Criminal Law Case Update
Covering Significant Cases Decided in 2009-2010
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Criminal Offenses

Homicide

Malice

State v. Tellez, __ N.C. App. __, __ S.E.2d __ (Nov. 3, 2009). There was sufficient evidence of malice to sustain a second-degree murder conviction where the defendant drove recklessly, drank alcohol before and while operating a motor vehicle, had prior convictions for impaired driving and driving while license revoked, and fled and engaged in elusive behavior after the accident.

State v. Mack, __ N.C. App. __, __ S.E.2d __ (Aug. 17, 2010). There was sufficient evidence of malice in a second-degree murder case involving a vehicle accident. The defendant, whose license was revoked, drove extremely dangerously in order to evade arrest for breaking and entering and larceny. When an officer attempted to stop the defendant, he fled, driving more than 90 miles per hour, running a red light, and traveling the wrong way on a highway — all with the vehicle's trunk open and with a passenger pinned by a large television and unable to exit the vehicle.

State v. Neville, __ N.C. App. __, __ S.E.2d __ (Jan. 19, 2010). There was sufficient evidence of malice to support a second-degree murder conviction in a case where the defendant ran over a four-year-old child. When she hit the victim, the defendant was angry and not exhibiting self-control; the defendant's vehicle created "acceleration marks" and was operating properly; the defendant had an "evil look"; and the yard was dark, several small children were present, and the defendant did not know where the children were when she started her car.

Felony-Murder

State v. Freeman, __ N.C. App. __, __ S.E.2d __ (Mar. 2, 2010). The trial court properly submitted felony-murder to the jury based on underlying felony of attempted sale of a controlled substance with the use of a deadly weapon. The defendant and an accomplice delivered cocaine to the victim. Approximately one week later, they went to the victim's residence to collect the money owed for the cocaine and at this point, the victim was killed. At the time of the shooting, the defendant was engaged in an attempted sale of cocaine (although the cocaine had been delivered, the sale was not consummated because payment had not been made) and there was no break in the chain of events between the attempted sale and the murder.

Voluntary Manslaughter

State v. Simonovich, __ N.C. App. __, __ S.E.2d __ (Jan. 19, 2010). The trial court did not err by denying the defendant's request for a voluntary manslaughter instruction. Although the defendant knew that his wife was having sex with other men and she threatened to continue this behavior, the defendant did not find her in the act of intercourse with another or under circumstances clearly indicating that the act had just been completed. Additionally, the defendant testified that he strangled his wife to quiet her.

Multiple Convictions/Lesser Included Offenses

State v. Davis, __ N.C. App. __, 680 S.E.2d 239 (Aug. 4, 2009). A defendant may not be sentenced for

both involuntary manslaughter and felony death by vehicle arising out of the same death. A defendant may not be sentenced for both felony death by vehicle and impaired driving arising out of the same incident. However, a defendant may be sentenced for both involuntary manslaughter and impaired driving.

State v. Armstrong, __ N.C. App. __, __ S.E.2d __ (April 20, 2010). A defendant may be convicted for both second-degree murder (for which the evidence of malice was the fact that the defendant drove while impaired and had prior convictions for impaired driving) and impaired driving.

Assaults

Simple Assault

State v. Corbett, ___ N.C. App. ___, 675 S.E.2d 150 (April 21, 2009). Assault is not a lesser-included offense of sexual battery.

Assault by Strangulation

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Dec. 8, 2009). (1) The evidence was sufficient to establish assault by strangulation; the victim told an officer that she felt that the defendant was trying to crush her throat, that he pushed down on her neck with his foot, that she thought he was trying to "chok[e] her out" or make her go unconscious, and that she thought she was going to die. (2) Even if the offenses are not the same under the *Blockburger* test, the statutory language, "[u]nless the conduct is covered under some other provision of law providing greater punishment," prohibits sentencing a defendant for this offense and a more serious offense based on the same conduct.

Culpable Negligence

State v. Davis, __ N.C. App. __, 678 S.E.2d 385 (July 7, 2009). Committing a violation of G.S. 20-138.1 (impaired driving) constitutes culpable negligence as a matter of law sufficient to establish the requisite intent for assault with a deadly weapon inflicting serious injury.

Deadly Weapon

State v. Walker, __ N.C. App. __, __ S.E.2d __ (June 15, 2010). The evidence was sufficient to establish that the knife used in the assault was a deadly weapon where a witness testified that the knife was three inches long and the victim sustained significant injuries.

State v. Liggons, ___ N.C. App. ___, 670 S.E.2d 333 (Jan. 6, 2009). The defendant and his accomplice discussed intentionally forcing drivers off the road in order to rob them and one of them then deliberately threw a very large rock or concrete chunk through the driver's side windshield of the victim's automobile as it was approaching at approximately 55 or 60 miles per hour. The size of the rock and the manner in which it was used establishes that it was a deadly weapon.

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Dec. 8, 2009). There was sufficient evidence that the defendant's hands were a deadly weapon as to one victim when the evidence showed that the defendant was a big, stocky man, probably larger than the victim, who was a female and a likely user of crack cocaine, and the victim sustained serious injuries. There was sufficient evidence that the defendant's hands were a deadly weapon as to another victim when the evidence showed that the victim was a small-

framed, pregnant woman with a cocaine addiction and the defendant used his hands to throw her onto the concrete floor, cracking her head open, and put his hands around her neck.

State v. Wallace, ___ N.C. App. ___, 676 S.E.2d 922 (June 2, 2009). The defendant and an accomplice, both female, assaulted a male with fists and tree limbs. The two females individually, but not collectively, weighed less than the male victim, and both were shorter than him. They both were convicted of assault with a deadly weapon inflicting serious injury. The court ruled that the evidence was sufficient to prove that the fists and the tree limbs were deadly weapons.

State v. Clark, __ N.C. App. __, __ S.E. 2d __ (Dec. 8, 2009). The vehicle at issue was not a deadly weapon as a matter of law where there was no evidence that the vehicle was moving at a high speed and given the victim's lack of significant injury and the lack of damage to the other vehicle involved, a jury could conclude that the vehicle was not aimed directly at the victim and that the impact was more of a glancing contact.

Intent

State v. Maready, __ N.C. App. __, __ S.E.2d __ (July 6, 2010). The trial judge committed prejudicial error with respect to its instruction on the intent element for the charges of assault with a deadly weapon, in a case in which a vehicle was the deadly weapon. In order for a jury to convict of assault with a deadly weapon, it must find that it was the defendant's actual intent to strike the victim with his vehicle, or that the defendant acted with culpable negligence from which intent may be implied. Because the trial court's instruction erroneously could have allowed the jury to convict without a finding of either actual intent or culpable negligence, reversible error occurred.

Intent to Kill

State v. Liggons, ___ N.C. App. ___, 670 S.E.2d 333 (Jan. 6, 2009). There was sufficient evidence of an intent to kill and the weapon used was deadly as a matter of law. The defendant was convicted of assault with a deadly weapon with intent to kill inflicting serious injury and other offenses. There was sufficient evidence of an intent to kill where the defendant and his accomplice discussed intentionally forcing drivers off the road in order to rob them and one of them then deliberately threw a very large rock or concrete chunk through the driver's side windshield of the victim's automobile as it was approaching at approximately 55 or 60 miles per hour. The court concluded that it is easily foreseeable that such deliberate action could result in death, either from the impact of the rock on or a resulting automobile accident.

Serious Injury

State v. Walker, __ N.C. App. __, __ S.E.2d __ (June 15, 2010). The evidence was sufficient to establish serious injury where the defendant had a three-inch knife during the assault; the victim bled "a lot" from his wounds, dripping blood throughout the bedroom, bathroom, and kitchen; the victim was on the floor in pain and spitting up blood when the officer arrived; the victim was stabbed or cut 8 or 9 times and had wounds on his lip, back, and arm; the victim was removed by stretcher to the emergency room, where he remained for 12 hours, receiving a chest tube to drain blood, stitches in his back and arm, and was placed on a ventilator because of a lung puncture; the victim received pain medication for approximately one week; and at trial the victim still had visible scars on his lip, arm, and back.

Serious Bodily Injury

State v. Rouse, __ N.C. App. __, __ S.E.2d __ (July 21, 2009). There was sufficient evidence that a 70-year-old victim suffered from a protracted condition causing extreme pain supporting a charge of assault inflicting serious bodily injury when the facts showed: the victim had dried blood on her lips and in her nostrils and abdominal pain; she had a bruise and swelling over her left collarbone limiting movement of her shoulder, and a broken collarbone, requiring a sling; she had cuts in her hand requiring stitches; she received morphine immediately and was prescribed additional pain medicine; she had to return to the emergency room 2 days later due to an infection in the sutured hand, requiring re-stitching and antibiotics; a nurse was unable to use a speculum while gathering a rape kit because the victim was in too much pain.

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Dec. 8, 2009). (1) There was sufficient evidence of serious bodily injury with respect to one victim where the victim suffered a cracked pelvic bone, a broken rib, torn ligaments in her back, a deep cut over her left eye, and was unable to have sex for seven months; the eye injury developed an infection that lasted months and was never completely cured; the incident left a scar above the victim's eye, amounting to permanent disfigurement; there was sufficient evidence of serious bodily injury as to another victim where the victim sustained a puncture wound to the back of her scalp and a parietal scalp hematoma and she went into premature labor as a result of the attack. (2) There was insufficient evidence of serious bodily injury as to another victim where the evidence showed that the victim received a vicious beating but did not show that her injuries placed her at substantial risk of death; although her ribs were "sore" five months later, there was no evidence that she experienced "extreme pain" in addition to the "protracted condition." (4) Based on the language in G.S. 14-32.4(b) providing that "[u]nless the conduct is covered under some other provision of law providing greater punishment," the court held that a defendant may not be sentenced to assault by strangulation and a more serious offense based on the same conduct. Because the statutory language in G.S. 14-32.4(a) proscribing assault inflicting serious bodily injury contains the same language, the same analysis likely would apply to that offense.

Discharging a Barreled Weapon or Firearm into Occupied Property

State v. Small, __ N.C. App. __, __ S.E.2d __ (Dec. 8, 2009). Only a barreled weapon must meet the velocity requirements of G.S. 14-34.1(a) (capable of discharging shot, bullets, pellets, or other missiles at a muzzle velocity of at least 600 feet per second); a firearm does not.

Malicious Conduct By Prisoner

State v. Noel, __ N.C. App. __, __ S.E.2d __ (Mar. 2, 2010). The evidence was sufficient to establish that the defendant emitted bodily fluids where it showed that he spit on an officer. The evidence was sufficient to show that the defendant acted knowingly and willfully where the defendant was uncooperative with the officers, was belligerent towards them, and immediately before the spitting, said to an approaching officer: "F--k you, n----r. I ain't got nothing. You ain't got nothing on me." The evidence was sufficient to show that the defendant was in custody when he was handcuffed and seated on a curb, numerous officers were present, and the defendant was told that he was not free to leave.

Multiple Convictions

State v. Williams, __ N.C. App. __, 689 S.E.2d 412 (Dec. 8, 2009). A defendant may not be convicted of assault with a deadly weapon inflicting serious injury and assault inflicting serious bodily injury arising out of the same conduct.

Relation to Sexual Battery

State v. Corbett, ___ N.C. App. ___, 675 S.E.2d 150 (April 21, 2009). Assault is not a lesser-included offense of sexual battery.

Secret Assault

State v. Holcombe, __ N.C. App. __, __ S.E.2d __ (April 20, 2010). The evidence was insufficient to support a conviction where the state failed to produce evidence that the assault was done in a secret manner. To satisfy this element, the state must offer evidence showing that the victim is caught unaware.

Threats, Harassment, Stalking & Violation of Domestic Violence Protective Orders

State v. Byrd. 363 N.C. 214 (May 1, 2009). Reversing the court of appeals and holding that a temporary restraining order (TRO) entered pursuant to Rule 65(b) of the N.C. Rules of Civil Procedure on a motion alleging acts of domestic violence in an action for divorce from bed and board was not a valid domestic violence protective order as defined by Chapter 50B and was not entered after a hearing by the court or with consent of the parties. Thus, the TRO could not support imposition of the punishment enhancement prescribed by G.S. 50B-4.1(d).

State v. Wooten, __ N.C. App. __, __ S.E.2d __ (Aug. 17, 2010). The evidence was sufficient to sustain a stalking conviction where it showed that the defendant sent five facsimile messages to the victim's workplace but the first four did not contain a direct threat. In this regard, the court noted, the case "diverges from those instances in which our courts historically have applied the stalking statute." Among other things, the faxes called the victim, Danny Keel, "Mr. Keel-a-Nigger," referenced the defendant having purchased a shotgun, and mentioned his daughter, who was living away from home, by first name.

State v. Van Pelt, __ N.C. App. __, __ S.E. 2d __ (Sept. 7, 2010). In a prosecution under the prior version of the stalking statute, there was sufficient evidence to sustain a conviction. The court rejected the defendant's argument that the evidence showed communications to persons other than the alleged victim on all but one occasion, concluding that all of the communications were directed to the victim. The defendant harassed the victim by written communications, pager, and phone with no legitimate purpose. The communications were directed to the victim, including those to his office staff, made with the request that they be conveyed to the victim. The harassment placed the victim in fear as evidenced by his testimony, his actions in having his staff make sure the office doors were locked and ensuring the outside lights were working along with encouraging them to walk in "twos" to their cars, his wife's testimony of his demeanor during and after his phone call with the defendant, his late night phone call to a police officer, his action in taking out a restraining order, and his visit to his children's school to speak with teachers and counselors and to have them removed from the school's website. The victim's fears were reasonable given the defendant's odd behavior exhibiting a pattern of escalation.

State v. Van Pelt, __ N.C. App. __, __ S.E. 2d __ (Sept. 7, 2010). The evidence was sufficient to establish that the defendant violated G.S. 14-196(a)(3) by making harassing phone calls. The defendant repeatedly called the victim at work to annoy and harass him. It was not necessary for the State to show that defendant actually spoke with the victim.

Sexual Assaults, Sex Offender Registration, and Related Offenses

Age Difference Between Defendant and Victim for Sexual Assaults

State v. Faulk, __ N.C. App. __, __ S.E.2d __ (Sept. 15, 2009). In a case charging offenses under G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old), the court held that the trial judge misapplied the "birthday rule" (a person reaches a certain age on his or her birthday and remains that age until his or her next birthday) to the calculation of the age difference between the defendant and the victim. The defendant's and victim's ages at the time in question were 19 years, 7 months, and 5 days and 15 years, 2 months, and 8 days respectively. Applying the birthday rule, the trial court concluded that the defendant was 19 at the time in question and that the victim was 15, making the age difference 4 years, when the relevant statute required it to be more than 4 years. The appellate court concluded that the statutory element of more than 4 years but less than 6 years means 4 years 0 days to 6 years 0 days, "or anywhere in the range of 1460 days to 2190 days."

Crime Against Nature

In Re R.N., __ N.C. App. __, __ S.E.2d __ (Aug. 17, 2010). The trial court erred by denying the juvenile's motion to dismiss a charge of crime against nature; as to a second charge alleging the same offense, defects in the transcript made appellate review impossible. The first count alleged that the juvenile licked the victim's genital area. The evidence established that the juvenile licked her private, put his mouth on her private area, and "touch[ed] . . . on her private parts." Citing, *State v. Whittemore*, 255 N.C. 583 (1961), the court held that the evidence was insufficient to establish penetration. As to the second count, alleging that the juvenile put his penis in the victim's mouth, the evidence showed that the juvenile forced the victim's head down to his private and that she saw his private area. Under *Whittemore*, this was insufficient evidence of penetration. However, when a social worker was asked whether there was penetration, she responded: "[the victim] told me there was *(Indistinct Muttering)* penetration." The court concluded that because it could not determine from this testimony whether penetration occurred, it could not meaningfully review the sufficiency of the evidence. The court vacated the adjudication and remanded for a hearing to reconstruct the social worker's testimony.

Indecent Liberties

State v. Breathette, __ N.C. App. __, __ S.E.2d __ (Mar. 2, 2010). Mistake of age is not a defense to the crime of indecent liberties. The trial court did not err by instructing the jury that the term willfully meant that the act was done purposefully and without justification or excuse. This instruction "largely mirrors" the North Carolina Supreme Court's definition of willfully, which is "the wrongful doing of an act without justification or excuse, or the commission of an act purposely and deliberately in violation of law."

State v. McClary, __ N.C. App. __, 679 S.E.2d 414 (July 7, 2009). There was sufficient evidence to survive a motion to dismiss where it showed that the defendant gave the child a letter containing sexually graphic language for the purpose of soliciting sexual intercourse and oral sex for money. Additionally, the jury could reasonably infer that the defendant's acts of writing and delivering the letter to the child were

taken for the purpose of arousing and gratifying sexual desire.

State v. Coleman, ___ N.C. App. ___, 684 S.E.2d 513 (Nov. 3, 2009). The court held that the (1) defendant, who had a custodial relationship with the child, committed an indecent liberty when he watched the child engage in sexual activity with another person and facilitated that activity; and (2) defendant's two acts−touching the child's breasts and watching and facilitating her sexual encounter with another person−supported two convictions.

Failure to Register/Notify of Address or Other Change

State v. Abshire, 363 N.C. 322 (June 18, 2009). Rejecting an interpretation of the term "address" as meaning where a person resides and receives mail or other communication, the North Carolina Supreme Court held that the term carries the "ordinary meaning of describing or indicating the location where someone lives"; as such, the court concluded, the word indicates a person's residence, whether permanent or temporary. The court went on to hold that the state presented sufficient evidence to establish that the defendant changed her address, thus triggering the reporting requirement.

State v. Worley, __ N.C. App. __, 679 S.E.2d 857 (July 21, 2009). The trial court did not err in denying the defendant's motion to dismiss a charge of failure to notify of a change of address within 10 days where the evidence showed, at a minimum, that the defendant ceased to reside at his last listed reported address on or before August 10th, but did not submit a change of address form until September 16th. The court noted that individuals required to notify the sheriff of a change address must do so, even if the change of address is temporary; it rejected the defendant's contention that there may be times when a registered sex offender lacks a reportable address, such as when the person has no permanent abode.

State v. Braswell, __ N.C. App. __, __ S.E.2d __ (May 4, 2010). The trial court erred by denying the defendant's motion to dismiss the charge of failing to register as a sex offender by failing to verify his address. In order to be convicted for failure to return the verification form, a defendant must actually have received the form. In this case, the evidence was uncontroverted that the defendant never received the form.

Mentally Disabled Victim

State v. Williams, __ N.C. App. __, __ S.E. 2d __ (Sept. 7, 2010). In a sexual offense case, there was sufficient evidence that the victim, an adult with 58 I.Q., was mentally disabled and that the defendant knew or should reasonably have known this. (1) Because the parties agreed that the victim was capable of appraising the nature of his conduct and of communicating an unwillingness to submit to a sexual act (he told the defendant he did not want to do the act), the issue on the mentally disabled element was whether the victim was substantially capable of resisting a sexual act. The victim was mildly mentally retarded. He had difficulty expressing himself verbally, was able to read very simple words and solve very simple math problems, and had difficulty answering questions about social abilities and daily tasks. He needed daily assistance with cooking and personal hygiene. Notwithstanding the victim's communication of his unwillingness to receive oral sex, the defendant completed the sexual act, allowing an inference that the victim was unable to resist. (2) There was sufficient evidence that the defendant knew or should have known that the victim was mentally disabled. An officer testified that within three minutes of talking with the victim, it was obvious that he had some deficits. By contrast, the defendant appeared normal and healthy. While the defendant had a driver's license, held regular jobs, took care of the victim's mother, could connect a VCR, and could read "somewhat," the victim could not drive, never held a regular job,

could cook only in a microwave, had to be reminded to brush his teeth, did not know how to connect a VCR, and could not read. Moreover, the defendant had sufficient opportunity to get to know the victim, having dated the victim's mother for thirteen years and having spent many nights at the mother's house, where the victim lived.

Rape

State v. Lawrence, 363 N.C. 118 (Mar. 20, 2009). The court, per curiam and without an opinion, affirmed the ruling of the court of appeals that there was substantial evidence that the defendant displayed an article which the victim reasonably believed to be a dangerous or deadly weapon. The evidence showed that the defendant grabbed the victim, told her that he was going to kill her and reached into his pocket to get something; although the victim did not see if the item was a knife or a gun, she saw something shiny and silver that she believed to be a knife.

Sexual Battery

State v. Corbett, ___ N.C. App. ___, 675 S.E.2d 150 (April 21, 2009). Assault is not a lesser-included offense of sexual battery.

Sexual Offense

State v. Crocker, __ N.C. App. __, 676 S.E.2d 658 (June 2, 2009). The evidence was sufficient of a sexual offense where the child victim testified that the defendant reached beneath her shorts and touched between "the skin type area" in "[t]he area that you pee out of" and that he would rub against a pressure point causing her pain and to feel faint. A medical expert testified that because of the complaint of pain, the victim's description was "more suggestive of touching . . . on the inside."

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Dec. 8, 2009). The defendant was properly convicted of two counts of sexual offense when the evidence showed that the victim awoke to find the defendant's hands in her vagina and in her rectum at the same time.

Sexual Activity by a Custodian

State v. Coleman, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 3, 2009). The court held that (1) the defendant, who was employed by a corporation at its boys' group home location was a custodian of the victim, who lived at the corporation's girls' group home location; and (2) the State need not prove that the defendant knew that he was the victim's custodian.

Solicitation of a Child by Computer

State v. Fraley, __ N.C. App. __, __ S.E.2d __ (Feb. 16, 2010). The defendant advised or enticed an officer posing as a child to meet the defendant, on the facts presented. The court noted that since the terms advise and entice were not defined by the statute, the General Assembly is presumed to have used the words to convey their natural and ordinary meaning.

Kidnapping

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Dec. 8, 2009). The removal of the victim was without

her consent when the defendant induced the victim to enter his car on the pretext of paying her money in exchange for sex, but his real intent was to assault her; a reasonable mind could conclude that had the victim known of such intent, she would not have consented to have been moved by the defendant.

State v. Yarborough, __ N.C. App. __, 679 S.E.2d 397 (July 7, 2009). There was sufficient evidence of confinement where the defendant entered a trailer, brandished a loaded shotgun, and ordered everyone to lie down. It was immaterial that the victim did not comply with the defendant's order to lie down.

State v. Keller, __ N.C. App. __, 680 S.E.2d 212 (Aug. 4, 2009). Kidnapping requires a live victim.

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Dec. 8, 2009). A defendant may be convicted of assault inflicting serious bodily injury and first-degree kidnapping when serious injury elevates the kidnapping conviction to first-degree.

Larceny

State v. Patterson, ___ N.C. App. ___, 671 S.E.2d 357 (Jan. 6, 2009). The doctrine of recent possession applied to a video camera and a DVD player found in the defendant's exclusive possession 21 days after the break-in.

Possession of Stolen Goods

State v. Tanner, __ N.C. __, __ S.E.2d __ (June 17, 2010). Reversing the Court of Appeals and overruling *State v. Marsh*, 187 N.C. App. 235 (2007), and *State v. Goblet*, 173 N.C. App. 112 (2005), the Supreme Court held that a defendant who is acquitted of underlying breaking or entering and larceny charges may be convicted of felonious possession of stolen goods on a theory that the defendant knew or had reasonable grounds to believe that the goods were stolen.

State v. Rahaman, __ N.C. App. __, __ S.E.2d __ (Jan. 19, 2010). There was sufficient evidence that a stolen truck was worth more than $1,000. The sole owner purchased the truck new 20 years ago for $9,000.00. The truck was in "good shape"; the tires were in good condition, the radio and air conditioning worked, and the truck was undamaged, had never been in an accident and had been driven approximately 75,000 miles. The owner later had an accident that resulted in a "total loss" for which he received $1,700 from insurance; he would have received $2,100 had he given up title. An officer testified that the vehicle had a value of approximately $3,000. The State is not required to produce direct evidence of value, provided that the jury is not left to speculate as to value.

State v. Wilson, __ N.C. App. __, __ S.E.2d __ (April 20, 2010). The evidence was insufficient to establish that the defendant knew a gun was stolen. Case law establishes that guilty knowledge can be inferred from the act of throwing away a stolen weapon. In this case, shortly after a robbery, the defendant and an accomplice went to the home of the accomplice's mother, put the gun in her bedroom, and left the house. These actions were not analogous to throwing an item away for purposes of inferring knowledge that an item was stolen.

State v. Moses, __ N.C. App. __, __ S.E.2d __ (July 20, 2010). A defendant may not be sentenced for both robbery and possession of stolen property taken during the robbery.

State v. Marshall, __ N.C. App. __, __ S.E.2d __ (Aug. 17, 2010). In a possession of stolen property case,

the trial court committed reversible error by instructing the jury on constructive possession. The property, a vehicle stolen from a gas station, was found parked on the street outside of the defendant's residence. The defendant claimed that unknown to him, someone else drove the vehicle there. The State argued that evidence of a surveillance tape showing the defendant at the station when the vehicle was taken, the defendant's opportunity to observe the running, unoccupied vehicle, the fact that the vehicle was not stolen until defendant left the station, and the later discovery of the vehicle near the defendant's residence was sufficient to establish constructive possession. The court concluded that although this evidence showed opportunity, it did not show that the defendant was aware of the vehicle's location outside his residence, was at home when it arrived, that he regularly used that location for his personal use, or that the public street was any more likely to be under his control than the control of other residents. The court concluded that the vehicle's location on a public street not under the defendant's exclusive control and the additional circumstances recounted by the State did not support an inference that defendant had "the intent and capability to maintain control and dominion over" the vehicle. Based on the same analysis, the court also agreed with the defendant's argument that the trial court erred by denying his motions to dismiss as there was insufficient evidence that he actually or constructively possessed the stolen vehicle and by accepting the jury verdict as to possession of stolen goods because it was fatally inconsistent with its verdict of not guilty of larceny of the same vehicle.

Robbery

State v. Maness, 363 N.C. 261 (June 18, 2009). If the events constitute a continuous transaction, a defendant may be convicted of armed robbery when the dangerous weapon taken during the robbery also is the weapon used to perpetrate the offense. In this case, the defendant fought with a law enforcement officer and "emerged from the fight" with the officer's gun.

State v. Porter, __ N.C. App. __, 679 S.E.2d 167 (July 7, 2009). The defendant's use of violence was concomitant with and inseparable from the theft of the property from a store where the store manager confronted the defendant in the parking lot and attempted to retrieve the stolen property, at which point the defendant struck the store manager. This constituted a continuous transaction.

State v. Moses, __ N.C. App. __, __ S.E.2d __ (July 20, 2010). A defendant may not be sentenced for both robbery and possession of stolen property taken during the robbery.

State v. Bettis, __ N.C. App. __, __ S.E. 2d __ (Sept. 7, 2010). Where witness testimony indicated that the defendant used a gun in an armed robbery and there was no evidence that the gun was inoperable, the State was not required to affirmatively demonstrate operability and the trial court was not required to instruct on common law robbery.

State v. Williamson, __ N.C. App. __, __ S.E. 2d __ (Sept. 7, 2010). The trial court did not err by failing to instruct the jury on the lesser included offense of common law robbery and by denying defendant's motion to dismiss the armed robbery charges. Because the defendant presented no evidence at trial to rebut the presumption that the firearm used in the robbery was functioning properly, he was not entitled to either an instruction on common law robbery or dismissal of the armed robbery charges.

Frauds

Identity Theft

State v. Barron, __ N.C. App. __, __ S.E.2d __ (Mar. 2, 2010). The defendant's active (and false)

acknowledgement to an officer that the last four digits of his social security number were "2301" constituted the use of identifying information of another within the meaning of G.S. 14-113.20(a).

Exploitation of Elder Adult

State v. Forte, __ N.C. App. __, __ S.E. 2d __ (Sept. 7, 2010). The defendant was charged with offenses under the current (G.S. 14-112.2) and prior (G.S. 14-32.3) statutes proscribing the crime of exploitation of an elder adult. (1) There was sufficient evidence that the victim was an elder adult. The victim was either 99 or 109 years old and had not driven a vehicle for years. Individuals helped him by paying his bills, driving him, bringing him meals and groceries, maintaining his vehicles, cashing his checks, helping him with personal hygiene, and making medical appointments for him. (2) There was sufficient evidence that the defendant was the victim's caretaker. The defendant assisted the victim by, among other things, performing odd jobs, running errands, serving as a driver, taking him shopping, purchasing items, doing projects on the victim's property, writing checks, visiting with him, taking him to file his will, making doctor appointments, and cutting his toenails. Additionally, the two had a close relationship, the defendant was frequently at the victim's residence, and was intricately involved in the victim's financial affairs. The court rejected the defendant's argument that these activities were not sufficient to transform the "friendly relationship" into that of caretaker and charge.

Forgery

State v. Guarascio, __ N.C. App. __, __ S.E.2d __ (July 20, 2010). There was sufficient evidence of forgery under G.S. 14-119 when the evidence showed that the defendant signed a law enforcement officer's name on five North Carolina Uniform Citations.

Burglary and Breaking and Entering

State v. Rawlinson, __ N.C. App. __, 679 S.E.2d 878 (Aug. 4, 2009). The defendant did not have implied consent to enter an office within a video store. Even if the defendant had implied consent to enter the office, his act of theft therein rendered that implied consent void ab initio.

State v. Owens, __ N.C. App. __, __ S.E.2d __ (July 6, 2010). First-degree trespass is a lesser included offense of felony breaking or entering.

Trespass

In re S.M.S., ___ N.C. App. ___, 675 S.E.2d 44 (April 7, 2009). A male juvenile's entry into a school's female locker room with a door marked "Girl's Locker Room" was sufficient evidence to support the juvenile's adjudication of second-degree trespass. The sign was reasonably likely to give the juvenile notice that he was not authorized to go into the locker room.

State v. Owens, __ N.C. App. __, __ S.E.2d __ (July 6, 2010). First-degree trespass is a lesser included offense of felony breaking or entering.

Bombing, Terrorism, and Related Offenses

State v. Watterson, __ N.C. App. __, 679 S.E.2d 897 (Aug. 4, 2009). In a prosecution under G.S. 14-288.8, the State is not required to prove that the defendant knew of the physical characteristics of the

weapon that made it unlawful.

Weapons Offenses
Constitutional Issues

McDonald v. City of Chicago, 561 U.S. __ (June 28, 2010). The Second Amendment right to keep and bear arms applies to the states.

Britt v. North Carolina, 363 N.C. 546 (Aug. 28, 2009). The court held that G.S. 14-415.1 (felon in possession), as applied to the plaintiff, was unconstitutional. In 1979, the plaintiff was convicted of possession of a controlled substance with intent to sell and deliver, a nonviolent crime that did not involve the use of a firearm. He completed his sentence in 1982 and in 1987, his civil rights were fully restored, including his right to possess a firearm. The then-existing felon in possession statute did not bar the plaintiff from possessing a firearm. In 2004, G.S. 14-415.1 was amended to extend the prohibition to all firearms by anyone convicted of a felony and to remove the exceptions for possession within the felon's own home and place of business. Thereafter, the plaintiff spoke with his local sheriff about whether he could lawfully possess a firearm and divested himself of all firearms, including sporting rifles and shotguns that he used for game hunting on his land. Plaintiff, who had never been charged with another crime, filed a civil action against the State, alleging that G.S. 14-415.1 violated his constitutional rights. The North Carolina Supreme Court held that as applied to him, G.S. 14-415.1, which contains no exceptions, violated the plaintiff's right to keep and bear arms protected by Article I, Section 30 of the North Carolina Constitution. Specifically, the court held that as applied, G.S. 14-451.1 was not a reasonable regulation. The court held: "Plaintiff, through his uncontested lifelong nonviolence towards other citizens, his thirty years of law-abiding conduct since his crime, his seventeen years of responsible, lawful firearm possession between 1987 and 2004, and his assiduous and proactive compliance with the 2004 amendment, has affirmatively demonstrated that he is not among the class of citizens who pose a threat to public peace and safety." It concluded: "[I]t is unreasonable to assert that a nonviolent citizen who has responsibly, safely, and legally owned and used firearms for seventeen years is in reality so dangerous that any possession at all of a firearm would pose a significant threat to public safety."

State v. Whitaker, __ N.C. App. __, 689 S.E.2d 395 (Dec. 8, 2009). Rejecting facial and "as applied" constitutional challenges to the felon in possession statute. The court distinguished *Britt* (discussed above) in connection with the as applied challenge. The court also rejected the defendant's contentions that the statute violates the prohibition against ex post facto laws and constitutes an unconstitutional bill of attainder.

State v. Sullivan, __ N.C. App. __, 691 S.E.2d 417 (Feb. 16, 2010). The court rejected the defendant's argument that as applied to him, G.S. 14-269.4 (carrying weapon in a courthouse) violated his right to bear arms under Article I, Section 30 of the North Carolina Constitution. The defendant had argued that the General Assembly had no authority to enact any legislation regulating or infringing on his right to bear arms. The court rejected this argument, noting that the state may regulate the right to bear arms, within proscribed limits. The court also held that the trial judge did not err by refusing to instruct the jury that it must consider whether the defendant knowingly or willfully violated the statute. The court concluded that an offender's intent is not an element of the offense.

Felon in Possession

State v. Fuller, ___ N.C. App. ___, 674 S.E.2d 824 (April 21, 2009). There was sufficient evidence of

constructive possession to sustain conviction for possession of a firearm by a felon.

State v. Taylor, __ N.C. App. __, __ S.E.2d __ (April 20, 2010). There was sufficient evidence of constructive possession. When a probation officer went to the defendant's cabin, the defendant ran away; a frisk of the defendant revealed spent .45 caliber shells that smelled like they had been recently fired; the defendant told the officer that he had been shooting and showed the officer boxes of ammunition close to the cabin, of the same type found during the frisk; a search revealed a .45 caliber handgun in the undergrowth close to the cabin, near where the defendant had run.

State v. Mewborn, __ N.C. App. __, 684 S.E.2d. 535 (Nov. 3, 2009). The evidence was sufficient to establish possession supporting convictions of felon in possession and carrying concealed where the defendant ran through a field in a high traffic area, appeared to have something heavy in his back pocket and to make throwing motions from that pocket, and a clean dry gun was found on the wet grass.

Carrying Concealed

State v. Mewborn, __ N.C. App. __, 684 S.E.2d. 535 (Nov. 3, 2009). The evidence was sufficient to establish possession supporting convictions of felon in possession and carrying concealed where the defendant ran through a field in a high traffic area, appeared to have something heavy in his back pocket and to make throwing motions from that pocket, and a clean dry gun was found on the wet grass.

Possession of Weapons on School Grounds

In Re J.C., __ N.C. App. __, __ S.E. 2d __ (July 6, 2010). The evidence was sufficient to support the court's adjudication of a juvenile as delinquent for possession of a weapon on school grounds in violation of G.S. 14-269.2(d). The evidence showed that while on school grounds the juvenile possessed a 3/8-inch thick steel bar forming a C-shaped "link" about 3 inches long and 1½ inches wide. The link closed by tightening a ½-inch thick bolt and the object weighed at least 1 pound. The juvenile could slide several fingers through the link so that 3-4 inches of the 3/8-inch thick bar could be held securely across his knuckles and used as a weapon.

Obscenity and Related Offenses

State v. Ligon, __ N.C. App. __, __ S.E.2d __ (Aug. 17, 2010). The evidence was insufficient to sustain a conviction for first-degree sexual exploitation of a minor. The State's evidence consisted of photographs of the five-year-old victim but did not depict any sexual activity. The court rejected the State's arguments that a picture depicting the child pulling up the leg of her shorts while her fingers were in her pubic area depicted masturbation; the court concluded that the photograph merely showed her hand in proximity to her crotch. It also rejected the State's argument that this picture, along with other evidence supported an inference that the defendant coerced or encouraged the child to touch herself for the purpose of producing a photograph depicting masturbation, concluding that no statutorily prohibited sexual activity took place. Finally, it rejected the State's argument that a photograph of the defendant pulling aside the child's shorts depicted prohibited touching constituting sexual activity on grounds that the picture depicted the defendant touching the child's shorts not her body.

State v. Martin, 195 N.C. App. 43 (Jan. 20, 2009). No double jeopardy violation when the defendant was convicted and punished for indecent liberties and using a minor in obscenity based on the same photograph depicting the child and defendant. Each offense has at least one element that is not included in

the other offense.

Obstruction of Justice and Related Offenses

State v. Richardson, __ N.C. App. __, __ S.E.2d __ (Feb. 16, 2010). There was insufficient evidence of resisting an officer. The State argued that the defendant resisted by exiting a home through the back door after officers announced their presence with a search warrant. "We find no authority for the State's presumption that a person whose property is not the subject of a search warrant may not peacefully leave the premises after the police knock and announce if the police have not asked him to stay."

State v. Goble, __ N.C. App. __, __ S.E.2d __ (July 6, 2010). The trial court did not err by denying the defendant's motion to dismiss a charge of felony failure to appear. To survive a motion to dismiss a charge of felonious failure to appear, the State must present substantial evidence that (1) the defendant was released on bail pursuant to G.S. Article 26 in connection with a felony charge or, pursuant to section G.S. 15A-536, after conviction in the superior court; (2) the defendant was required to appear before a court or judicial official; (3) the defendant did not appear as required; and (4) the defendant's failure to appear was willful. In this case, the defendant signed an Appearance Bond for Pretrial Release which included the condition that the defendant appear in the action whenever required. The defendant subsequently failed to appear on the second day of trial. The court further held that the defendant, who failed to appear on felony charges, was not entitled to an instruction on misdemeanor failure to appear even though the felony charges resulted in misdemeanor convictions.

State v. Wright, __ N.C. App. __, __ S.E.2d __ (Aug. 3, 2010). The trial court did not err by denying the defendant's motion to dismiss a charge of felony obstruction of justice. The State argued that the defendant knowingly filed with the State Board of Elections (Board) campaign finance reports with the intent of misleading the Board and the voting public about the sources and uses of his campaign contributions. The defendant was a member of the House of Representatives and a candidate for re-election. He was required to file regular campaign finance disclosure reports with the Board to provide the Board and the public with accurate information about his compliance with campaign finance laws, the sources of his contributions, and the nature of his expenditures. His reports were made under oath or penalty of perjury. The defendant's sworn false reports deliberately hindered the ability of the Board and the public to investigate and uncover information to which they were entitled by law: whether defendant was complying with campaign finance laws, the sources of his contributions, and the nature of his expenditures. Further, his false reports concealed illegal campaign activity from public exposure and possible investigation. The lack of any pending judicial proceeding or a specific investigation into whether the defendant had violated campaign finance laws was immaterial. The court also rejected the defendant's argument that the trial court's jury instructions deviated from the indictment. The defendant argued that the indictment alleged that he obstructed public access to the information but that the jury instructions focused on obstructing the Board's access to information. The court found this to be a distinction without a difference.

Drug Offenses

Maintaining a Dwelling

State v. Fuller, ___ N.C. App. ___, 674 S.E.2d 824 (April 21, 2009). There was insufficient evidence to establish that the defendant "maintained" the dwelling. Evidence showed only that the defendant had discussed, with the home's actual tenant, taking over rent payments but never reached an agreement to do so; a car, similar to defendant's was normally parked at the residence; and the defendant's shoes and some

of his personal papers were found there.

State v. Craven, __ N.C. App. __, __ S.E.2d __ (July 20, 2010). The trial court did not err by denying the defendant's motion to dismiss a charge of maintaining a vehicle where the evidence was sufficient to establish that the defendant had possession of cocaine in his mother's vehicle over a duration of time and/or on more than one occasion.

State v. Hudson, __ N.C. App. __, __ S.E.2d __ (Aug. 17, 2010). The evidence was sufficient to support a conviction for maintaining a vehicle. Drugs were found in a vehicle being transported by a car carrier driven by the defendant. The evidence showed that the defendant kept or maintained the vehicle where the bill of lading showed that the defendant picked it up and maintained possession as the authorized bailee continuously and without variation for two days. Having stopped to rest overnight at least one time during the time period, the defendant retained control and disposition over the vehicle and resumed his planned route with the car carrier.

Possession

Knowing Possession

State v. Nunez, __ N.C. App. __, __ S.E.2d __ (May 18, 2010). The evidence was sufficient to establish that the defendant knowingly possessed and transported the controlled substance. The evidence showed that (1) the packages involved in the controlled delivery leading to the charges at issue were addressed to "Holly Wright;" although a person named Holly Wainwright had lived in the apartment with the defendant, she had moved out; (2) the defendant immediately accepted possession of the packages, dragged them into the apartment, and never mentioned to the delivery person that Wainwright no longer lived there; (3) Wainwright testified that she had not ordered the packages; (4) the defendant told a neighbor that another person (Smallwood) had ordered the packages for her; (5) the defendant did not open the packages, but immediately called Smallwood to tell him that they had arrived; (6) after getting off the phone with Smallwood, the defendant acted like she was in a hurry to leave; and (7) Smallwood came to the apartment within thirty-five minutes of the packages being delivered.

Constructive Possession

State v. Miller, 363 N.C. 96 (Mar. 20, 2009). There was sufficient evidence that the defendant constructively possessed cocaine. Two factors frequently considered in analyzing constructive possession are the defendant's proximity to the drugs and indicia of the defendant's control over the place where the drugs are found. The court found the following evidence sufficient to support constructive possession: Officers found the defendant in a bedroom of a home where two of his children lived with their mother. When first seen, the defendant was sitting on the same end of the bed where the cocaine was recovered. Once the defendant slid to the floor, he was within reach of the package of cocaine recovered from the floor behind the bedroom door. The defendant's birth certificate and state-issued identification card were found on top of a television stand in that bedroom. The only other person in the room was not near any of the cocaine. Even though the defendant did not exclusively possess the premises, these incriminating circumstances permitted a reasonable inference that the defendant had the intent and capability to exercise control and dominion over cocaine in that room.

State v. Biber, __ N.C. App. __, __ S.E. 2d __ (Sept. 7, 2010). Over a dissent, the court held that there was insufficient evidence that the defendant had constructive possession of the substance at issue, found in a motel room's bathroom light fixture while the defendant and two others were present. Ms. Hensley,

who had rented the room with an unidentified friend, twice complained that people were using drugs in her room and that she did not want them there. The court found no competent evidence that the defendant intended and had the capability to maintain control and dominion over the room or the substance itself. In this regard it noted that because Ms. Hensley did not want the defendant in the room, his control over it was minimal. It also noted that there was no way to determine how long the defendant had been in the room before the officers arrived. Also, there was insufficient evidence of the defendant's proximity to the substance given that no evidence showed that he ever entered the bathroom. Rather, the evidence showed that when the officers entered the room, one of the other people present ran into the bathroom, refused to come out, and engaged in activity consistent with the destruction or concealing of contraband. [Note: Although the case was before the court on an appeal from an adverse ruling on a suppression motion, the court reached the issue of sufficiency of the evidence].

State v. Ferguson, __ N.C. App. __, __ S.E.2d __ (June 15, 2010). There was insufficient evidence that the defendant had constructive possession of bags of marijuana found in a vehicle. An officer found a vehicle that had failed to stop on his command in the middle of a nearby street with the engine running. The driver and passengers had fled. Officers searched the vehicle and found, underneath the front passenger seat, a large bag containing two smaller bags of marijuana; in the glove box, a small bag of marijuana; and in the defendant's handbag, a burned marijuana cigarette. The defendant, who had been sitting in the back seat, did not own the vehicle. There was no evidence that the defendant behaved suspiciously or failed to cooperate with officers after being taken into custody. There was no evidence that the defendant made any incriminating admissions, had a relationship with the vehicle's owner, had a history of selling drugs, or possessed an unusually large amount of cash.

State v. Hough, __ N.C. App. __, __ S.E.2d __ (Mar. 2, 2010). There was sufficient evidence of constructive possession even though the defendant did not have exclusive control of the residence where the controlled substances were found. The defendant admitted that he resided there, officers found luggage, mail, and a cellular telephone connected to the defendant at the residence, the defendant's car was in the driveway, and when the officers arrived, no one else was present. Additionally, the defendant was found pushing a trash can that contained the bulk of the marijuana seized, acted suspiciously when approached by the officers, and ran when an officer attempted to lift the lid.

State v. Fuller, 196 N.C. App. 412 (April 21, 2009). There was sufficient evidence of constructive possession of cocaine for purposes of charges of trafficking by possession, possession with intent, and possession of paraphernalia.

State v. Fortney, __ N.C. App. __, __ S.E.2d __ (Jan. 5, 2010). There was sufficient evidence that the defendant constructively possessed controlled substances found in a motorcycle carry bag even though the defendant did not own the motorcycle.

State v. Barron, __ N.C. App. __, __ S.E.2d __ (Mar. 2, 2010). There was insufficient evidence that the defendant constructively possessed the controlled substances at issue. The defendant did not have exclusive possession of the premises where the drugs were found; evidence showed only that the defendant was present, with others, in the room where the drugs were found.

State v. Richardson, __ N.C. App. __, __ S.E.2d __ (Feb. 16, 2010). There was insufficient evidence that the defendant constructively possessed cocaine and drug paraphernalia. When officers announced their presence at a residence to be searched pursuant to a warrant, the defendant exited through a back door and was detained on the ground; crack cocaine was found on the ground near the defendant and drug

paraphernalia was found in the house. As to the cocaine, the defendant did not have exclusive control of the house, which was rented by a third party, and there was insufficient evidence of other incriminating circumstances. The defendant did not rent the premises, no documents bearing his name were found there, none of his family lived there, and there was no evidence that he slept or lived at the home. The defendant's connection to the paraphernalia was even weaker where no evidence connected the defendant to the paraphernalia or to the room where it was found.

State v. Hudson, __ N.C. App. __, __ S.E.2d __ (Aug. 17, 2010). There was sufficient evidence of constructive possession to sustain a conviction for possession with the intent to sell and deliver marijuana. The drugs were found in a vehicle being transported by a car carrier driven by the defendant. The court determined that based on the defendant's power and control of the vehicle in which the drugs were found, an inference arose that he had knowledge their presence. The vehicle had been under the defendant's exclusive control since it was loaded onto his car carrier two days earlier and the defendant had keys to every car on the carrier. Although the defendant's possession of the vehicle was not exclusive because he did not own it, other evidence created an inference of his knowledge. Specifically, he acted suspiciously when stopped (held his hands up, nervous, sweating), he turned over a suspect bill of lading, and he had fully functional keys for all cars on the carrier except the one at issue for which he gave the officers a "fob" key which prevented its user from opening the trunk housing the marijuana.

Multiple Convictions

State v. Springs, __ N.C. App. __, __ S.E.2d __ (Oct. 6, 2009). A defendant may be convicted and punished for both felony possession of marijuana and felony possession of marijuana with intent to sell or deliver.

State v. Hall, __ N.C. App. __, __ S.E.2d __ (May 4, 2010). A defendant may be convicted and sentenced for both possession of ecstasy and possession of ketamine when both of the controlled substances are contained in a single pill.

Manufacturing

State v. Hinson, __ N.C. App. __, __ S.E.2d __ (April 6, 2010). The offense of manufacturing a controlled substance does not require an intent to distribute unless the activity constituting manufacture is preparing or compounding. An indictment charging the defendant with manufacturing methamphetamine "by chemically combining and synthesizing precursor chemicals" does not charge compounding but rather charges chemically synthesizing and thus the State was not required to prove an intent to distribute.

Counterfeit Controlled Substance Offenses

State v. Bivens, __ N.C. App. __, __ S.E.2d __ (June 1, 2010). For purposes of the counterfeit controlled substance offenses, a counterfeit controlled substance is defined, in part, by G.S. 90-87(6) to include any substance intentionally represented as a controlled substance. The statute further provides that "[i]t is evidence that the substance has been intentionally misrepresented as a controlled substance" if certain factors are established. The court rejected the defendant's argument that for a controlled substance to be considered intentionally misrepresented, all of the factors listed in the statute must be proved, concluding that the factors are evidence that the substance has been intentionally misrepresented as a controlled substance, not elements of the crime. The court also concluded that the evidence was sufficient to establish that the defendant misrepresented the substance at issue—calcium carbonate—as crack cocaine

where the defendant approached a vehicle, asked its occupants what they were looking for, departed to fill their request for "a twenty," and handed the occupants a little baggie containing a white rock-like substance. Finally, the court held that the statute does not require the State to prove that the defendant had specific knowledge that the substance was counterfeit.

State v. Mobley, __ N.C. App. __, __ S.E.2d __ (Aug. 3, 2010). There was sufficient evidence to support the defendant's conviction of conspiracy to sell a counterfeit controlled substance. The court concluded that G.S. 90-87(6) (definition of counterfeit controlled substance) requires only that the substance be intentionally represented as a controlled substance, not that a defendant have specific knowledge that it is counterfeit. There was sufficient evidence that the defendant intentionally represented the substance as a controlled substance in this case: when an undercover officer asked for a "40" ($40 worth of crack cocaine), an accomplice produced a hard, white substance packaged in two small corner baggies, which the officers believed to be crack cocaine. There also was substantial evidence that the defendant conspired with the accomplice: the defendant initiated contact with the officers, directed them where to park, spoke briefly with the accomplice who emerged from a building with the substance, and the defendant brokered the deal.

Trafficking

State v. Beam, __ N.C. App. __, __ S.E.2d __ (Jan. 5, 2010). The term "deliver," used in the trafficking statutes, is defined by G.S. 90-87(7) to "mean[] the actual constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship." Thus, an actual delivery is not required. In a prosecution under G.S. 90-95, the defendant bears the burden of establishing that an exemption applies, such as possession pursuant to a valid prescription. In this case, the trial court properly denied the defendant's motion to dismiss and properly submitted to the jury the issue of whether the defendant was authorized to possess the controlled substances.

Motor Vehicle Offenses

State v. Davis, __ N.C. __, __ S.E.2d __ (Aug. 27, 2010). The trial court erred by imposing punishment for felony death by vehicle and felony serious injury by vehicle when the defendant also was sentenced for second-degree murder and assault with a deadly weapon inflicting serious injury based on the same conduct. G.S. 20-141.4(a) prescribes the crimes of felony and misdemeanor death by vehicle, felony serious injury by vehicle, aggravated felony serious injury by vehicle, aggravated felony death by vehicle, and repeat felony death by vehicle. G.S. 20-141.4(b), which sets out the punishments for these offenses, begins with the language: "Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section[.]" Second-degree murder and assault with a deadly weapon inflicting serious injury provide greater punishment than felony death by vehicle and felony serious injury by vehicle. The statute thus prohibited the trial court from imposing punishment for felony death by vehicle and felony serious injury by vehicle in this case.

State v. Davis, __ N.C. App. __, __ S.E.2d __ (Aug. 4, 2009). A defendant may not be sentenced for both felony death by vehicle and impaired driving arising out of the same incident. However, a defendant may be sentenced for both involuntary manslaughter and impaired driving.

State v. Armstrong, __ N.C. App. __, __ S.E.2d __ (April 20, 2010). A defendant may be convicted for both second-degree murder (for which the evidence of malice was the fact that the defendant drove while impaired and had prior convictions for impaired driving) and impaired driving.