

Criminal Procedure Appeal Issues

[*State v. Golder*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). Because the defendant made no motion to dismiss at trial based on insufficiency of the evidence with respect to aiding and abetting, the defendant waived appellate review of this issue. For the same reason, the defendant waived his argument that because he obtained nothing of value, the evidence was insufficient to sustain his conviction for obtaining property by false pretenses.

[*State v. Robinson*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). Because the defendant did not assert at the trial level that the officer made false statements in his affidavit supporting a search warrant, that issue was not preserved for appellate review.

[*State v. Shore*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). Where the defendant did not move for a mistrial or request any additional action by the trial court in response to alleged misconduct by the child victim's father, the defendant failed to preserve for appellate review a claim that the trial court erred by failing to declare a mistrial sua sponte in response to that conduct.

Indictment & Pleading Issues

[*State v. Golder*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). The indictment, which tracked the language of the statute, properly charged the defendant with misdemeanor of unlicensed bail bonding in violation of G.S. 58-71-40. The court rejected the defendant's argument that the indictment was fatally defective because it failed to specify the exact manner in which he violated the statute.

[*State v. Jones*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). Over a dissent, the court held that a citation properly charged the defendant with operating a motor vehicle with an open container of alcohol. The defendant challenged the citation on grounds that it failed to allege that he was operating a motor vehicle while on a public street or highway. The court noted that official commentary to G.S. 15A Article 49 indicates that a citation need only identify the crime charged and that the pleading requirements for a citation are less than is required for other criminal process. It further noted that pursuant to G.S. 15A-922(c), "[t]o the extent there was a deficiency in the citation," the defendant could have objected to trial on the citation. The court went on to hold that the citation properly identified the crime and thus complied with G.S. 15A-302, giving the district court jurisdiction. It stated: "Identifying a crime charged does not require a hyper-technical assertion of each element of an offense, nor does it require the specificity of a "statement of the crime" necessary to issue a warrant or criminal summons." The court acknowledged that G.S. 20-138.7(g) requires a citation charging the offense in question to include additional information, including that the defendant drove a motor vehicle. However, because the citation satisfied the requirements of G.S. 15A-302, thereby establishing the district court's jurisdiction, the defendant's concern regarding the sufficiency of the charging language required an objection to trial on the citation at the district court level under G.S. 15A-922, which he failed to do. Thus, the defendant "was no longer in a position to assert his statutory right to object to trial on citation, or to the sufficiency of the allegations set forth in Section 20-138.7(g)." The court continued, holding that even if the defendant was not required to object below, "the failure to comply with N.C. Gen. Stat. § 15A-924(a)(5) by neglecting to allege facts supporting every element of an offense in a citation is not a *jurisdictional* defect." It reasoned that the North Carolina Constitution does not require a citation charging a misdemeanor to allege each element of the charged offense.

Jurisdiction

[State v. Seam](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). In this *Miller* Eighth Amendment/LWOP case, the superior court lacked jurisdiction to enter judgment. The trial court resentenced the defendant in response to a decision by the North Carolina Supreme Court, but before the mandate had issued from that Court. The court vacated the judgment and remanded for resentencing.

Trial Court's Expression of Opinion

[State v. Shore](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). Citing *State v. Welch*, 65 N.C. App. 390 (1983), the court rejected the defendant's argument that the trial court impermissibly expressed an opinion on the evidence by denying the defendant's motion to dismiss in the presence of the jury, in violation of G.S. 15A-1222.

Jury Instructions

[State v. Robinson](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). No plain error occurred in this drug case where the trial court instructed the jury that it could convict the defendant if it found that he was in actual or constructive possession of the contraband. Although there was no evidence that the defendant actually possessed the contraband, no plain error occurred where there was substantial evidence that the defendant constructively possessed the items and where the defense at trial was that the defendant's sister-in-law planted the drugs and that his brother-in-law was storing weapons in his house.

Evidence

Expert Opinions

[State v. Prince](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). In this child abuse case, the expert witness's testimony did not constitute improper vouching for the victim. At trial Holly Warner, a nurse practitioner, testified as an expert. Warner had evaluated the victim after he was placed in foster care. At trial she related what the victim told her about his injuries and what she observed during her evaluation of him before she gave her medical opinion. When she related the victim's disclosure about how his injury occurred and who caused them, Warner was describing her process for gathering necessary information to make a medical diagnosis and was not commenting on the victim's credibility. In neither her direct examination nor cross-examination did Warner state that the child was believable, credible or telling the truth.

[State v. Shore](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). In this child sexual abuse case the court applied the new *Daubert* standard and concluded that the trial court did not err by admitting certain expert testimony. At trial Kelli Wood testified as an expert in clinical social work, specializing in child sexual abuse cases. The defendant argued that the trial court abused its discretion by allowing Wood to testify that it is not uncommon for children to delay the disclosure of sexual abuse and by allowing Wood to provide possible reasons for delayed disclosures. According to the defendant, Wood's testimony was unreliable because she had not conducted on research herself and instead relied on studies conducted by others. The court found that this argument—that the trial court abused its discretion by admitting Wood's testimony based on a review of research on delayed disclosures combined with her professional experience— to “directly conflict[]” with Rule 702. It noted that experience alone or experience combined with knowledge and training is sufficient to establish a proper

foundation for expert testimony. Here, Wood testified that her testimony on delayed disclosures was grounded in 200 hours of training, 11 years of forensic interviewing experience, conducting over 1200 forensic interviews with 90% of those focusing on sex abuse allegations, and reviewing over 20 articles on delayed disclosures. The court noted that similar testimony had been admitted under an earlier version of Rule 702, and that case law was still good law. The court also rejected the defendant's argument that the testimony was inadmissible because it was not the product of reliable principles and methods. The defendant argued that the research Wood relied on was flawed in a number of respects. The court noted that these concerns were addressed examination and cross-examination of Wood and that Wood was able to provide detailed explanations for each of these concerns.

Criminal Offenses

Thefts

[*State v. Rogers*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). The evidence was sufficient to convict the defendant of larceny of a firearm. The court rejected the defendant's argument that the evidence was insufficient to show that he intended to permanently deprive the victim of a firearm, noting: "Generally, where a defendant takes property from its rightful owner and keeps it as his own until apprehension, the element of intent to permanently deny the rightful owner of the property is deemed proved." Here, the defendant was apprehended by law enforcement officers with the stolen pistol hidden in the spare tire well of his vehicle.

Frauds

[*State v. Golder*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). In a case where the defendant was paying a court employee to alter court records, the evidence was sufficient to sustain a conviction for unlicensed bail bonding. The court rejected the defendant's argument that the evidence failed to show that he was acting in the capacity of a bail bondsman.

Resist, Delay, and Obstruct an Officer

State v. Peters, ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 5, 2017). The evidence was sufficient to sustain a conviction for resisting, delaying, and obstructing an officer (RDO). The court rejected the argument that the evidence was insufficient evidence to show that the defendant delayed or intended to delay an officer. The officer responded to a Walmart store, where a loss prevention officer had detained the defendant for theft. When the officer asked the defendant for an identification card, the defendant produced a North Carolina ID. The officer then radioed dispatch, asking for information related to the license number on the identification. Dispatch reported that the name associated with the identification number different from the one listed on the identification card. The officer asked the defendant if the numbers were correct, and the defendant confirmed that they were. Upon further questioning the defendant noted that there may have been a missing "8" at the end of the identification number. The defendant confirmed that no other numbers were missing. However dispatch again reported that the name did not match the new identification number. The officer then asked dispatch to search using the defendant's name and date of birth. The search revealed that the defendant's identification number also included a "0." The defendant was charged with RDO based on verbally giving an incorrect driver's license identification number. The evidence showed that the defendant's conduct delayed the officer and that she intended such a delay. The court noted, in part, that the officer testified, based on his experience, that individuals being investigated for charges similar to those at issue scratch numbers off the of their identification cards to create difficulty in identification.