked on the side door. No one answered. From the door, the officer noticed plants growing in several buckets about 15 yards away. Both officers recognized the plants as marijuana. The officers seized the plants, returned to the sheriff's office and got a search warrant to search the home. The defendant was charged with manufacturing a controlled substance and moved to suppress evidence of the marijuana plants. The trial court denied the motion and the court of appeals reversed. The supreme court began by finding that the officers observed the plants in plain view. It went on to explain that a warrantless seizure may be justified as reasonable under the plain view doctrine if the officer did not violate the Fourth Amendment in arriving at the place from where the evidence could be plainly viewed; the evidence's incriminating character was immediately apparent; and the officer had a lawful right of access to the object itself. Additionally, it noted, "[t]he North Carolina General Assembly has . . . required that the discovery of evidence in plain view be inadvertent." The court noted that the sole point of contention in this case was whether the officers had a lawful right of access from the driveway 15 yards across the defendant's property to the plants' location. Finding against the defendant on this issue, the court stated: "Here, the knock and talk investigation constituted the initial entry onto defendant's property which brought the officers within plain view of the marijuana plants. The presence of the clearly identifiable contraband justified walking further into the curtilage." The court rejected the defendant's argument that the seizure was improper because the plants were on the curtilage of his property, stating:

> [W]e conclude that the unfenced portion of the property fifteen yards from the home and bordering a wood line is closer in kind to an open field than it is to the paradigmatic curtilage which protects "the privacies of life" inside the home. However, even if the property at issue can be considered the curtilage of the home for Fourth Amendment purposes, we disagree with defendant's claim that a justified presence in one portion of the curtilage (the driveway and front porch) does not extend to justify recovery of contraband in plain view located in another portion of the curtilage (the side yard). By analogy, it is difficult to imagine what formulation of the Fourth Amendment would prohibit the officers from seizing the contraband if the plants had been growing on the porch—the paradigmatic curtilage—rather than at a distance, particularly when the officers' initial presence on the curtilage was justified. The plants in question were situated on the periphery of the curtilage, and the protections cannot be greater than if the plants were growing on the porch itself. The officers in this case were, by the custom and tradition of our society, implicitly invited into the curtilage to approach the home. Traveling within the curtilage to seize contraband in plain view within the curtilage did not violate the Fourth Amendment.

(citation omitted). (2) The court went on to hold that the seizure also was justified by exigent circumstances, concluding: “Reviewing the record, it is objectively reasonable to conclude that someone may have been home, that the individual would have been aware of the officers’ presence, and that the individual could easily have moved or destroyed the plants if they were left on the property.”