Criminal Case Update
Significant N.C. & U.S. Supreme Court Cases – 2011
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Criminal Procedure

Counsel Issues

State v. Lane, 365 N.C. 7 (Mar. 11. 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS82MDZBMDUtMS5wZGY). This capital case came back before the N.C. Supreme Court after that court remanded in *State v. Lane,* 362 N.C. 667 (Dec. 12, 2008) (*Lane I*), for consideration under *Indiana v. Edwards*, 554 U.S. 164 (2008), as to whether the trial judge should have exercised discretion to deny the defendant's request to represent himself. *Edwards* held that states may require counsel to represent defendants who are competent to stand trial but who suffer from severe mental illness to the extent that they are not competent to represent themselves. At trial, the trial court had accepted the defendant's waiver of counsel and allowed the defendant to proceed pro se. Following a hearing, held on remand after *Lane I*, the trial court concluded that the defendant was competent to stand trial and to discharge his counsel and proceed pro se. The N.C. Supreme Court held that because the defendant never was denied his constitutional right to self-representation (he was allowed to proceed pro se), the U.S. "Supreme Court's holding in *Edwards*, that the State may deny that right if a defendant falls into the "gray area" of competence, does not guide our decision here." Slip op. at 22. Rather, the N.C. Supreme Court clarified, because the trial court found the defendant competent to stand trial, the issue was whether the defendant made a knowing and voluntary waiver of his right to counsel. On that issue, and after a detailed review of the trial court's findings, the court concluded that the trial court's inquiry was sufficient to support its determination that the defendant knowingly and voluntarily waived his right to counsel. In the course of that ruling, the court reaffirmed that a defendant's technical legal knowledge is not relevant to an assessment of a valid waiver of counsel.

While *Lane I* could be read to suggest that the trial court always must undertake an *Edwards* inquiry before allowing a defendant to proceed pro se, *Lane II* suggests otherwise. In *Lane II,* the court clarified the options for the trial court, stating:

> For a defendant whose competence is at issue, he must be found [competent] before standing trial. If that defendant, after being found competent, seeks to represent himself, the trial court has two choices: (1) it may grant the motion to proceed *pro se*, allowing the defendant to exercise his constitutional right to self-representation, if and only if the trial court is satisfied that he has knowingly and voluntarily waived his corresponding right to assistance of counsel . . . ; or (2) it may deny the motion, thereby denying the defendant's constitutional right to self-representation because the defendant falls into the "gray area" and is therefore subject to the "competency limitation" described in *Edwards.* The trial court must make findings of fact to support its determination that the defendant is "unable

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> to carry out the basic tasks needed to present his own defense without the help of counsel."

365 N.C. at 22 (citations omitted).

State v. Choudhry, __ N.C. __, __ S.E.2d __ (Aug. 26, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80MDlBMTAtMS5wZGY=). Although the trial court's inquiry of the defendant was insufficient to assure that the defendant knowingly, intelligently, and voluntarily waived his right to conflict free counsel, because the defendant failed to show that counsel's performance was adversely affected by the conflict, he is not entitled to relief. At the defendant's noncapital first-degree murder trial, the prosecution informed the trial court that defense counsel had previously represented a State's witness, Michelle Wahome, who was the defendant's girlfriend at the time of the incident in question and with whom the defendant had a child. Specifically, defense counsel had represented Wahome with respect to charges arising out of an incident at a shopping mall. The charges were reduced to common law forgery and although the defendant had not been charged in the matter, both he and Wahome appeared in the video surveillance and the items in question were men's clothing. Defense counsel indicated that the prior representation would not impair his ability to represent the defendant and that he did not plan to question Wahome about the earlier incident. The trial court then informed the defendant that defense counsel had previously represented Wahome, a witness for the State and asked the defendant if he had any concerns about counsel's ability appropriately to represent him, if he was satisfied with counsel's representation, and if he desired to have counsel continue his representation. The defendant said that he had no concerns about counsel's representation and gave an affirmative answer to each remaining question. The defendant was convicted and appealed. In a split decision, the court of appeals found no error. State v. Choudhry, ___ N.C. App. ___, ___, 697 S.E.2d 504 (2010). The dissenting judge contended that the trial court erred by failing to fully inform the defendant of the consequences of the potential conflict and that a remand was required. The supreme court determined that because the prosecutor brought a potential conflict to the trial judge's attention, the trial judge was obligated to make an inquiry. The court concluded that because the trial court did not specifically explain the limitations that the conflict imposed on defense counsel's ability to question Wahome regarding her earlier criminal charges or indicate that he had given the defendant such an explanation, the trial judge failed to establish that the defendant had sufficient understanding of the implications of counsel's prior representation of Wahome to ensure a knowing, intelligent, and voluntary waiver of the potential conflict of interest. However, it went on to conclude that in light of counsel's effective cross-examination of Wahome, the defendant failed to demonstrate an actual conflict of interest adversely affecting performance and thus was not entitled to relief.

State v. Phillips, __ N.C. __, __ S.E.2d __ (June 16, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80OEEwOC0xLnBkZg==). (1) Investigators did not violate the capital defendant's constitutional right to counsel by continuing to question him after an attorney who had been appointed as provisional counsel arrived at the sheriff's office and was denied access to the defendant. The interrogation began before the attorney arrived, the defendant waived his *Miranda* rights, and he never stated that he wanted the questioning to stop or that he wanted to speak with an attorney. (2) Office of Indigent Defense Services statutes and rules regarding an indigent's entitlement to counsel did not make the defendant's statement inadmissible. Although the relevant statutes create an entitlement to counsel and authorize provisional counsel to seek access to a potential capital defendant, they do not override a defendant's waiver of the right to counsel, which occurred in this case.

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Discovery and Related Issues

State v. Lane, 365 N.C. 7 (Mar. 11. 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS82MDZBMDUtMS5wZGY). In a capital murder case, the trial court did not abuse its discretion by excluding expert testimony by a neuropharmacologist and research scientist who studies the effects of drugs and alcohol on the brain, proffered by the defense as relevant to the jury's determination of the reliability of the defendant's confession. The trial court barred the expert's testimony on grounds that the expert's report provided to the State was insufficient to satisfy the discovery rules; repeated requests were made by the State for the report and the trial court had ordered production. Relevant to the court's finding of no abuse of discretion was its separate conclusion that the expert's testimony was not relevant.

Motion to Dismiss

State v. Pastuer, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zMjdQQTEwLTEucGRm). An equally divided court left undisturbed the court of appeals' decision in *State v. Pastuer,* __ N.C. App. __, 697 S.E.2d 381 (2010) (holding that the trial court erred by denying the defendant's motion to dismiss a charge alleging that he murdered his wife; the State's case was based entirely on circumstantial evidence; the court held that although the State may have introduced sufficient evidence of motive, evidence of the defendant's opportunity and ability to commit the crime was insufficient to show that he was the perpetrator; according to the court, no evidence put the defendant at the scene; although a trail of footprints bearing the victim's blood was found at her home and her blood was found on the bottom of one of the defendant's shoes, the court concluded that the State failed to present substantial evidence that the victim's DNA could only have gotten on the defendant's shoe at the time of the murder; evidence that the defendant was seen walking down a highway sometime around the victim's disappearance and that her body was later found in the vicinity did not supply substantial evidence that he was the perpetrator). The court noted that the effect of its decision is that the court of appeals' opinion stands without precedential value.

Suppression Motions

State v. Phillips, __ N.C. __, __ S.E.2d __ (June 16, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80OEEwOC0xLnBkZg==). The court rejected the capital defendant's argument that the trial court's findings of fact as to whether he had consumed impairing substances before making an incriminating statement to the police were insufficient. The court reviewed the trial court's detailed findings and found them sufficient.

False Evidence

State v. Phillips, __ N.C. __, __ S.E.2d __ (June 16, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80OEEwOC0xLnBkZg==). The court rejected the capital defendant's claim that the prosecution knowingly elicited or failed to correct false testimony. In victim Cooke's pretrial statements, she related that the defendant said that he had nothing to live for. When asked at trial whether the defendant made that statement, Cooke responded: "Not in those terms, no." The court concluded that it was not apparent that Cooke testified falsely or that her trial testimony materially conflicted with her pretrial statements. Moreover, it found that any inconsistency was addressed during cross-examination. Finally, the court concluded, even if Cooke perjured herself,

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there is no indication that the State knew her testimony was false.

Jury Argument

State v. Phillips, __ N.C. __, __ S.E.2d __ (June 16, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80OEEwOC0xLnBkZg==). The court rejected the capital defendant's argument that the trial court erred by failing to intervene ex mero motu during the State's argument in the guilt-innocence phase. (1) The defendant argued that the trial court should have intervened when the prosecutor commented about a defense expert on diminished capacity. Although the court found the prosecutor's statement that the expert's testimony was "wholly unbelievable" to be error, that error was not so egregious as to warrant intervention on the court's own motion. Similarly, the prosecutor's comment about the "convenience" of the expert's testimony (she opined that the defendant suffered from diminished capacity for a portion of time that coincided with when the crime occurred), was not so grossly improper as to require intervention ex mero motu. (2) The defendant argued that the trial judge should have intervened when the prosecutor mischaracterized defense counsel's statements. Although the prosecutor overstated the extent of defense counsel's concessions, the statements constituted a lapsus linguae that were neither calculated to mislead nor prejudicial. The defendant argued that the trial court should have intervened when the prosecutor remarked about the defendant's failure to introduce evidence supporting his diminished capacity defense. The court concluded that the State is free to point out the defendant's failure to produce evidence to refute the State's case. Furthermore, it rejected the defendant's contention that the prosecutor's statements misstated the law on diminished capacity. The defendant argued that the prosecutor's statement about diminished capacity misled the jury into believing that the defense was not established because the defense failed to prove remorse or efforts to help the victims. Any impropriety in this argument, the court concluded, was cured by the trial court's correct instructions on the defense. The defendant argued that the prosecutor misstated the law as to the intent required for first-degree murder. However, the prosecutor's statement was not improper. In sum, the court concluded that the prosecutor's statements, both individually and cumulatively, were not so grossly improper as to have required the trial court to intervene ex mero motu. (3) The court rejected the defendant's argument that during the State's closing argument in the sentencing phase the prosecutor erroneously called upon the jury to disregard mercy altogether. The court found that the arguments in question, cautioning jurors against reaching a decision on the basis of their "feelings" or "hearts," did not foreclose considerations of mercy or sympathy; instead, the prosecutor asked the jury not to impose a sentence based on emotions divorced from the facts presented in the case.

Verdict

State v. Sargeant, 365 N.C. 58 (Mar. 11, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zNTVBMTAtMS5wZGY). The court agreed with the court of appeals' decision in *State v. Sargeant,* __ N.C. App. __, 696 S.E.2d 786 (Aug. 3, 2010), which had held, over a dissent, that the trial court erred by taking a partial verdict. However, because the court concluded that a new trial was warranted on account of a prejudicial ruling on an unrelated evidence issue, it did not analyze whether the verdict error was prejudicial. The court of appeals' decision described the verdict issue as follows. The defendant was convicted of first-degree murder, first-degree kidnapping, robbery with a dangerous weapon, and burning of personal property. At the end of the first day of deliberations, the jury had not reached a unanimous decision as to each of the charges. The trial court asked the jury to submit verdict sheets for any of the charges for which it had unanimously found the defendant guilty. The trial court then received the jury's verdicts finding the defendant guilty of first-

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degree kidnapping, robbery with a dangerous weapon, and burning of personal property, as well as first-degree murder on the bases of both felony murder and lying in wait. The only issue left for the jury to decide was whether the defendant was guilty of first-degree murder on the basis of premeditation and deliberation. The next morning, the court gave the jury a new verdict sheet asking only whether the defendant was guilty of first-degree murder on the basis of premeditation and deliberation. The jury returned a guilty verdict later that day. The court of appeals concluded that the trial court erred by taking a verdict as to lying in wait and felony murder when the jury had not yet agreed on premeditation and deliberation. It reasoned that premeditation and deliberation, felony murder, and lying in wait are not crimes, but rather theories of first-degree murder and the trial court cannot take a verdict on a theory. Therefore, the court of appeals concluded, the trial court erred by taking partial verdicts on theories of first-degree murder. As noted above, the supreme court agreed that error occurred but declined to assess whether it was prejudicial.

Sentencing

State v. Pinkerton, 365 N.C. 6 (Feb. 4, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zMjFBMTAtMS5wZGY=). In a per curiam opinion, the court reversed, for the reasons stated in the dissenting opinion below, the decision of the court of appeals in *State v. Pinkerton,* __ N.C. App. __, 697 S.E.2d 1 (July 20, 2010). The court of appeals had held, over a dissent, that when sentencing the defendant in a child sexual assault case, the trial court impermissibly considered the defendant's exercise of his right to trial by jury. After the jury returned a guilty verdict and the defendant was afforded the right to allocution, the trial court stated that "if you truly cared–if you had one ounce of care in your heart about that child–you wouldn't have put that child through this." Instead, according to the trial court, defendant "would have pled guilty, and you didn't." The trial court stated: "I'm not punishing you for not pleading guilty . . . I would have rewarded you for pleading guilty." The dissenting judge found no indication of improper motivation by the trial court judge in imposing the defendant's sentence.

State v. Moore, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS85NEExMS0xLnBkZg==). The court reversed *State v. Moore,* __ N.C. App. __, 705 S.E.2d 797 (2011) (holding that the evidence was insufficient to support an award of restitution of $39,332.49), and held that while there was some evidence to support the restitution award the evidence did not adequately support the particular amount awarded. The case involved a conviction for obtaining property by false pretenses; specifically, the defendant rented premised owned by the victim to others without the victim's permission. The defendant collected rent on the property and the "tenants" caused damage to it. At trial, a witness testified that a repair person estimated that repairs would cost "[t]hirty-something thousand dollars." There was also testimony that the defendant received $1,500 in rent. Although the court rejected the State's argument that testimony about costs of "thirty-something thousand dollars" is sufficient to support an award "anywhere between $30,000.01 and $39,999.99," it concluded that the testimony was not too vague to support any award. The court remanded to the trial court to calculate the correct amount of restitution.

Evidence

***Crawford* Issues**

Michigan v. Bryant, 562 U.S. __, 131 S. Ct. 1143 (Feb. 28, 2011). Justice Sotomayor, writing for the Court, held that a mortally wounded shooting victim's statements to first-responding officers were non-testimonial under *Crawford*. In the early morning, Detroit police officers responded to a radio dispatch

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that a man had been shot. When they arrived at the scene, the victim was lying on the ground at a gas station. He had a gunshot wound to his abdomen, appeared to be in great pain, and had difficulty speaking. The officers asked the victim what happened, who had shot him, and where the shooting occurred. The victim said that the defendant shot him about 25 minutes earlier at the defendant's house. The officers' 5-10 minute conversation with the victim ended when emergency medical personnel arrived. The victim died within hours. At trial, the victim's statements to the responding officers were admitted and the defendant was found guilty of, among other things, murder.

The Court held that because the statements were non-testimonial, no violation of confrontation rights occurred. The Court noted that unlike its previous decisions in *Davis* and *Hammon,* the present case involved a non-domestic dispute, a victim found in a public location suffering from a fatal gunshot wound, and a situation where the perpetrator's location was unknown. Thus, it indicated, "we confront for the first time circumstances in which the 'ongoing emergency' . . . extends beyond an initial victim to a potential threat to the responding police and the public at large." Slip Op. at 12. This new scenario, the Court noted, "requires us to provide additional clarification . . . to what *Davis* meant by 'the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.'" *Id.* It concluded that when determining whether this is the primary purpose of an interrogation, a court must objectively evaluate the circumstances in which the encounter occurs and the parties' statements and actions. *Id.* It explained that the existence of an ongoing emergency "is among the most important circumstances informing the 'primary purpose' of an interrogation." *Id.* at 14. As to the statements and actions of those involved, the Court concluded that the inquiry must focus on both the declarant and the interrogator.

Applying this analysis to the case at hand, the Court began by examining the circumstances of the interrogation to determine if an ongoing emergency existed. Relying on the fact that the victim said nothing to indicate that the shooting was purely a private dispute or that the threat from the shooter had ended, the Court found that the emergency was broader than those at issue in *Davis* and *Hammon,* encompassing a threat to the police and the public. *Id.* at 27. The Court also found it significant that a gun was involved. *Id.* "At bottom," it concluded, "there was an ongoing emergency here where an armed shooter, whose motive for and location after the shooting were unknown, had mortally wounded [the victim] within a few blocks and a few minutes of the location where the police found [the victim]." *Id.* The Court continued, determining that given the circumstances of the emergency, it could not say that a person in the victim's situation would have had the primary purpose of establishing past facts relevant to a criminal prosecution. *Id.* at 29. As to the motivations of the police, the Court concluded that they solicited information from the victim to meet the ongoing emergency. *Id.* at 30. Finally, it found that the informality of the situation and interrogation further supported the conclusion that the victim's statements were non-testimonial.

Justice Thomas concurred in the judgment, agreeing that the statements were non-testimonial but resting his conclusion on the lack of formality that attended them. Justices Scalia and Ginsburg dissented. Justice Kagan took no part in the consideration or decision of the case.

Bullcoming v. New Mexico, 564 U.S. ___, 131 S. Ct. 2705 (June 23, 2011) (http://www.supremecourt.gov/opinions/10pdf/09-10876.pdf). In a straightforward application of *Melendez-Diaz v. Massachusetts*, 557 U.S. __, 129 S. Ct. 2527 (June 25, 2009) (holding that forensic laboratory reports are testimonial and thus subject to *Crawford*), the Court held that substitute analyst testimony in an impaired driving case violated *Crawford*. The defendant was arrested on charges of driving while intoxicated (DWI). Evidence against him included a forensic laboratory report certifying that his blood-alcohol concentration was well above the threshold for aggravated DWI. At trial, the prosecution did not call the analyst who signed the certification. Instead, the State called another analyst who was familiar with the laboratory's testing procedures, but had neither participated in nor observed the

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test on the defendant's blood sample. The New Mexico Supreme Court determined that, although the blood-alcohol analysis was "testimonial," the Confrontation Clause did not require the certifying analyst's in-court testimony. Instead, New Mexico's high court held, live testimony of another analyst satisfied the constitutional requirements. The Court reversed, holding that "surrogate testimony of that order does not meet the constitutional requirement."

Hearsay

State v. Phillips, __ N.C. __, __ S.E.2d __ (June 16, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80OEEwOC0xLnBkZg==). Noting that it has not had occasion to considered whether statements by law enforcement officers acting as agents of the government and concerning a matter within the scope of their agency or employment constitute admissions of a party opponent under Rule 801(d) for the purpose of a criminal proceeding, the court declined to address the issue because even if error occurred, it did not constitute plain error.

State v. Sargeant, 365 N.C. 58 (Mar. 11, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zNTVBMTAtMS5wZGY). Modifying and affirming *State v. Sargeant,* __ N.C. App. __, 696 S.E.2d 786 (Aug. 3, 2010), the court held that the trial court committed prejudicial error by excluding defense evidence of hearsay statements made by a participant in the murder, offered under the Rule 804(b)(5) residual exception. The court noted that the only factor in dispute under the six-factor residual exception test was circumstantial guarantees of trustworthiness. To evaluate that factor, a court must assess, among other things, (1) the declarant's personal knowledge of the event; (2) the declarant's motivation to speak the truth; (3) whether the declarant recanted; and (4) the reason for the declarant's unavailability. Because the record established that the declarant had personal knowledge and never recanted, the court focused it analysis on factors (2) and (4). The court found that the trial court's conclusions that these considerations had not been satisfied were made on the basis of inaccurate and incomplete findings of fact used to reach unsupported conclusions of law.

Impeachment of the Verdict

Cummings v. Ortega, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80MTdQQTEwLTEucGRm). In a civil medical malpractice case, the court held that under Rule 606(b) juror affidavits were inadmissible to support a new trial motion. Two days after the jury returned a verdict in favor of the defendant, juror Rachel Simmons contacted the plaintiff's attorneys to report misconduct by juror Charles Githens. Simmons executed an affidavit stating that before the case was submitted to the jury, Githens told the other jurors that "his mind was made up" and he would not change his views. Githens said the other jurors could either "agree with him or they would sit there through the rest of the year." Simmons stated that Githens's conduct "interfered with [her] thought process about the evidence during the plaintiff's case." An affidavit from another juror corroborated this account. Based on these affidavits, the plaintiff successfully moved for a new trial. On appeal, the court noted that Rule 606(b) reflects the common law rule that juror affidavits are inadmissible to impeach the verdict except as they pertain to external influences that may have affected the jury's decision. External influences include information that has not been introduced in evidence. Internal influences by contrast include information coming from the jurors themselves, such as a juror not assenting to the verdict, a juror misunderstanding the court's instructions, a juror being unduly influenced by the statements of fellow jurors, or a juror being mistaken in his or her calculations or judgments. The court found that the affidavits in question pertained to internal influences.

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The court also rejected the plaintiff's argument that Rule 606(b) was inapplicable because the misconduct occurred before her case was submitted formally to the jury.

Opinions

State v. Phillips, __ N.C. __, __ S.E.2d __ (June 16, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80OEEwOC0xLnBkZg==). In this capital case, the trial court did not commit plain error by admitting lay opinion testimony by an eyewitness. When the eyewitness was asked about the defendant's demeanor, she stated: "He was fine. I mean it was -- he had -- he knew what he was doing. He had it planned out. It was a -- he -- he knew before he ever got there what was going to happen." The defendant argued that the eyewitness had no personal knowledge of any plans the defendant might have had. The court noted that a lay witness may provide testimony based upon inference or opinion if the testimony is rationally based on the witness's perception and helpful to a clear understanding of his or her testimony or the determination of a fact in issue. It further noted that this rule permits a witness to express "instantaneous conclusions of the mind as to the appearance, condition, or mental or physical state of persons, animals, and things, derived from observation of a variety of facts presented to the senses at one and the same time. Such statements are usually referred to as shorthand statements of facts." Immediately before the testimony at issue, the witness testified that the defendant had said that "[h]e was in debt with somebody who he needed money for and that's why they came to [the] house," that the debt was "with a drug dealer and they were going to kill him, if he did not come up with their money," and that "his brother had been shot and he was dying and he had to get their money." In context, the witness's statements that the defendant "had it planned out" and "knew before he ever got there what was going to happen" were helpful to an understanding of her testimony and were rationally based on her perceptions upon seeing the defendant commit the multiple murders at issue.

Relevancy

State v. Lane, 365 N.C. 7 (Mar. 11. 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS82MDZBMDUtMS5wZGY). In a capital murder case, the trial court did not abuse its discretion by excluding expert testimony from a neuropharmacologist and research scientist who studies the effects of drugs and alcohol on the brain, proffered by the defense as relevant to the jury's determination of the reliability of the defendant's confession. The expert would have testified concerning the defendant's pattern of alcohol use and the potential consequences of alcohol withdrawal, including seizures. However, the expert repeatedly stated that he could not opine as to whether the confession was false or true or what the defendant's condition was at the time of the confession. Evidence had been presented indicating that the defendant was not intoxicated at the time of the interrogation and that he was an alcoholic. Given this evidence, the jury could assess how alcohol withdrawal affected the reliability of the confession, if at all. As such, the expert's testimony would not assist the jury in understanding the evidence or determining a fact in issue under Rule 702.

Arrest, Search, and Investigation

Probable Cause for Arrest

State v. Biber, __ N.C. __, __ S.E.2d __ (June 16, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80MjNBMTAtMS5wZGY=). The court reversed a decision of the Court of Appeals and held that probable cause supported the defendant's arrest for drug possession. In the decision below, the Court of Appeals held that there was insufficient evidence

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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. Although the case was before the Court of Appeals on an adverse ruling on a suppression motion, the court reached the issue of sufficiency of the evidence. The North Carolina Supreme Court concluded that the Court of Appeals applied the wrong analysis, conflating the sufficiency of the evidence standard with the standard that applies when assessing whether officers had probable cause to arrest. The court went on to conclude that unchallenged facts supported the trial court's conclusion that the officers had probable cause to arrest. Specifically, responding officers knew they were being dispatched to a motel to assist its manager in determining whether illegal drug use was occurring in Room 312, after a complaint had been made. The officers' initial conversation with the manager confirmed the possibility of suspicious activities. When the door to the room was opened, they saw a woman with a crack pipe and drug paraphernalia next to her. The woman fled to the bathroom, ignoring instructions to open the door while she flushed the toilet. A search of the bathroom revealed a bag of what looked like narcotics in the light fixture. The defendant ignored instructions to remain still. When asked, the defendant claimed the room was his and that a bag containing clothing was his.

Pretext

Ashcroft v. al-Kidd, 563 U.S. __ , 131 S. Ct. 2074 (May 31, 2011) (http://www.supremecourt.gov/opinions/10pdf/10-98.pdf). In the context of a qualified immunity analysis, the Court reversed the Ninth Circuit and held, in relevant part, that an objectively reasonable arrest and detention pursuant to a validly obtained material witness arrest warrant cannot be challenged as unconstitutional on the basis of allegations that the arresting authority had an improper motive. The complaint had alleged that in the aftermath of the September 11th terrorist attacks, then-Attorney General John Ashcroft authorized federal prosecutors and law enforcement officials to use the material-witness statute to detain individuals with suspected ties to terrorist organizations, that federal officials had no intention of calling most of these individuals as witnesses, and that they were detained, at Ashcroft's direction, because officials suspected them of supporting terrorism but lacked sufficient evidence to charge them with a crime.

Miranda

J.D.B. v. North Carolina, 564 U.S. __, 131 S. Ct. 2394 (June 16, 2011) (http://www.supremecourt.gov/opinions/10pdf/09-11121.pdf). In this North Carolina case, the Court held, in a five-to-four decision, that the age of a child subjected to police questioning is relevant to the *Miranda* custody analysis. J.D.B. was a 13-year-old, seventh-grade middle school student when he was removed from his classroom by a uniformed police officer, brought to a conference room, and questioned by police. This was the second time that police questioned J.D.B. in a week. Five days earlier, two home break-ins occurred, and items were stolen. Police stopped and questioned J.D.B. after he was seen behind a residence in the neighborhood where the crimes occurred. That same day, police spoke to J.D.B.'s grandmother—his legal guardian—and his aunt. Police later learned that a digital camera matching the description of one of the stolen items had been found at J.D.B.'s school and in his possession. Investigator DiCostanzo went to the school to question J.D.B. A uniformed school resource officer removed J.D.B. from his classroom and escorted him to a conference room, where J.D.B. was met by DiCostanzo, the assistant principal, and an administrative intern. The door to the conference room was closed. With the two police officers and the two administrators present, J.D.B. was questioned for 30-45 minutes. Before the questioning began, J.D.B. was given neither *Miranda* warnings nor the opportunity to speak to his grandmother. Nor was he informed that he was free to leave. J.D.B. eventually confessed to the break-ins.

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Juvenile petitions were filed against J.D.B. and at trial, J.D.B.'s lawyer moved to suppress his statements, arguing that J.D.B. had been subjected to a custodial police interrogation without *Miranda* warnings. The trial court denied the motion and J.D.B. was adjudicated delinquent. The N.C. Court of Appeals affirmed. The N.C. Supreme Court held that J.D.B. was not in custody, declining to extend the test for custody to include consideration of the age of the individual questioned. The U.S. Supreme Court reversed, holding that the *Miranda* custody analysis includes consideration of a juvenile suspect's age and concluding, in part: "[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. We think it clear that courts can account for that reality without doing any damage to the objective nature of the custody analysis." Slip Op. at 8. The Court distinguished a child's age "from other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action." Slip Op. at 11. It held: "[S]o long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test." Slip Op. at 14. However, the Court cautioned: "This is not to say that a child's age will be a determinative, or even a significant, factor in every case." *Id.* The Court remanded for the North Carolina courts to determine whether J.D.B. was in custody when the police interrogated him, "this time taking account of all of the relevant circumstances of the interrogation, including J.D.B.'s age." Slip Op. at 18.

Warden v. Dixon, 565 U.S. __ (Nov. 7, 2011) (http://www.supremecourt.gov/opinions/11pdf/10-1540.pdf). The Court, per curiam, held that the Sixth Circuit erroneously concluded that a state supreme court ruling affirming the defendant's murder conviction was contrary to or involved an unreasonable application of clearly established federal law. The defendant and an accomplice murdered the victim, obtained an identification card in the victim's name, and sold the victim's car. An officer first spoke with the defendant during a chance encounter when the defendant was voluntarily at the police station for completely unrelated reasons. The officer gave the defendant *Miranda* warnings and asked to talk to him about the victim's disappearance. The defendant declined to answer questions without his lawyer and left. Five days later, after receiving information that the defendant had sold the victim's car and forged his name, the defendant was arrested for forgery and was interrogated. Officers decided not to give the defendant *Miranda* warnings for fear that he would again refuse to speak with them. The defendant admitted to obtaining an identification card in the victim's name but claimed ignorance about the victim's disappearance. An officer told the defendant that "now is the time to say" whether he had any involvement in the murder because "if [the accomplice] starts cutting a deal over there, this is kinda like, a bus leaving. The first one that gets on it is the only one that's gonna get on." When the defendant continued to deny knowledge of the victim's disappearance, the interrogation ended. That afternoon the accomplice led the police to the victim's body, saying that the defendant told him where it was. The defendant was brought back for questioning. Before questioning began, the defendant said that he heard they had found a body and asked whether the accomplice was in custody. When the police said that the accomplice was not in custody, the defendant replied, "I talked to my attorney, and I want to tell you what happened." Officers read him *Miranda* rights and obtained a signed waiver of those rights. At this point, the defendant admitted murdering the victim. The defendant's confession to murder was admitted at trial and the defendant was convicted of, among other things, murder and sentenced to death. After the state supreme court affirmed, defendant filed for federal habeas relief. The district court denied relief but the Sixth Circuit reversed.

The Court found that the Sixth Circuit erred in three respects. First, it erred by concluding that federal law clearly established that police could not speak to the defendant when five days earlier he had refused to speak to them without his lawyer. The defendant was not in custody during the chance encounter and no law says that a person can invoke his *Miranda* rights anticipatorily, in a context other

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than custodial interrogation. Second, the Sixth Circuit erroneously held that police violated the Fifth Amendment by urging the defendant to "cut a deal" before his accomplice did so. No precedent holds that this common police tactic is unconstitutional. Third, the Sixth Circuit erroneously concluded that the state supreme court unreasonably applied *Oregon v. Elstad*, 470 U.S. 298 (1985), when it held that the defendant's second confession was voluntary. As the state supreme court explained, the defendant's statements were voluntary. During the first interrogation, he received several breaks, was given water and offered food, and was not abused or threatened. He freely acknowledged that he forged the victim's name and had no difficulty denying involvement with the victim's disappearance. Prior to his second interrogation, the defendant made an unsolicited declaration that he had spoken with his attorney and wanted to tell the police what happened. Then, before giving his confession, the defendant received *Miranda* warnings and signed a waiver-of-rights form. The state court recognized that the defendant's first interrogation involved an intentional *Miranda* violation but concluded that the breach of *Miranda* procedures involved no actual compulsion and thus there was no reason to suppress the later, warned confession. The Sixth Circuit erred by concluding that *Missouri v. Seibert*, 542 U.S. 600 (2004), mandated a different result. The nature of the interrogation here was different from that in *Seibert*. Here, the Court explained, the defendant denied involvement in the murder and then after *Miranda* warnings were given changed course and confessed (in *Seibert* the defendant confessed in both times). Additionally, the Court noted, in contrast to *Seibert,* the two interrogations at issue here did not occur in one continuum.

Exclusionary Rule

Davis v. United States, 564 U.S. __, 131 S. Ct. 2419 (June 16, 2011) (http://www.supremecourt.gov/opinions/10pdf/09-11328.pdf). The exclusionary rule (a deterrent sanction baring the prosecution from introducing evidence obtained by way of a Fourth Amendment violation) does not apply when the police conduct a search in compliance with binding precedent that is later overruled. Alabama officers conducted a routine traffic stop that eventually resulted in the arrests of driver Stella Owens for driving while intoxicated and passenger Willie Davis for giving a false name to police. The police handcuffed both individuals and placed them in the back of separate patrol cars. The police then searched the passenger compartment of Owens's vehicle and found a revolver inside Davis's jacket pocket. The search was done in reliance on precedent in the jurisdiction that had interpreted *New York v. Belton*, 453 U.S. 454 (1981), to authorize automobile searches incident to arrests of recent occupants, regardless of whether the arrestee was within reaching distance of the vehicle at the time of the search. Davis was indicted on a weapons charge and unsuccessfully moved to suppress the revolver. He was convicted. While Davis's case was on appeal, the Court decided *Arizona v. Gant*, 556 U.S. 332 (2009), adopting a new, two-part rule under which an automobile search incident to a recent occupant's arrest is constitutional (1) if the arrestee is within reaching distance of the vehicle during the search, or (2) if the police have reason to believe that the vehicle contains evidence relevant to the crime of arrest. Analyzing whether to apply the exclusionary rule to the search at issue, the Court determined that "[the] acknowledged absence of police culpability dooms Davis's claim." Slip Op. at 10. It stated: "Because suppression would do nothing to deter police misconduct in these circumstances, and because it would come at a high cost to both the truth and the public safety, we hold that searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule." Slip Op. at 1.

Exigent Circumstances

Kentucky v. King, 563 U.S. ___, 131 S. Ct. 1849 (May 16, 2011) (http://www.supremecourt.gov/opinions/10pdf/09-1272.pdf). The Court reversed and remanded a

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decision of the Kentucky Supreme Court and held that the exigent circumstances rule applies when police, by knocking on the door of a residence and announcing their presence, cause the occupants to attempt to destroy evidence. Police officers set up a controlled buy of crack cocaine outside an apartment complex. After an undercover officer watched the deal occur, he radioed uniformed officers to move in, telling them that the suspect was moving quickly toward the breezeway of an apartment building and urging them to hurry before the suspect entered an apartment. As the uniformed officers ran into the breezeway, they heard a door shut and detected a strong odor of burnt marijuana. At the end of the breezeway they saw two apartments, one on the left and one on the right; they did not know which apartment the suspect had entered. Because they smelled marijuana coming from the apartment on the left, they approached that door, banged on it as loudly as they could and announced their presence as the police. They heard people and things moving inside, leading them to believe that drug related evidence was about to be destroyed. The officers then announced that they were going to enter, kicked in the door, and went in. They found three people inside: the defendant, his girlfriend, and a guest who was smoking marijuana. During a protective sweep, the officers saw marijuana and powder cocaine in plain view. In a subsequent search, they found crack cocaine, cash, and drug paraphernalia. The police eventually entered the apartment on the right, where they found the suspected drug dealer who was the initial target of their investigation. On these facts, the state supreme court determined that the exigent circumstances rule did not apply because the police should have foreseen that their conduct would prompt the occupants to attempt to destroy evidence. The U.S. Supreme Court rejected this interpretation stating, "the exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable." It concluded: "Where, as here, the police did not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed." The Court did not rule on whether exigent circumstances existed in this case.

Police Power

State v. Yencer, __ N.C. __, __ S.E.2d __ (Nov. 10, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8zNjVQQTEwLTEucGRm). The supreme court held that the Campus Police Act, as applied to the defendant, does not violate the Establishment Clause of the First Amendment to the U.S. Constitution. The facts underlying the case involved a Davidson College Police Department officer's arrest of the defendant for impaired and reckless driving. The court of appeals held, in *State v. Yencer,* __ N.C. App. __, 696 S.E.2d 875 (Aug. 17, 2010), that because Davidson College is a religious institution, delegation of state police power to Davidson's campus police force was unconstitutional under the Establishment Clause. Applying the three-pronged test of *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the supreme court reversed, holding that as applied to the defendant's case, the Campus Police Act does not offend the Establishment Clause.

Criminal Offenses

First Amendment Issues

Snyder v. Phelps, 562 U.S. __, 131 S. Ct. 1207 (Mar. 2, 2011). The First Amendment shields members of a church from tort liability for picketing near a soldier's funeral. A jury held members of the Westboro Baptist Church liable for millions of dollars in damages for picketing near a soldier's funeral service. The picket signs reflected the church's view that the United States is overly tolerant of sin and that God kills American soldiers as punishment. The picketing occurred in Maryland. Although that state now has a criminal statute in effect restricting picketing at funerals, the statute was not in effect at the time the conduct at issue arose. Noting that statute and that other jurisdictions have enacted similar provisions, the

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Court stated: "To the extent these laws are content neutral, they raise very different questions from the tort verdict at issue in this case. Maryland's law, however, was not in effect at the time of the events at issue here, so we have no occasion to consider how it might apply to facts such as those before us, or whether it or other similar regulations are constitutional." Slip Op. at 11. [**Author's note**: In North Carolina, G.S. 14-288.4(a)(8), criminalizes disorderly conduct at funerals, including military funerals. In a prosecution for conduct prohibited by that statute, the issue that the U.S. Supreme Court did not have occasion to address may be presented for decision].

Kidnapping

State v. Phillips, __ N.C. __, __ S.E.2d __ (June 16, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80OEEwOC0xLnBkZg==). In a multiple homicide case in which the defendant also was charged with kidnapping a victim who was a minor, there was sufficient circumstantial evidence that the minor's parents did not consent to her kidnapping. Because the victim's parents did not testify, there was no direct evidence of lack of parental consent. However, the State presented evidence that, having shot and repeatedly stabbed the victim while she was at the murder scene, the defendant and his accomplices found her after she crawled outside and removed her from the yard for the stated purpose of killing her while she was incapable of escaping. They loaded her into the bed of the defendant's truck and drove to a trash pile, only to abandon her there when they heard sirens.

Robbery

State v. Hill, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8xMzRBMTEtMS5wZGY=). Affirming the court of appeals, the court held the State presented substantial evidence that the victim's money was taken through the use or threatened use of a dangerous weapon. The court noted that the investigating officer had testified that the victim reported being robbed by a man with a knife. The court also held that the evidence was sufficient to establish that the victim's life was endangered or threatened by the assailant's possession, use, or threatened use of a dangerous weapon, relying on the testimony noted above and the victim's injuries. The court rejected the defendant's argument that the evidence failed to support this element because the victim never indicated that he was afraid or felt threatened, concluding that the question is whether a person's life was in fact endangered or threatened by the weapon, not whether the victim was scared or in fear of his or her life.

Larceny, Possession & Unauthorized Use

State v. Nickerson, __ N.C. __, __ S.E.2d __ (Oct 7, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80NThQQTEwLTEucGRm). Reversing *State v. Nickerson,* __ N.C. App. __, 701 S.E.2d 685 (2010), the court held that unauthorized use of a motor vehicle is not a lesser included offense of possession of stolen goods. The court applied the definitional test and concluded that unauthorized use of a motor vehicle contains at least one element not present in the crime of possession of stolen goods and that therefore the former offense is not a lesser included offense of the latter offense.

Capital

Conner v. N.C. Council of State, __ N.C. __, __ S.E.2d __ (Oct. 7, 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8yMTNQQTEwLTEucGRm). (1) In a case

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centered on the constitutionality of the State's method of execution in capital cases, the Court held that the N.C. Council of State's process for approving or disapproving the Department of Correction's lethal injection protocol is not subject to the Administrative Procedure Act and that petitioners cannot challenge it by going through the Office of Administrative Hearings. Instead, the court held, any issue petitioners have with the protocol rests with the state trial courts or the federal courts. (2) The court also held that the superior court erred by dismissing the petitioners' declaratory judgment claim that the Council's approval of the execution protocol violated G.S. 15-188. Nevertheless, the court affirmed the superior court's order as modified because the court correctly construed G.S. 15-188 to mean that petitioners' rights "are limited to the obligation that [their] death[s] be by lethal injection, in a permanent death chamber in Raleigh, and carried out pursuant to an execution protocol approved by the Governor and the Council of State" and that no factual or legal authority "supports Petitioner[s] claims of a due process right to participate in the approval process."

Post-Conviction

DNA Testing

Skinner v. Switzer, 562 U.S. __, 131 S. Ct. 1289 (Mar. 7, 2011). In a 6-to-3 decision, the Court held that a convicted state prisoner seeking DNA testing of crime-scene evidence may assert a claim under 42 U.S.C. § 1983. However, the Court noted that *District Attorney's Office for Third Judicial Dist. v. Osborne,* 557 U.S. __, 129 S. Ct. 2308 (2009), severely limits the federal action a state prisoner may bring for DNA testing. It stated: "*Osborne* rejected the extension of substantive due process to this area, and left slim room for the prisoner to show that the governing state law denies him procedural due process." Slip Op. at 2 (citation omitted).

Ineffective Assistance

Harrington v. Richter, 131 S. Ct. 770 (Jan. 19, 2011) (http://www.supremecourt.gov/opinions/10pdf/09-587.pdf). The Court reversed the Ninth Circuit, which had held that the state court unreasonably applied existing law when rejecting the defendant's claim that his counsel was deficient by failing to present expert testimony on serology, pathology, and blood spatter patterns; the defendant had asserted that this testimony would have confirmed his version of how the events in question occurred. The Court concluded that it was at least arguable that a reasonable attorney could decide to forgo inquiry into the blood evidence under the circumstances, which included, among other things, the fact that counsel had reason to question the truth of the defendant's version of the events. The Court also rejected the Ninth Circuit's conclusion that counsel was deficient because he had not expected the prosecution to offer expert testimony and therefore was unable to offer expert testimony of his own in response. The Court concluded that although counsel was mistaken in thinking the prosecution would not present forensic testimony, the prosecution itself did not expect to make that presentation and had made no preparations for doing so on the eve of trial. For this reason alone, the Court concluded, it is at least debatable whether counsel's error was so fundamental as to call the fairness of the trial into doubt. Finally, the Court concluded that it would not have been unreasonable for the state court to conclude that the defendant failed to establish prejudice. Justice Kagan did not participate in the consideration or decision of the case.

Premo v. Moore, 131 S. Ct. 733 (Jan. 19, 2011) (http://www.supremecourt.gov/opinions/10pdf/09-658.pdf). The Court reversed the Ninth Circuit, which had held that the state court unreasonably applied existing law when rejecting the defendant's claim that counsel was ineffective by failing to file a motion to suppress the defendant's confession to police before advising him to accept a plea offer. Counsel had explained that he discussed the plea bargain with the defendant without first challenging the confession to

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the police because suppression would serve little purpose given that the defendant had made full and admissible confessions to two other private individuals, both of whom could testify. The state court would not have been unreasonable to accept this explanation. Furthermore, the Court held, the state court reasonably could have determined that the defendant would have accepted the plea agreement even if his confession had been ruled inadmissible. Justice Kagan did not participate in the consideration or decision of the case.

Cullen v. Pinholster, 563 U.S. __, 131 S. Ct. 1388 (April 4, 2011) (http://www.supremecourt.gov/opinions/10pdf/09-1088.pdf). In a capital case, the Ninth Circuit Court of Appeals improperly granted the defendant habeas relief on his claim of penalty-phase ineffective assistance of counsel. The defendant and two accomplices broke into a house at night, killing two men who interrupted the burglary. A jury convicted the defendant of first-degree murder, and he was sentenced to death. After the California Supreme Court twice denied the defendant habeas relief, a federal district court held an evidentiary hearing and granted the defendant relief under 28 U.S.C. § 2254 on grounds of "inadequacy of counsel by failure to investigate and present mitigation evidence at the penalty hearing." Sitting en banc, the Ninth Circuit affirmed, holding that the California Supreme Court unreasonably applied *Strickland* v. *Washington*, 466 U. S. 668 (1984), in denying the defendant's claim of penalty-phase ineffective assistance of counsel. The U.S. Supreme Court reversed, concluding that the defendant failed to show that the state court unreasonably concluded that defense counsel's penalty phase "family sympathy" strategy (that consisted principally of the testimony of the defendant's mother) was appropriate. Likewise, the defendant failed to show that the state court unreasonably concluded and that even if counsel's conduct was deficient, no prejudice occurred, given that the new evidence largely duplicated the mitigation evidence presented at trial and the extensive aggravating evidence.

Motions for Appropriate Relief

State v. Long, 365 N.C. 5 (Feb. 4. 2011) (http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8yNjVQQTA5LTEucGRm). With one justice taking no part in consideration of the case and with the other members of the court equally divided, the court affirmed, without opinion, a ruling by the trial court on the defendant's motion for appropriate relief. The case was before the court on writ of certiorari to review the trial court's order. The question presented, as stated in the defendant's appellate brief, was: "Whether the trial court erred in finding in a capitally-charged case that failing to disclose exculpatory SBI reports, testifying falsely as to what evidence was brought to the SBI and failing to preserve irreplaceable biological evidence did not violate due process?"

§ 1983 Liability

Connick v. Thompson, 563 U.S. __, 131 S. Ct. 1350 (Mar. 29, 2011) (http://www.supremecourt.gov/opinions/10pdf/09-571.pdf). A district attorney's office may not be held liable under 42 U.S.C. § 1983 for failure to train based on a single *Brady* violation. The Orleans Parish District Attorney's Office conceded that, in prosecuting the defendant for attempted armed robbery, prosecutors failed to disclose evidence that should have been turned over under *Brady*. The defendant was convicted. Because of that conviction, the defendant chose not to testify in his own defense in his later murder trial. He was again convicted and spent 18 years in prison. Shortly before his scheduled execution, his investigator discovered the undisclosed evidence from his armed robbery trial. The reviewing court determined that the evidence was exculpatory and both convictions were vacated. The defendant then sued the district attorney's office for damages under § 1983, alleging that the district attorney failed to

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train prosecutors adequately about their duty to produce exculpatory evidence and that the lack of training had caused the nondisclosure at issue. The jury awarded the defendant $14 million, and Fifth Circuit affirmed. Reversing, the Court, in an opinion authored by Justice Thomas, clarified that the failure-to-train claim required the defendant to prove both that (1) the district attorney, the policymaker for the district attorney's office, was deliberately indifferent to the need to train prosecutors about their *Brady* disclosure obligation with respect to the type of evidence at issue and (2) the lack of training actually caused the *Brady* violation at issue. The Court determined that the defendant failed to prove that the district attorney was on actual or constructive notice of, and therefore deliberately indifferent to, a need for more or different *Brady* training. The Court noted that a pattern of similar constitutional violations by untrained employees is "ordinarily necessary" to demonstrate deliberate indifference for purposes of failure to train. Here, however, no such pattern existed; the Court declined to adopt a theory of "single-incident liability." Justice Scalia concurred, joined by Justice Alito, writing separately only to address several issues raised by the dissent. Justice Ginsburg dissented, joined by Justices Breyer, Sotomayor, and Kagan. For another discussion of this opinion, see the blog post here: http://sogweb.sog.unc.edu/blogs/ncclaw/?p=2087

Jails and Corrections

Brown v. California, 563 U.S. __, 131 S. Ct. 1910 (May 23, 2011) (http://www.law.cornell.edu/supct/html/09-1233.ZS.html). In a 5-to-4 decision, the Court affirmed a remedial order issued by a three-judge court directing California to remedy ongoing constitutional violations involving prisoners with serious mental disorders and medical conditions primarily caused by prison overcrowding. The order below leaves the choice of means to reduce overcrowding to the discretion of state officials. But absent compliance through new construction, out-of-state transfers, or other means—or modification of the order upon a further showing by the State—California will be required to release some number of prisoners before their full sentences have been served. The Court held that the Prison Litigation Reform Act of 1995 authorizes the relief afforded and that the court-mandated population limit is necessary to remedy the violation of prisoners' constitutional rights.

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