

Criminal Procedure

Indictment Issues

[*State v. Everett*](#), __ N.C. App. __, __ S.E.2d __ (Oct. 21, 2014). In an obtaining property by false pretenses case there was no fatal variance between the indictment and the evidence. The defendant argued that the indictment alleged that he “filed a forged and false Special Warranty Deed” and that the State presented no evidence to that effect. Reviewing the indictment, however, the court noted that it alleged that the defendant “presented and filed a forged and false Special Warranty Deed” and the evidence supported this allegation.

Jury Argument

[*State v. Salentine*](#), __ N.C. App. __, __ S.E.2d __ (Oct. 21, 2014). In this murder case, the trial court did not abuse its discretion by overruling the defendant’s objections to the State’s closing argument. Although the prosecutor’s remarked that the case was one of “the most gruesome and violent murders this community has ever seen,” the comment related directly to the State’s theory of the case--that the defendant acted intentionally and with premeditation and deliberation.

Jury Instructions

[*State v. Walton*](#), __ N.C. App. __, __ S.E.2d __ (Oct. 21, 2014). No plain error occurred in a sexual assault case where the trial court referred to “the victim” in its jury instructions.

Juror Misconduct

[*State v. Salentine*](#), __ N.C. App. __, __ S.E.2d __ (Oct. 21, 2014). In a case where the defendant was convicted of first-degree murder and sentenced to life in prison, the trial court did not abuse its discretion by denying the defendant’s mistrial motions based on juror misconduct and refusing the defendant’s request to make further inquiry into whether other jurors received prejudicial outside information. During the sentencing phase of the trial, the trial court received a letter from juror Lloyd’s brother-in-law claiming that Lloyd contacted his sister and said that one juror failed to disclose information during voir dire, that he went online and found information about the defendant, and that he asked his sister the meaning of the term malice. Upon inquiry by the court Lloyd denied that he conducted online research or asked about the meaning of the term malice. The trial court removed Lloyd from the jury and replaced him with an alternate. The defendant moved for a mistrial before and after removal of Lloyd and asked the trial court to make further inquiry of the other jurors to determine if they were exposed to outside information. Given the trial court’s “searching” inquiry of Lloyd, the court found no abuse of discretion. With regard to the trial court’s failure to inquire of the other jurors, the court emphasized that there is no rule that requires a court to hold a hearing to investigate juror misconduct when an allegation is made.

Error Correction

[State v. Everett](#), __ N.C. App. __, __ S.E.2d __ (Oct. 21, 2014). Where the trial court miscalculated the defendant's prior record level but where a correction in points would not change the defendant's sentence, the court treated the error as clerical and remanded for correction. A dissenting judge would have concluded that the error was judicial not clerical.

Evidence

Relevancy and Its Limits

[State v. Royster](#), __ N.C. App. __, __ S.E.2d __ (Oct. 21, 2014). In a murder case, the trial court did not err by admitting testimony concerning nine-millimeter ammunition and a gun found at the defendant's house. Evidence concerning the ammunition was relevant because it tended to link the defendant to the scene of the crime, where eleven shell casings of the same brand and caliber were found, thus allowing the jury to infer that the defendant was the perpetrator. The trial court had ruled that evidence of the gun—which was not the murder weapon—was inadmissible and the State complied with this ruling on direct. However, in order to dispel any suggestion that the defendant possessed the nine-millimeter gun used in the shooting, the defendant elicited testimony that a nine-millimeter gun found in his house, in which the nine-millimeter ammunition was found, was not the murder weapon. The court held that the defendant could not challenge the admission of testimony that he first elicited.

Opinions

[State v. Walton](#), __ N.C. App. __, __ S.E.2d __ (Oct. 21, 2014). No error occurred when the State's experts in a sexual assault case testified that the victim's physical injuries were consistent with the sexual assault she described.

Confrontation Issues

[State v. Royster](#), __ N.C. App. __, __ S.E.2d __ (Oct. 21, 2014). The court rejected the defendant's argument that his confrontation clause rights were violated when the trial court released an out-of-state witness from subpoena. The State subpoenaed the witness from New York to testify at the trial. The witness testified at trial and the defendant had an opportunity to cross-examine him. After the witness stepped down from the witness stand, the State informed the trial court judge that the defense had attempted to serve a subpoena on the witness the day before. The State argued that the subpoena was invalid. The witness refused to speak with the defense outside of court and the trial court required the defense to decide whether to call the individual as a witness before 2:00 p.m. that day. When the appointed time arrived, the defense indicated it had not yet decided whether it would be calling the individual as a witness and the trial court judge released the witness from the summons. The defendant's confrontation rights were not violated where the witness was available at trial and the defendant had the opportunity to cross-examine him. Additionally, under G.S. 15A-814, the defendant's subpoena was invalid.

Arrest, Search and Investigation Interrogation

[State v. Davis](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 21, 2014). (1) The court rejected the defendant’s argument that she was in custody within the meaning of *Miranda* during an interview at the police station about her missing child. The trial court properly used an objective test to determine whether the interview was custodial. Furthermore competent evidence supported the trial court’s findings of fact that the defendant was not threatened or restrained; she voluntarily went to the station; she was allowed to leave at the end of the interviews; the interview room door was closed but unlocked; the defendant was allowed to take multiple bathroom and cigarette breaks and was given food and drink; and defendant was offered the opportunity to leave the fourth interview but refused. (2) The trial court did not err by finding that the defendant’s statements were given freely and voluntarily. The court rejected the defendant’s argument that they were coerced by fear and hope. The court held that an officer’s promise that the defendant would “walk out” of the interview regardless of what she said did not render her confession involuntary. Without more, the officer’s statement could not have led the defendant to believe that she would be treated more favorably if she confessed to her involvement in her child’s disappearance and death. Next, the court rejected—as a factual matter—the defendant’s argument that officers lied about information provided to them by a third party. Finally, the court rejected the defendant’s argument that her mental state rendered her confession involuntary and coerced, where the evidence indicated that the defendant understood what was happening, was coherent and did not appear to be impaired.

Searches

[State v. McCrary](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 21, 2014). (1) In this DWI case, the court—over a dissent—remanded for additional findings of fact on whether exigent circumstances supported a warrantless blood draw. The trial judge denied the motion to suppress before the U.S. Supreme Court issued its decision in *McNeely*, holding that the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every DWI case sufficient to justify conducting a blood test without a warrant. The court remanded for additional findings of fact as to the availability of a magistrate and the “additional time and uncertainties” in obtaining a warrant, as well as the “other attendant circumstances” that may support the conclusion of law that exigent circumstances existed. The dissenting judge would have reversed the trial court’s denial of the motion to suppress and remanded for a new trial. (2) The court rejected the defendant’s argument that the trial court erred by denying his motion to dismiss, which was predicated on a flagrant violation of his constitutional rights in connection with the warrantless blood draw. Noting that the defendant’s motion failed to detail irreparable damage to the preparation of his case and made no such argument on appeal, the court concluded that the only appropriate action by the trial court under the circumstances was to consider suppression of the evidence as a remedy for any constitutional violation.