Supreme Court Review

Including significant cases decided by the N.C. and U.S. Supreme Courts in 2016

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Criminal Procedure

Discovery & Related Issues

Wearry v. Cain, 577 U.S. ___, 136 S. Ct. 1002 (Mar. 7, 2016) (per curiam). In this capital case, the prosecution's failure to disclose material evidence violated the defendant's due process rights. At trial the defendant unsuccessfully raised an alibi defense and was convicted. The case was before the Court after the defendant's unsuccessful post-conviction *Brady* claim. Three pieces of evidence were at issue. First, regarding State's witness Scott, the prosecution withheld police records showing that two of Scott's fellow inmates had made statements that cast doubt on Scott's credibility. One inmate reported hearing Scott say that he wanted to make sure the defendant got "the needle cause he jacked over me." The other inmate told investigators that he had witnessed the murder. However, he recanted the next day, explaining that "Scott had told him what to say" and had suggested that lying about having witnessed the murder "would help him get out of jail." Second, regarding State's witness Brown, the prosecution failed to disclose that, contrary to its assertions at trial that Brown, who was serving a 15-year sentence, "hasn't asked for a thing," Brown had twice sought a deal to reduce his existing sentence in exchange for his testimony. And third, the prosecution failed to turn over medical records on Randy Hutchinson. According to Scott, on the night of the murder, Hutchinson had run into the street to flag down the victim, pulled the victim out of his car, shoved him into the cargo space, and crawled into the cargo space himself. But Hutchinson's medical records revealed that, nine days before the murder, Hutchinson had undergone knee surgery to repair a ruptured patellar tendon. An expert witness testified at the state collateral-review hearing that Hutchinson's surgically repaired knee could not have withstood running, bending, or lifting substantial weight. The State presented an expert witness who disagreed regarding Hutchinson's physical fitness. Concluding that the state court erred by denying the defendant's *Brady* claim, the Court stated: "Beyond doubt, the newly revealed evidence suffices to undermine confidence in [the defendant's] conviction. The State's trial evidence resembles a house of cards, built on the jury crediting Scott's account rather than [the defendant's] alibi." It continued: "Even if the jury—armed with all of this new evidence—could have voted to convict [the defendant], we have no confidence

that it would have done so." (quotations omitted). It further found that in reaching the opposite conclusion, the state post-conviction court improperly evaluated the materiality of each piece of evidence in isolation rather than cumulatively, emphasized reasons a juror might disregard new evidence while ignoring reasons she might not, and failed even to mention the statements of the two inmates impeaching Scott.

State v. Davis, __ N.C. __, 785 S.E.2d 312 (April 15, 2016). Modifying and affirming the unanimous decision of the Court of Appeals below, ___ N.C. App. ___, 768 S.E.2d 903 (2015), in this child sexual assault case, the court held that expert testimony about general characteristics of child sexual assault victims and the possible reasons for delayed reporting of such allegations is expert opinion testimony subject to disclosure in discovery under G.S. 15A-903(a)(2). The court rejected the State's argument that because its witnesses did not give expert opinion testimony and only testified to facts, the discovery requirements of G.S. 15A-903(a)(2) were not triggered. Recognizing "that determining what constitutes expert opinion testimony requires a case-by-case inquiry in which the trial court (or a reviewing court) must look at the testimony as a whole and in context," the court concluded that the witnesses gave expert opinions that should have been disclosed in discovery. Specifically, both offered expert opinion testimony about the characteristics of sexual abuse victims. In this respect, their testimony went beyond the facts of the case and relied on inferences by the experts to reach the conclusion that certain characteristics are common among child sexual assault victims. Similarly, both offered expert opinion testimony explaining why a child victim might delay reporting abuse. Here again the experts drew inferences and gave opinions explaining that these and other unnamed patients had been abuse victims and delayed reporting the abuse for various reasons. The court continued: "These views presuppose (*i.e,* opine) that the other children the expert witnesses observed had actually been abused. These are not factual observations; they are expert opinions." However, the court found that the defendant failed to show that the error was prejudicial.

Double Jeopardy

Bravo-Fernandez v. United States, 580 U.S. ___ (Nov. 29, 2016). The issue-preclusion component of the Double Jeopardy Clause does not bar the Government from retrying the defendants after a jury has returned irreconcilably inconsistent verdicts of conviction and acquittal and the convictions are later vacated on appeal because of error in the judge's instructions on related to the verdicts' inconsistency.

Entry of an Order/Judgment

State v. Miller, ___ N.C. ___, 783 S.E.2d 194 (Mar. 18, 2016). On discretionary review of a unanimous, unpublished decision, the court held that the Court of Appeals improperly dismissed the State's appeal on grounds that the trial court's order had not been properly entered. The court noted that in a criminal case, a judgment or order is entered when the clerk of court records or files the judge's decision; entry of an order does not require that the trial court's decision be reduced to writing. Here, after the superior court announced its decision to affirm the district court order, the courtroom clerk noted in the minutes that "Court affirms appeal. State appeals court ruling." As a result, the order from which the State noted its appeal was properly entered.

Indictment Issues

State v. Williams, 368 N.C. 620 (Jan. 29, 2016). In a case where the defendant, a sex offender, was charged with violating G.S. 14-208.11 by failing to provide timely written notice of a change of address, the indictment was not defective. Distinguishing *State v. Abshire,* 363 N.C. 322 (2009), the court rejected the defendant's argument that the indictment was defective because it alleged that he failed to register his change of address with the sheriff's office within three days, rather than within three *business* days.

State v. James, ___ N.C. ___, 782 S.E.2d 509 (Mar. 18, 2016). In an appeal from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 774 S.E.2d 871 (2015), the court per curiam affirmed for the reasons stated in *State v. Williams* (discussed immediately above).

State v. Spivey, ___ N.C. ___, 782 S.E.2d 872 (Mar. 18, 2016). On discretionary review of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 769 S.E.2d 841 (2015), the court reversed, holding that an indictment charging the defendant with injury to real property "of Katy's Great Eats" was not fatally defective. The court rejected the argument that the indictment was defective because it failed to specifically identify "Katy's Great Eats" as a corporation or an entity capable of owning property, explaining: "An indictment for injury to real property must describe the property in sufficient detail to identify the parcel of real property the defendant allegedly injured. The indictment needs to identify the real property itself, not the owner or ownership interest." The court noted that by describing the injured real property as "the restaurant, the property of Katy's Great Eats," the indictment gave the defendant reasonable notice of the charge against him and enabled him to prepare his defense and protect against double jeopardy. The court also rejected the argument that it should treat indictments charging injury to real property the same as indictments charging crimes involving personal property, such as larceny, embezzlement, or injury to personal property, stating:

> Unlike personal property, real property is inherently unique; it cannot be duplicated, as no two parcels of real estate are the same. Thus, in an indictment alleging injury to real property, identification of the property itself, not the owner or ownership interest, is vital to differentiate between two parcels of property, thereby enabling a defendant to prepare his defense and protect against further prosecution for the same crime. While the owner or lawful possessor's name may, as here, be used to identify the specific parcel of real estate, it is not an essential element of the offense that must be alleged in the indictment, so long as the indictment gives defendant reasonable notice of the specific parcel of real estate he is accused of injuring.

The court further held that to the extent *State v. Lilly*, 195 N.C. App. 697 (2009), is inconsistent with its opinion, it is overruled. Finally, the court noted that although "[i]deally, an indictment for injury to real property should include the street address or other clear designation, when possible, of the real property alleged to have been injured," if the defendant had been confused as to the property in question, he could have requested a bill of particulars.

Suppression Motions

State v. Collins, ___ N.C. ___, ___ S.E.2d ___ (Sept. 23, 2016). In a drug case in which the court of appeals had held that a strip search of the defendant did not violate the fourth amendment, *State v. Collins*, ___ N.C. App. ___, 782 S.E.2d 350 (2016), the Supreme Court affirmed solely on the ground that because the defendant failed to raise in the trial court the timing of the officer's observation of powder on the floor, he failed to preserve that issue on appeal. The defendant had argued in the court of appeals that because the officer did not see the powder until after the search, the trial court was barred from considering the officer's observation in ruling on the defendant's suppression motion. The court of appeals determined that because the defendant failed to raise the timing of the officer's observation at the hearing on his motion to suppress, the issue was not properly before the appellate court.

Jury Selection

Foster v. Chatman, 578 U.S. ___, 136 S. Ct. 1737 (May 23, 2016). The Court reversed this capital murder case, finding that the State's "[t]wo peremptory strikes on the basis of race are two more than the Constitution allows." The defendant was convicted of capital murder and sentenced to death in a Georgia court. Jury selection proceeded in two phases: removals for cause and peremptory strikes. The first phase whittled the list of potential jurors down to 42 "qualified" prospective jurors. Five were black. Before the second phase began, one of the black jurors—Powell--informed the court that she had just learned that one of her close friends was related to the defendant; she was removed, leaving four black prospective jurors: Eddie Hood, Evelyn Hardge, Mary Turner, and Marilyn Garrett. The State exercised nine of its ten allotted peremptory strikes, removing all four of the remaining black prospective jurors. The defendant immediately lodged a *Batson* challenge. The trial court rejected the objection and empaneled the jury. The jury convicted the defendant and sentenced him to death. After the defendant unsuccessfully pursued his *Batson* claim in the Georgia courts, the U.S. Supreme Court granted certiorari. Before the Court, both parties agreed that the defendant demonstrated a prima facie case and that the prosecutor had offered race-neutral reasons for the strikes. The Court therefore addressed only *Batson*'s third step, whether purposeful discrimination was shown. The defendant focused his claim on the strikes of two black prospective jurors, Marilyn Garrett and Eddie Hood. With respect Garrett, the prosecutor had told the trial court that Garrett was "listed" by the prosecution as "questionable" and its strike of her was a last-minute race-neutral decision. However, evidence uncovered after the trial showed this statement to be false; the evidence showed that the State had specifically identified Garret in advance as a juror to strike. In fact, she was on a "definite NO's" list in the prosecution's file. The Court rejected attempts by the State "to explain away the contradiction between the 'definite NO's' list and [the prosecutor's] statements to the trial court as an example of a prosecutor merely 'misspeak[ing].'" Regarding Hood, the Court noted that "[a]s an initial matter the prosecution's principal reasons for the strike shifted over time, suggesting that those reasons may be pretextual." It further found that the State's asserted justifications for striking Hood "cannot be credited." In the end, the Court found that "the focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury."

Jury Instructions

State v. Walters, ___ N.C. ___, 782 S.E.2d 505 (Mar. 18, 2016). On discretionary review from a unanimous unpublished Court of Appeals decision, the court reversed in part, concluding that the trial court's jury instructions regarding first-degree kidnapping did not violate the defendant's constitutional right to be convicted by the unanimous verdict. The trial court instructed the jury, in part, that to convict the defendant it was required to find that he removed the victim for the purpose of facilitating commission of *or* flight after committing a specified felony assault. The defendant was convicted and appealed arguing that the disjunctive instruction violated his right to a unanimous verdict. Citing its decision in *State v. Bell*, 359 N.C. 1, 29-30, the Supreme Court disagreed, stating: "our case law has long embraced a distinction between unconstitutionally vague instructions that render unclear the offense for which the defendant is being convicted and instructions which instead permissibly state that more than one specific act can establish an element of a criminal offense." It also found that, contrary to the opinion below, the evidence was sufficient to support a jury finding that the defendant had kidnapped the victim in order to facilitate an assault on the victim.

Speedy Trial

Betterman v. Montana, 578 U.S. __, 136 S. Ct. 1609 (May 19, 2016). The Sixth Amendment's speedy trial guarantee does not apply to the sentencing phase of a criminal prosecution. After pleading guilty to bail-jumping, the defendant was jailed for over 14 months awaiting sentence on that conviction. The defendant argued that the 14-month gap between conviction and sentencing violated his speedy trial right. Resolving a split among the courts on the issue, the Court held:

> [T]he guarantee protects the accused from arrest or indictment through trial, but does not apply once a defendant has been found guilty at trial or has pleaded guilty to criminal charges. For inordinate delay in sentencing, although the Speedy Trial Clause does not govern, a defendant may have other recourse, including, in appropriate circumstances, tailored relief under the Due Process Clauses of the Fifth and Fourteenth Amendments.

The Court reserved on the question of whether the speedy trial clause "applies to bifurcated proceedings in which, at the sentencing stage, facts that could increase the prescribed sentencing range are determined (e.g., capital cases in which eligibility for the death penalty hinges on aggravating factor findings)." Nor did it decide whether the speedy trial right "reattaches upon renewed prosecution following a defendant's successful appeal, when he again enjoys the presumption of innocence."

Evidence

Authentication

State v. Snead, __ N.C. __, 783 S.E.2d 733 (April 15, 2016). Reversing a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 768 S.E.2d 344 (2015), the court held, in this larceny case, that the State properly authenticated a surveillance video showing the defendant stealing shirts from a Belk department store. At trial Toby Steckler, a regional loss prevention manager

for the store, was called by the State to authenticate the surveillance video. As to his testimony, the court noted:

> Steckler established that the recording process was reliable by testifying that he was familiar with how Belk's video surveillance system worked, that the recording equipment was "industry standard," that the equipment was "in working order" on [the date in question], and that the videos produced by the surveillance system contain safeguards to prevent tampering. Moreover, Steckler established that the video introduced at trial was the same video produced by the recording process by stating that the State's exhibit at trial contained exactly the same video that he saw on the digital video recorder. Because defendant made no argument that the video had been altered, the State was not required to offer further evidence of chain of custody. Steckler's testimony, therefore, satisfied Rule 901, and the trial court did not err in admitting the video into evidence.

The court also held that the defendant failed to preserve for appellate review whether Steckler's lay opinion testimony based on the video was admissible.

Fifth Amendment (Self-Incrimination) Issues

Herndon v. Herndon, ___ N.C. ___, 785 S.E.2d 922 (June 10, 2016). Reversing the Court of Appeals, the court held that the trial court did not violate the defendant's Fifth Amendment rights in connection with a civil domestic violence protective order hearing. During the defendant's case-in-chief, but before the defendant took the stand, the trial court asked defense counsel whether the defendant intended to invoke the Fifth Amendment, to which counsel twice responded in the negative. While the defendant was on the stand, the trial court posed questions to her. The court noted that at no point during direct examination or the trial court's questioning did the defendant, a voluntary witness, give any indication that answering any question posed to her would tend to incriminate her. "Put simply," the court held, the "defendant never attempted to invoke the privilege against self-incrimination." The court continued: "We are not aware of, and the parties do not cite to, any case holding that a trial court infringes upon a witness's Fifth Amendment rights when the witness does not invoke the privilege." The court further noted that in questioning the defendant, the trial court inquired into matters within the scope of issues that were put into dispute on direct examination by the defendant. Therefore, even if the defendant had attempted to invoke the Fifth Amendment, the privilege was not available during the trial court's inquiry.

Opinions

State v. McGrady, ___ N.C. ___, 787 S.E.2d 1 (June 10, 2016). Affirming the decision below, the court held that the trial court did not abuse its discretion by ruling that the defendant's proffered expert testimony did not meet the standard for admissibility under Rule 702(a). The defendant offered its expert to testify on three principal topics: that, based on the "pre-attack cues" and "use of force variables" present in the interaction between the defendant and the victim, the defendant's use of force was a reasonable response to an imminent, deadly assault that the defendant perceived; that the defendant's actions and testimony are consistent with those of someone experiencing the sympathetic nervous system's "fight or flight" response; and that reaction times can explain why some of the defendant's defensive shots hit the victim in the

back. Holding (for reasons discussed in detail in the court's opinion) that the trial court did not abuse its discretion by excluding this testimony, the court determined that the 2011 amendment to Rule 702(a) adopts the federal standard for the admission of expert witness articulated in the *Daubert* line of cases. *See* Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993).

Arrest, Search, and Investigation

Exclusionary Rule & Related Issues

Utah v. Strieff, 579 U.S. ___, 136 S. Ct. 2056 (June 20, 2016). The attenuation doctrine applies when an officer makes an unconstitutional investigatory stop, learns that the suspect is subject to a valid arrest warrant, and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest. An officer stopped the defendant without reasonable suspicion. An anonymous tip to the police department reported "narcotics activity" at a particular residence. An officer investigated and saw visitors who left a few minutes after arriving at the house. These visits were sufficiently frequent to raise his suspicion that the occupants were dealing drugs. One visitor was the defendant. After observing the defendant leave the house and walk toward a nearby store, the officer detained the defendant and asked for his identification. The defendant complied and the officer relayed the defendant's information to a police dispatcher, who reported that the defendant had an outstanding arrest warrant for a traffic violation. The officer then arrested the defendant pursuant to the warrant. When a search incident to arrest revealed methamphetamine and drug paraphernalia, the defendant was charged. The defendant unsuccessfully moved to suppress, arguing that the evidence was inadmissible because it was derived from an unlawful investigatory stop. He was convicted and appealed. The Utah Supreme Court held that the evidence was inadmissible. The Court reversed. The Court began by noting that it has recognized several exceptions to the exclusionary rule, three of which involve the causal relationship between the unconstitutional act and the discovery of evidence: the independent source doctrine; the inevitable discovery doctrine; and—at issue here—the attenuation doctrine. Under the latter doctrine, "Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." (quotation omitted). Turning to the application of the attenuation doctrine, the Court first held that the doctrine applies where—as here—the intervening circumstance that the State relies on is the discovery of a valid, pre-existing, and untainted arrest warrant. It then concluded that the discovery of a valid arrest warrant was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on the defendant's s person. In this respect it applied the three factors articulated in *Brown v. Illinois*, 422 U. S. 590 (1975): the temporal proximity between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search; the presence of intervening circumstances; and the purpose and flagrancy of the official misconduct. It concluded:

> Applying these factors, we hold that the evidence discovered … was admissible because the unlawful stop was sufficiently attenuated by the preexisting arrest warrant. Although the illegal stop was close in time to [the] arrest, that consideration is outweighed by two factors supporting the State. The outstanding

> arrest warrant for … arrest is a critical intervening circumstance that is wholly independent of the illegal stop. The discovery of that warrant broke the causal chain between the unconstitutional stop and the discovery of evidence by compelling [the] Officer … to arrest [the defendant]. And, it is especially significant that there is no evidence that [the] Officer[‘s] … illegal stop reflected flagrantly unlawful police misconduct.

Interrogation & Confession

State v. Hammonds, ___ N.C. ___, ___ S.E.2d ___ (June 10, 2016). Vacating the opinion of the Court of Appeals and the trial court’s order denying the defendant’s motion to suppress, the court ordered the case certified to the trial court for a new hearing on the defendant’s motion to suppress for the trial court to apply the totality of the circumstances test as set out in *Howes v. Fields*, 132 S. Ct. 1181, 1194 (2012). At issue was whether the defendant was in custody when he made statements to law enforcement officers while under an involuntary commitment order. The court further stated that the trial court “shall consider all factors, including the important factor of whether the involuntarily committed defendant was told that he was free to end the questioning.” (quotation omitted).

Searches

Birchfield v. North Dakota, 579 U.S. ___, 136 S. Ct. 2160 (June 23, 2016). In three consolidated cases the Court held that while a warrantless breath test of a motorist lawfully arrested for drunk driving is permissible as a search incident to arrest, a warrantless blood draw is not. It concluded: “Because breath tests are significantly less intrusive than blood tests and in most cases amply serve law enforcement interests, we conclude that a breath test, but not a blood test, may be administered as a search incident to a lawful arrest for drunk driving. As in all cases involving reasonable searches incident to arrest, a warrant is not needed in this situation.” Having found that the search incident to arrest doctrine does not justify the warrantless taking of a blood sample, the Court turned to the argument that blood tests are justified based on the driver’s legally implied consent to submit to them. In this respect it concluded: “motorists cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense.”

Vehicle Stops

State v. Warren, ___ N.C. ___, 782 S.E.2d 509 (Mar. 18, 2016). On appeal pursuant from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 775 S.E.2d 362 (2015), the court per curiam affirmed. In this post-*Rodriguez* case, the court of appeals had held that the officer had reasonable suspicion to extend the scope and duration of a routine traffic stop to allow a police dog to perform a drug sniff outside the defendant’s vehicle. The court of appeals noted that under *Rodriguez v. United States*, ___ U.S. ___, 191 L.Ed. 2d 492 (2015), an officer who lawfully stops a vehicle for a traffic violation but who otherwise does not have reasonable suspicion that any crime is afoot beyond a traffic violation may execute a dog sniff only if the check does not prolong the traffic stop. It further noted that earlier N.C. case law applying the de minimus rule to traffic stop extensions had been overruled by *Rodriguez*. The court of appeals continued, concluding that in this case the trial court’s findings support the conclusion that the

officer developed reasonable suspicion of illegal drug activity during the course of his investigation of the traffic offense and was therefore justified to prolong the traffic stop to execute the dog sniff. Specifically:

> Defendant was observed and stopped "in an area [the officer] knew to be a high crime/high drug activity area[;]" that while writing the warning citation, the officer observed that Defendant "appeared to have something in his mouth which he was not chewing and which affected his speech[;]"that "during his six years of experience [the officer] who has specific training in narcotics detection, has made numerous 'drug stops' and has observed individuals attempt to hide drugs in their mouths and . . . swallow drugs to destroy evidence[;]" and that during their conversation Defendant denied being involved in drug activity "any longer."

Criminal Offenses

Cyberbullying

State v. Bishop, ___ N.C. ___, 787 S.E.2d 814 (June 10, 2016). Reversing the Court of Appeals, the court held that the cyberbullying statute, G.S. 14-458.1, was unconstitutional under the First Amendment. It concluded that the statute "restricts speech, not merely nonexpressive conduct; that this restriction is content based, not content neutral; and that the cyberbullying statute is not narrowly tailored to the State's asserted interest in protecting children from the harms of online bullying."

Sexual Offender Crimes

State v. Crockett, ___ N.C. ___, 782 S.E.2d 878 (Mar. 18, 2016). On discretionary review of a unanimous decision of the Court of Appeals, 238 N.C. App. 96 (2014), the court affirmed the defendant's convictions, finding the evidence sufficient to prove that he failed to register as a sex offender. The defendant was charged with failing to register as a sex offender in two indictments covering separate offense dates. The court held that G.S. 14-208.9, the "change of address" statute, and not G.S. 14-208.7, the "registration" statute, governs the situation when, as here, a sex offender who has already complied with the initial registration requirements is later incarcerated and then released. The court continued, noting that "the facility in which a registered sex offender is confined after conviction functionally serves as that offender's address." Turning to the sufficiency the evidence, the court found that as to the first indictment, the evidence was sufficient for the jury to conclude that defendant had willfully failed to provide written notice that he had changed his address from the Mecklenburg County Jail to the Urban Ministry Center. As to the second indictment, the evidence was sufficient for the jury to find that the defendant had willfully changed his address from Urban Ministries to Rock Hill, South Carolina without providing written notice to the Sheriff's Department. As to this second charge, the court rejected the defendant's argument that G.S. 14-208.9(a) applies only to in-state address changes. The court also noted that when a registered offender plans to move out of state, appearing in person at the Sheriff's Department and providing written notification three days before he intends to leave, as required by G.S. 14-208.9(b) would appear to satisfy the requirement in G.S. 14-208.9(a) that he appear in person and provide written notice not later than three business days after the address change. Having affirmed on these grounds, the court

declined to address the Court of Appeals' alternate basis for affirming the convictions: that the Urban Ministry is not a valid address at which the defendant could register because the defendant could not live there.

State v. Barnett, ___ N.C. ___, 782 S.E.2d 885 (Mar. 18, 2016). On discretionary review of a unanimous decision of the Court of Appeals, ___ N.C. App. ___, 768 S.E.2d 327 (2015), the court reversed, holding that the evidence was sufficient to sustain the defendant's conviction to failing to register as a sex offender. Following *Crockett* (summarized immediately above), the court noted that G.S. 14-208.7(a) applies solely to a sex offender's initial registration whereas G.S. 14-208.9(a) applies to instances in which an individual previously required to register changes his address from the address. Here, the evidence showed that the defendant failed to notify the Sheriff of a change in address after his release from incarceration imposed after his initial registration.

Weapons Offenses

Caetano v. Massachusetts, 577 U.S. ___, 136 S. Ct. 1027 (Mar. 21, 2016) (per curiam). The Court vacated and remanded the decision of the Supreme Judicial Court of Massachusetts, finding that court erred in interpreting *District of Columbia v. Heller,* 554 U. S. 570 (2008), to hold that the Second Amendment does not extend to stun guns. The Court began by noting that *Heller* held "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding."

Post-Conviction Proceedings

Welch v. United States, 578 U.S. __, 136 S. Ct. 1257 (April 18, 2016). *Johnson v. United States*, 576 U. S. ___ (2015), holding that the residual clause of the Armed Career Criminal Act of 1984, 18 U. S. C. §924(e)(2)(B)(ii), was void for vagueness was a substantive decision that is retroactive in cases on collateral review.

Montgomery. v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (Jan. 25, 2016). *Miller v. Alabama*, 567 U. S. ___ (2012) (holding that a juvenile convicted of a homicide offense could not be sentenced to life in prison without parole absent consideration of the juvenile's special circumstances), applied retroactively to juvenile offenders whose convictions and sentences were final when *Miller* was decided. A jury found defendant Montgomery guilty of murdering a deputy sheriff, returning a verdict of "guilty without capital punishment." Under Louisiana law, this verdict required the trial court to impose a sentence of life without parole. Because the sentence was automatic upon the jury's verdict, Montgomery had no opportunity to present mitigation evidence to justify a less severe sentence. That evidence might have included Montgomery's young age at the time of the crime; expert testimony regarding his limited capacity for foresight, self-discipline, and judgment; and his potential for rehabilitation. After the Court decided *Miller,* Montgomery, now 69 years old, sought collateral review of his mandatory life without parole sentence. Montgomery's claim was rejected by Louisiana courts on grounds the *Miller* was not retroactive. The Supreme Court granted review and reversed. The Court began its analysis by concluding that it had jurisdiction to address the issue. Although the parties agreed that the Court had jurisdiction to decide this case, the Court appointed an amicus curiae to brief and argue the

position that the Court lacked jurisdiction; amicus counsel argued that the state court decision does not implicate a federal right because it only determined the scope of relief available in a particular type of state proceeding, which is a question of state law. On the issue of jurisdiction, the Court held:

> [W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule. *Teague*'s conclusion establishing the retroactivity of new substantive rules is best understood as resting upon constitutional premises. That constitutional command is, like all federal law, binding on state courts. This holding is limited to *Teague*'s first exception for substantive rules; the constitutional status of Teague's exception for watershed rules of procedure need not be addressed here.

Turning to the issue of retroactivity, the Court held that *Miller* announced a new substantive rule that applies retroactively to cases on collateral review. The Court explained: "*Miller* … did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of 'the distinctive attributes of youth.'" The Court continued:

> Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects "'unfortunate yet transient immaturity.'" Because *Miller* determined that sentencing a child to life without parole is excessive for all but "'the rare juvenile offender whose crime reflects irreparable corruption,'" it rendered life without parole an unconstitutional penalty for "a class of defendants because of their status"—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it "'necessarily carr[ies] a significant risk that a defendant'"—here, the vast majority of juvenile offenders—"'faces a punishment that the law cannot impose upon him.'" (citations omitted).

The Court went on to reject the State's argument that *Miller* is procedural because it did not place any punishment beyond the State's power to impose, instead requiring sentencing courts to take children's age into account before sentencing them to life in prison. The Court noted: "*Miller* did bar life without parole, however, for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." It explained: "Before *Miller*, every juvenile convicted of a homicide offense could be sentenced to life without parole. After *Miller*, it will be the rare juvenile offender who can receive that same sentence." Noting that *Miller* "has a procedural component," the Court explained that "a procedural requirement necessary to implement a substantive guarantee" cannot transform a substantive rule into a procedural one. It continued, noting that the hearing where "youth and its attendant characteristics" are considered as sentencing factors "does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity."

State v. Thomsen, ___ N.C. ___, ___ S.E.2d ___ (Aug. 19, 2016). The Court of Appeals had subject-matter jurisdiction to review, pursuant to the State's petition for writ of certiorari, a trial court's grant of its own motion for appropriate relief (MAR). The defendant pleaded guilty to

rape of a child by an adult offender and to sexual offense with a child by an adult offender, both felonies with mandatory minimum sentences of 300 months. Pursuant to a plea arrangement, the trial court consolidated the convictions for judgment and imposed a single active sentence of 300 to 420 months. The trial court then immediately granted its own MAR and vacated the judgment and sentence. It concluded that, as applied to the defendant, the mandatory sentence violated the Eighth Amendment; the court resentenced the defendant to 144 to 233 months. The State petitioned the Court of Appeals for a writ of certiorari to review the trial court's MAR order. The defendant responded, arguing that under *State v. Starkey*, 177 N.C. App. 264, the court of appeals lacked subject-matter jurisdiction to review a trial court's sua sponte grant of a MAR. The Court of Appeals allowed the State's petition and issued the writ. The Court of Appeals found no Eighth Amendment violation, vacated the defendant's sentence and the trial court's order granting appropriate relief, and remanded the case for a new sentencing hearing. *See* State v. Thomsen, ___ N.C. App. ___, ___, 776 S.E.2d 41, 48 (2015). Before the supreme court, the parties disagreed on whether the trial court's sua sponte motion was pursuant to G.S. 15A-1415(b) (defendant's MAR) or G.S. 15A-1420(d) (trial court's sua sponte MAR). The court found it unnecessary to resolve this dispute, holding first that if the MAR was made under G.S. 15A-1415, *State v. Stubbs*, 368 N.C. 40, 42-43, authorized review by way of certiorari. Alternatively, if the MAR was made pursuant to G.S. 1420(d), G.S. 7A-32(c) gives the Court of Appeals jurisdiction to review a lower court judgment by writ of certiorari, unless a more specific statute restricts jurisdiction. Here, no such specific statute exists. It went on to hold that to the extent *Starkey* was inconsistent with this holding it was overruled.

Capital Law

Kansas v. Carr, 577 U.S. __, 136 S. Ct. 633 (Jan. 20, 2016). (1) The Eighth Amendment does not require courts to instruct capital sentencing juries that mitigating circumstances "need not be proved beyond a reasonable doubt." (2) The Eighth Amendment was not violated by a joint capital sentencing proceeding for two defendants. The Court reasoned, in part: "the Eighth Amendment is inapposite when each defendant's claim is, at bottom, that the jury considered evidence that would not have been admitted in a severed proceeding, and that the joint trial clouded the jury's consideration of mitigating evidence like 'mercy.'"

Hurst v. Florida, 577 U.S. ___, 136 S. Ct. 616 (Jan. 12, 2016). The Court held Florida's capital sentencing scheme unconstitutional. In this case, after a jury convicted the defendant of murder, a penalty-phase jury recommended that the judge impose a death sentence. Notwithstanding this recommendation, Florida law required the judge to hold a separate hearing and determine whether sufficient aggravating circumstances existed to justify imposing the death penalty. The judge so found and sentenced the defendant to death. After the defendant's conviction and sentence was affirmed by the Florida Supreme Court, the defendant sought review by the US Supreme Court. That Court granted certiorari to resolve whether Florida's capital sentencing scheme violates the Sixth Amendment in light of *Ring*. Holding that it does, the Court stated: "The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death. A jury's mere recommendation is not enough."

Lynch v. Arizona, 578 U.S. ___, 136 S. Ct. 1818 (May 31, 2016). Where the State put the defendant's future dangerousness at issue and acknowledged that his only alternative sentence to

death was life imprisonment without parole, the Arizona court erred by concluding that the defendant had no right to inform the jury of his parole ineligibility. Under *Simmons v. South Carolina*, 512 U. S. 154 (1994), and its progeny, where a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life imprisonment without possibility of parole, the Due Process Clause entitles the defendant to inform the jury of his parole ineligibility, either by a jury instruction or in arguments by counsel.

Judicial Administration

Williams v. Pennsylvania, 579 U.S. ___, 136 S. Ct. 1899 (June 9, 2016). Due process required that a Pennsylvania Supreme Court Justice recuse himself from the capital defendant's post-conviction challenge where the justice had been the district attorney who gave his official approval to seek the death penalty in the case. The Court stated: "under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." It went on to hold that the justice's authorization to seek the death penalty against the defendant constituted significant, personal involvement in a critical trial decision. Finally, it determined that an unconstitutional failure to recuse constitutes structural error even if the judge in question did not cast a deciding vote; as such the error was not subject to harmless error review.