

## APPEAL AND ERROR

**Interlocutory appeal - statute not applicable - no substantial right affected** - Defendant's appeal from the trial court's denial of his motion to dismiss plaintiff's negligence complaint was dismissed. Because N.C.G.S. § 162-16 governs only a method of personal service of process upon a sheriff and does not establish the sole method of service of process upon a sheriff, N.C.G.S. § 162-16 was not applicable to service in this case, so defendant's appeal was interlocutory. Furthermore, defendant's motion to dismiss based on a statute of limitations did not affect a substantial right and was therefore not immediately appealable. **Webb v. Price,**

**Interlocutory order - condemnation proceeding - substantial right affected** - Plaintiff's appeal from the trial court's interlocutory order regarding her claim for adverse possession in a condemnation proceeding affected a substantial right and was immediately appealable. **City of Charlotte v. Williams,**

**Interlocutory order - Industrial Commission - appeal dismissed** - Defendants' appeal from an opinion and award by the Full Commission awarding temporary total disability benefits, temporary partial disability benefits, past and future medical expenses, costs, and attorney fees to plaintiff was dismissed as interlocutory. The opinion and award on its face contemplated further proceedings to resolve the amount of plaintiff's wage loss benefits. **Evans v. Hendrick Auto. Grp.,**

**Interlocutory order - merged into final order - timely appeal** - The Court of Appeals had jurisdiction over a custody case where the trial court's 6 March order did not determine all of the issues, those issues were determined by an order on 20 May, and defendant's appeal on 6 June was timely. The original order became part of a final order on 20 May. **Peters v. Pennington,**

**Interlocutory order - Rule 54(b) certification - failure to exhaust administrative remedies** - An appeal from a partial summary judgment involving workers' compensation insurance rates was dismissed as not being from a final order, despite the trial court's Rule 54(b) certification. Defendant had not exhausted its administrative remedies and the issue upon which summary judgment was not granted was directly related to the other issues and the trial court's decision was not a final order. **The Travelers Indem. Co. v. Wall, Wall & Knudson, Ltd.,**

**Invited error - cross-examination question - answer repeated by counsel** - There was no plain error in an indecent liberties prosecution

where defense counsel on cross-examination elicited an answer that “something must have happened” and then repeated the testimony and invited the witness to give her opinion again. **State v. Carter,**

**Preservation of issues - constitutional errors - not raised at trial -** Defendant’s argument that he was denied his right to a fair trial guaranteed by the Fifth Amendment to the United States Constitution and Article I of the North Carolina Constitution by the admission of a witness’s testimony was not properly before the Court of Appeals and was not addressed. Because defendant did not raise this constitutional issue at trial, he failed to preserve it for appellate review. **State v. Banks,**

**Preservation of issues - constitutional issue - not raised at trial -** Defendant’s argument that at least one of his four convictions in a multiple assault case must be arrested because entry of judgment on all four violated due process was dismissed. Defendant failed to raise the constitutional issue at trial and, thus, failed to preserve the issue for appellate review. **State v. Wright,**

**Preservation of issues - objection at trial - not different from argument on appeal -** Defendant preserved for appeal the question of whether the trial court should have dismissed one of two conspiracy charges where defendant moved at trial to dismiss all charges, including both conspiracy charges. Although the State contended that this was a different argument from that argued at trial, defendant argued on appeal that there was evidence of only one agreement. **State v. Lawrence,**

**Preservation of issues - sentencing -** Defendant’s appeal of the issue of whether he was properly sentenced as an habitual offender for trafficking in opium was cognizable even though he did not object at trial. **State v. Eaton,**

**Record - applicable law - prior and subsequent zoning ordinances -** An appeal from a zoning decision was dismissed where the record did not permit determination of whether a prior or a subsequent zoning ordinance was applicable to the development plans in question. **CRLP Durham LP v. Durham City/Cnty Bd. Of Adjust.,**

**Record - social security numbers -** Although sanctions were not imposed, counsel were cautioned against including social security numbers in the record on appeal. **Lamm v. Lamm,**

## **ASSAULT**

**Lesser-included offenses not submitted - no error** - The trial court did not commit plain error in a multiple assault case by failing to submit lesser-included offenses to the jury. Evidence of defendant's intent to kill was sufficient to support the assault with a deadly weapon with intent to kill inflicting serious injury charge and evidence of the victim's serious injury was sufficient to support the assault with a deadly weapon inflicting serious injury charge. **State v. Wright,**

**Secret assault - insufficient evidence - motion to dismiss improperly denied** - The trial court erred in denying defendant's motion to dismiss the charge of secret assault where there was insufficient evidence that the assault was committed in a secret manner. **State v. Wright,**

## **ATTORNEY FEES**

**Child custody - court's observation of attorney-** The trial court did not err in its award of attorney fees in a child custody case where the court had ample opportunity to observe the attorney whose fees were question and to judge her reputation for diligence and competence. **Peters v. Pennington,**

**Child custody - factors** - The award of attorney fees in a child custody case was supported by the complexity of the case, the difficulty of litigation-related issues, and the results obtained. **Peters v. Pennington,**

**Payment on a schedule - interest** - The trial court did not abuse its discretion when awarding attorney fees in a child custody case by requiring payment on a schedule since defendant is free to satisfy the judgment early. However, the portion of the order imposing interest was vacated. **Peters v. Pennington,**

## **BURGLARY AND UNLAWFUL BREAKING OR ENTERING**

**Attempted - instructions - omitted portion subsequently included** - There was no plain error in an instruction on attempted felonious breaking and entering where the trial court initially omitted the part of the instruction concerning an overt act, but later included the missing portion of the instruction and repeated it for the second count of the offense. **State v. Lawrence,**

**Attempted - no entrance onto property - evidence sufficient** - There was sufficient evidence of attempted breaking and entering to survive a motion to dismiss even though defendant and his coconspirators did not enter the intended victim's property. The evidence showed that defendant had the

specific intent to break and enter, that defendant was to be the “muscle” when the group intercepted the intended victim outside her home, forced her inside, and robbed her. **State v. Lawrence,**

## **CHILD CUSTODY AND SUPPORT**

**Allocation of physical and legal custody - medical decision making - no error** - The trial court did not abuse its discretion in a child custody case by allocating to plaintiff permanent sole physical and legal custody with the exception of temporary custody related to medical decision making, which was shared. The portion of the order indicating that the medical decision-making provision could be modified if plaintiff demonstrates responsibility would require a substantial change in circumstances, as would a similar provision on visitation. **Peters v. Pennington,**

**Custody - best interests analysis - change of circumstances not found** - The trial court in a child custody case correctly proceeded directly to the best-interests analysis without finding a substantial change in circumstances where a prior consent order dealt with narrow matters and did not incorporate the separation agreement. It was not necessary to decide whether the consent order could constitute a final custody order since its issues were not at the crux of the appeal. **Peters v. Pennington,**

**Custody change - findings - inferences supported by evidence** - Disputed findings by the trial court in a child custody action were inferences supported by the evidence, and the findings supported the conclusions. **Lamm v. Lamm,**

**Custody change - single conclusion - sufficient** - The trial court's single conclusion in a child custody case reached all three of the required legal conclusions for modifying a child custody order. The court's conclusion clearly stated that substantial changes in circumstances had occurred, that these substantial changes affected the minor child, and that these substantial changes warranted a modification of the existing custody order because they affected the best interests of the child. **Lamm v. Lamm,**

**Damage to child - ultimate conclusion - supported by findings** - There were ample unchallenged findings of fact in a child custody dispute to support the trial court's ultimate factual conclusion that defendant caused physical and psychological damage to her child. **Peters v. Pennington,**

**Mental or emotional harm to child - expert testimony not required** - District court judges have the training and experience to make causal decisions regarding child custody and expert testimony is not required to

determine the cause of mental or emotional harm to the children. The trial court's conclusion here was supported by the findings and evidence, except that a finding that DSS substantiated allegations of abuse. The evidence indicates that DSS substantiated neglect but not abuse. **Peters v. Pennington,**

**Modification of custody order - findings of fact support conclusions of law -** The trial court did not err in a child custody case by modifying a custody order to grant joint custody of the child to both parties with primary custody to defendant. As plaintiff did not challenge any of the trial court's findings of fact, they were binding on appeal. Moreover, the findings supported the conclusions of law that there had been a substantial change in circumstances affecting the welfare of the child and that it was in the best interest of the child that defendant be granted primary custody. **Pass v. Beck,**

**Mother required to accept court's conclusion - belief rather than behavior -** The trial court abused its discretion in a child custody case by requiring defendant to accept as true the court's conclusion that she harmed her children. This requirement mandates that defendant and the therapist attain a standard based upon defendant's beliefs rather than her behavior. **Peters v. Pennington,**

**Uninsured therapy costs - support rather than costs -** The trial court did not err in a child custody case by taxing defendant with the children's uninsured therapy costs as "equitable" costs. Uninsured therapy expenses are not taxable costs but are awarded pursuant to the court's ability to structure child support. **Peters v. Pennington,**

## **CHILD VISITATION**

**Therapeutic visitation - controlled by therapists -** The trial court did not err by authorizing therapeutic visitation between defendant and her children to be controlled by therapists. This arrangement does not present the problems inherent in custodian-controlled visitation because neutral decision makers, who are in the best position to evaluate the mental condition of defendant and the children, have the authority to craft the details of an elastic treatment and visitation program. **Peters v. Pennington,**

**Visitation restricted - clear, cogent, and convincing standard - not required -** The trial court was not required to apply the clear, cogent and convincing evidentiary standard when restricting defendant's visitation with her children in a custody case because the court did not prohibit all visitation or contact. **Peters v. Pennington,**

## CONSPIRACY

**Attempted robberies - one rather than two conspiracies** - There was evidence of only one conspiracy rather than two, and one of two convictions was vacated, where the time intervals, participants, objective, and number of meetings indicated only one conspiracy. **State v. Lawrence,**

## CONSTITUTIONAL LAW

**Effective assistance of counsel - no prejudicial error** - Defendant's argument that he was denied effective assistance of counsel in a first-degree murder trial was overruled. Defendant failed to show that any error of counsel was prejudicial to his defense so as to deprive defendant of a fair trial. **State v. Banks,**

**Effective assistance of counsel - not moving to strike statement by witness** - Defendant's counsel was not ineffective in an indecent liberties prosecution when he did not move to strike a statement by a witness that "something must have happened." **State v. Carter,**

**Right to fair trial - objections sustained - no prejudice** - Defendant's argument that his constitutional right to a fair trial was denied by the prosecutor's cross-examination of defendant using a witness's pre-trial statement was overruled. Because defendant's objections to all three questions were sustained, he cannot demonstrate prejudice arising from these questions. **State v. Banks,**

**State testing of material evidence - evidence made available to defendant for testing - denial of motion to continue - no error** - Defendant's argument that he was entitled to a new trial because the State Bureau of Investigation Crime Lab refused to test material evidence in violation of the Sixth and Fourteenth Amendments was overruled. Police do not have a constitutional duty to perform any particular tests on crime scene evidence and the evidence at issue was made available to defendant for independent testing. The trial court did not err by denying defendant's motion to continue to test the evidence where defendant had six months to prepare for trial and to obtain independent testing, but waited until the morning trial was scheduled to begin to file his motion. **State v. Wright,**

## COSTS

**Child custody - litigation expenses** - The portions of an award of costs other than attorney fees in a child custody case were remanded for a hearing

on how those costs were incurred and whether they are authorized by statute.  
**Peters v. Pennington,**

## CRIMINAL LAW

**Flight - evidence sufficient** - The trial court did not err by instructing the jury on flight where the evidence, viewed in the light most favorable to the State, was sufficient to support the theory that defendant fled the scene to avoid apprehension. **State v. Lawrence,**

## DIVORCE

**Alimony - obligation terminated - modification not allowed** - The trial court erred in a domestic action by awarding defendant alimony after plaintiff's alimony obligation had been previously terminated. Under previous North Carolina alimony statutes, the right to modify a lump sum alimony award that was ordered to be paid over a fixed term was limited to the time period during which the alimony was actually ordered. **Cathey v. Cathey,**

## EASEMENTS

**Prescriptive - summary judgment - erroneously granted** - The trial court erred by granting summary judgment for defendants on a prescriptive easement claim in an action involving a dirt road across a subdivision. Plaintiffs presented evidence sufficient to establish a genuine issue of material fact as to each element of the claim from 1950 to 1972, and plaintiffs were entitled to the benefits of any prescriptive easement as a successor in interest. The burden of proof on defendants' oblique claim of abandonment is on defendants, with the issue of abandonment being a question for the jury. **Deans v. Mansfield,**

## EVIDENCE

**Bad character - no abuse of discretion - no plain error** - The trial court did not err in an assault case by admitting evidence of defendant's bad character. Where the evidence was objected to at trial, there was no abuse of discretion in the trial court's admitting the testimony for corroborative purposes only. Furthermore, even assuming *arguendo* that the trial court erred in admitting the testimony that was not objected to at trial, defendant failed to show that a different result probably would not have been reached absent the error. **State v. Wright,**

**First-hand observation - convenience store cashier - belief that**

**defendant had gun** - A convenience store cashier's testimony that he believed that defendant was holding a gun under his jacket was rationally based on his firsthand observation of defendant and was more than mere speculation or conjecture. The trial court did not abuse its discretion by admitting the testimony in defendant's robbery prosecution. **State v. Elkins,**

**Hearsay - exception - no prejudicial error** - The trial court did not commit prejudicial error by allowing detectives to testify concerning the contents of a witness's prior statement. Detective Downing's testimony was admissible to explain the subsequent conduct of the person to whom the statement was made. Furthermore, although Detective Weaver's testimony was inadmissible hearsay, defendant failed to show that there was a reasonable possibility that, had the error not been made, a different result would have been reached at trial. **State v. Banks,**

**Hearsay - no plain error** - The trial court did not commit plain error in an assault case by admitting hearsay evidence which the prosecutor subsequently argued in closing argument. Defendant failed to show that a different result probably would have been reached had the evidence not been admitted. **State v. Wright,**

**Hearsay - offered to explain subsequent action - other evidence of guilt** - There was no plain error in a common law robbery prosecution where the trial court admitted alleged hearsay testimony about a jacket that defendant suddenly stopped wearing, about taking defendant to the hospital, and about a hospital employee's statements. The statements were offered to explain the detective's subsequent actions rather than as proof of the matter asserted and were not hearsay; even so, there was other evidence incriminating defendant, including his own written confession. **State v. Elkins,**

**Evidence - hearsay - offered to explain subsequent actions - no plain error** - There was no plain error in a common law robbery prosecution where the trial court admitted a detective's testimony about a hospital employee's statements. The testimony was admitted to explain the detective's subsequent actions; however, assuming that it was hearsay, there was sufficient uncontested evidence to convict defendant. **State v. Elkins,**

**Leading question - not plain error** - There was no plain error in a common law robbery prosecution where the prosecutor was allowed to ask the victim a leading question concerning the element of fear. There was sufficient evidence to support the element of fear or violence without the testimony elicited by the leading question. **State v. Elkins,**

**Objection after question answered - no motion to strike answer - other testimony** - The defendant in an indecent liberties prosecution waived his objection to a question about where the victim had been touched by defendant when the victim had not yet identified defendant as the man by whom she was touched. Defendant objected only after the question was answered and made no motion to strike, nor did he object to similar questions. **State v. Carter,**

**Officer's opinion of guilt - no prejudice** - There was no plain error in a common law robbery prosecution from the trial court's erroneous admission of a detective's testimony that he was "building a solid case." The statement was an opinion of the ultimate issue of defendant's guilt, but the other evidence incriminating defendant was such that there was no prejudice. **State v. Elkins,**

**Prior inconsistent statement - admitted for impeachment purposes - no abuse of discretion** - The trial court did not abuse its discretion pursuant to N.C. Rules of Evidence 403 and 607 in allowing the State to impeach a witness with her pre-trial statement. The witness admitted to having written the statement and testified that she could not remember making certain parts of the statement. Moreover, even if the trial court erred in allowing the State to impeach Harrin using her prior statement, defendant failed to demonstrate prejudice from the error. **State v. Banks,**

**Prior offense committed by witness - chain of events - no unfair prejudice** - The trial court did not err in allowing a witness to testify about a prior robbery he had committed as the testimony was evidence pertaining to the chain of events in defendant's robbery and the probative value of the evidence was not outweighed by unfair prejudice. **State v. Hill,**

**Prior statement - cross-examination - evidence previously introduced - no prejudicial error** - The trial court did not commit prejudicial error in allowing the prosecutor to cross-examine defendant's mother regarding the prior statement made by a witness. Because the evidence was already before the jury, even if the trial court had erred in overruling defendant's objection, no prejudice existed. **State v. Banks,**

**Racial slurs addressed to officers - not prejudicial** - Any error in allowing the introduction of evidence that defendant addressed the arresting officers with racial slurs was not prejudicial given the overwhelming evidence of guilt. **State v. Eaton,**

**Testimony - results of blood tests - no misrepresentation of results -**

**no error** – The trial court did not commit error or plain error in a multiple assault case by admitting a State Bureau of Investigation (SBI) agent's testimony or a prosecutor's comments regarding the results of SBI Crime Laboratory blood tests. Neither the agent's testimony nor the prosecutor's comments misrepresented the results of the tests. **State v. Wright, Unauthenticated surveillance photographs – other evidence of guilt** – There was no plain error in admitting hospital surveillance photographs into evidence where the photographs were not properly authenticated but there was plenary uncontested evidence incriminating defendant. **State v. Elkins,**

## **FIREARMS AND OTHER WEAPONS**

**Possession by felon – as applied constitutional challenge – no evidence or stipulations** – The trial court erroneously dismissed an indictment for possession of a firearm by a felon where defendant filed an unverified motion to dismiss on constitutional grounds but no evidence was presented at the hearing and there were no clear stipulations. In order for defendant to prevail through an as-applied constitutional challenge to N.C.G.S. § 14-415.1, he must present evidence which would allow the trial court to make findings about the factors in *Britt v. State*, 363 N.C. 546. **State v. Buddington,**

**Possession by felon – guns obtained and possessed simultaneously – single possession conviction** – The trial court erred by denying defendant's motion to dismiss two of three counts of possession of a firearm by a convicted felon where Defendant obtained and possessed simultaneously two firearms used during the murder of one victim and assaults upon two other victims. N.C.G.S. § 14-415.1(a) does not authorize multiple convictions of and sentences for possession of a firearm by a convicted felon predicated on evidence that the defendant simultaneously obtained and possessed one or more firearms, which he used during the commission of multiple substantive criminal offenses. **State v. Wiggins,**

## **GRAND JURIES**

**Information presented to grand jury – variance from instruction** – There was not a fatal variance in an indecent liberties prosecution between the specific act identified in the jury instruction and the evidence defendant speculated was presented to the grand jury. **State v. Carter,**

## **HOMICIDE**

**First-degree murder - sufficient evidence** - The trial court did not err in failing to dismiss a first-degree murder charge against defendant as there was sufficient evidence of all the elements of the crime, including that defendant was the perpetrator. **State v. Banks,**

**Jury instructions - first-degree murder - lesser-included offense - second-degree murder - no plain error** - The trial court did not commit plain error in a first-degree murder trial by failing to submit the issue of defendant's guilt of the lesser-included offense of second-degree murder to the jury. The evidence concerning defendant's behavior immediately prior to the shooting of the victim clearly supported a finding of premeditation and deliberation and did not support an inference that defendant formed the intent to kill the victim at the same time that he shot him. **State v. Wiggins,**

## **INDECENT LIBERTIES**

**Purpose of sexual gratification - evidence sufficient** - The trial court did not err by denying defendant's motion to dismiss a charge of taking indecent liberties where defendant argued that there was no evidence that he committed any act for the purpose of sexual gratification. The evidence presented by the State established a reasonable inference of defendant's guilt. **State v. Carter,**

## **INDICTMENT AND INFORMATION**

**Indecent liberties - immoral, improper, indecent act not specifically identified** - Although an indecent liberties defendant argued that his indictment did not specifically allege which of his acts was the immoral, improper and indecent liberty, the indictment used the language of the statute and the State was not required to allege an evidentiary basis for the charged offense. Nor did the instruction vary from the indictment. **State v. Carter,**

## **INSURANCE**

**Auto - cancellation - effective date - receipt by insurance company** - Defendants' insurance contract was in full force on 25 March 2008, the day of a car accident, where the request for cancellation by the company that financed the premiums stated an effective date of 24 March 2008 but the cancellation was not received by the insurance company until 28 March. Under N.C.G.S. § 58-35-85(3), an insurance policy is cancelled on the date the insurer receives the request for cancellation. **Universal Ins. Co. v. Patterson,**

## KIDNAPPING

**Attempted - overt act - lying in wait** - The trial court did not err by not dismissing two charges of attempted kidnapping where defendant was never in the presence of the intended victim. There was evidence of intent and preparation and, assuming that those acts were not more than preparations, defendant's hiding in the woods behind the victim's house and waiting for her to come home, and fleeing only upon the arrival of law enforcement and armed neighbors, was an act beyond mere preparation and thus overt. **State v. Lawrence,**

**Attempted - restraint - beyond that inherent in robbery** - The evidence of attempted kidnapping was sufficient to survive defendant's motion to dismiss on the issue of whether the restraint he intended to use was inherent in the intended robbery. Defendant's plans were not only to intercept the victim outside her house and force her back into the house, but also to bind her hands and threaten to douse her with gasoline if she did not cooperate. These were additional acts that would have exposed the victim to greater danger than that inherent in the armed robbery and that were also the kind of danger and abuse the kidnapping statute was designed to prevent. **State v. Lawrence,**

## NEGLIGENCE

**Legally responsible party - summary judgment - properly granted** - The trial court did not err by entering summary judgment in favor of defendants in a negligence action. Defendants adequately supported their motion for summary judgment on the basis that none of the defendants were legally liable for the alleged negligence of employees at the Food Lion store in which plaintiff fell. Moreover, the internet printouts upon which plaintiff relied to support her assertion that the store in which she was injured was owned by Defendant Delhaize America, Inc. were not admissible and could not have been properly considered by the trial court in ruling on defendants' summary judgment motion. **Rankin v. Food Lion,**

## PARTIES

**Necessary - tenants by the entirety** - Judgment was improperly entered without a necessary party where a dispute arose over the dividing line between two properties, defendant's land was owned as tenants by the entirety with his wife, and she was not included as a party. **Boone v. Rogers,**

## PLEADINGS

**Sanctions – emergency custody motion** – The trial court did not abuse its discretion by imposing Rule 11 sanctions on defendant for filing an emergency custody motion. The three determinations required under *Turner v. Duke University*, 325 N.C. 152, were answered affirmatively. **Lamm v. Lamm**,

**Sanctions – inadequate inquiry into allegations** – The trial court correctly decided to sanction an attorney in a child custody case where the attorney either did not make an adequate inquiry into factual allegations or did not reasonably believe that the allegations were well-grounded in fact. **Peters v. Pennington**,

## **PRETRIAL PROCEEDINGS**

**Denial of motion to continue – no error** – The trial court did not improperly deny defendant’s motions to continue his first-degree murder trial.

Based on the facts, defendant was not entitled to a presumption of prejudice under *State v. Rogers*, 352 N.C. 119. Moreover, defendant failed to show that he suffered prejudice as a result of the denial. **State v. Banks**,

## **REAL PROPERTY**

**Condemnation proceedings – adverse possession – inadequate findings and conclusions** – The trial court erred in a condemnation proceeding by failing to make adequate findings and conclusions regarding plaintiff’s adverse possession claim following its hearing on her motion. **City of Charlotte v. Williams**,

## **ROBBERY**

**Attempted – lying-in-wait – beyond mere preparation** – The trial court did not err by denying defendant’s motions to dismiss two counts of attempted armed robbery where defendant was never in the presence of the intended victim. The evidence established defendant’s intent, preparations, and two instances of lying-in-wait, which goes beyond mere preparation and are thus overt acts. **State v. Lawrence**,

**Common law – element of fear – evidence sufficient** – The trial court did not err by denying defendant’s motion to dismiss a common law robbery charge for insufficient evidence of violence or fear where defendant went into a convenience store and told the cashier he needed \$100; defendant hid his arm under his jacket in a manner suggesting that he had a gun; the clerk testified that he knew that defendant was serious because of defendant’s eyes; and the clerk gave defendant the money because he was afraid. **State v.**

**Elkins,**

**Instruction - use of weapon - plain error -** There was plain error when instructing the jury on conspiracy to commit robbery with a dangerous weapon where the court did not instruct the jury that the charge included the use of a weapon to threaten or endanger the life of the victim, rather than merely a taking through the use of a firearm. **State v. Lawrence,**

**With a dangerous weapon - sufficient evidence - motion to dismiss properly denied -** The trial court did not err by denying defendant's motion to dismiss the charge of robbery with a dangerous weapon where there was sufficient evidence of each element of the offense, including that defendant acted in concert with another individual to rob the victim. **State v. Hill,**

## **SEARCH AND SEIZURE**

**Baggie with pills abandoned alongside road - no expectation of privacy -** The trial court did not err in a narcotics prosecution by denying defendant's motion to exclude a bag of pills which defendant discarded before complying with an officer's request to return to his patrol car. Defendant was not seized when he discarded the baggie containing the pills beside a public road, and he no longer had a reasonable expectation of privacy in the abandoned property. **State v. Eaton,**

## **SENTENCING**

**Class of offense - clerical error -** An error in characterizing defendant's offense as a Class H felony rather than a Class I felony was clerical only and did not prejudice defendant where he was sentenced as a Class C felony pursuant to the Habitual Felon Act. **State v. Eaton,**

**Habitual felon - mandatory drug sentencing -** The trial court did not err by sentencing defendant as an habitual felon after a trafficking in opium conviction where defendant argued that habitual felon status did not apply to increase the mandatory trafficking sentence under Structured Sentencing. A drug trafficker who is not an habitual felon would be subject to enhanced sentencing under N.C.G.S. § 90-95(h)(4), while a drug trafficker who has also attained habitual felon status would be subject to even more enhanced sentencing pursuant to N.C.G.S. § 14-7.6. **State v. Eaton,**

**Out-of-state convictions - no evidence of substantial similarity - erroneous assignment of points -** The trial court erred in an assault case in its classification and assignment of points to two out-of-state convictions. The State did not produce any evidence that defendant's two prior out-of-state

convictions were substantially similar to any North Carolina offenses, and the trial court did not make any substantial similarity conclusions. **State v. Wright,**

**Restitution - evidence not sufficient** - A restitution order in a common law robbery case supported only by the unsworn statement of the prosecutor was vacated. **State v. Elkins,**

## TAXATION

**Sale of electricity - exemption from taxes - credit to customers not required** - Where the trial court correctly concluded that plaintiff was exempt from paying certain taxes on its sale of electricity, plaintiff did not have to demonstrate that it had credited its customers prior to receiving the ordered refund. Based on the clear and specific language of former N.C.G.S. § 105-267, the judgment entered "shall be collected as in other cases" and N.C.G.S. § 105-164.11 did not control this case. **Cape Hatteras Elec. Membership Corp. v. Lay,**

**Sale of electricity - exemption from taxes - interest on entire judgment** - In a case involving taxes levied on plaintiff's sale of electricity, plaintiff was entitled to interest on the entire judgment at the legal rate pursuant to N.C.G.S. 105-267. **Cape Hatteras Elec. Membership Corp. v. Lay,**

**Sale of electricity - indirect taxation - unsupported conclusions - irrelevant** - In a case involving taxes levied on plaintiff's sale of electricity, the findings of fact did not support the conclusions of law that defendant was not able to tax plaintiff indirectly by taxing plaintiff's third-party supplier. Nevertheless, the conclusions of law had no impact on the trial court's ultimate decree that plaintiff was not subject to sales or franchise taxes and that defendant must refund such taxes paid since 2000. **Cape Hatteras Elec. Membership Corp. v. Lay,**

**Sale of electricity - legislative act - exemption from taxes** - The trial court did not err in a case concerning taxes levied on plaintiff's sale of electricity by concluding that the special legislative act at issue was ambiguous, and, therefore, that the legislative intent must be ascertained. Furthermore, the trial court did not err in its determination that the clear legislative intent of the act was for plaintiff to maintain its tax-favored public agency status and to be exempt from paying franchise tax. **Cape Hatteras Elec. Membership Corp. v. Lay,**

## WITNESSES

**Four-year-old child - competent** - The trial court did not abuse its discretion in an indecent liberties prosecution by finding that a four-year-old child was competent to testify where defendant argued that the witness had not responded or gave seemingly contradictory answers to some questions. While contradictions and nonresponsive answers may have been appropriate for cross-examination or jury argument, it does not alter the witness's competence. **State v. Carter,**

## **WORKERS' COMPENSATION**

**Insurance policy - termination valid - nonpayment of premium** - The Industrial Commission did not err in finding and concluding that defendant insurance carrier's pre-term cancellation of defendant employer's workers' compensation coverage was valid and effective. A workers' compensation insurance policy may be cancelled by the insurer before the expiration of the term for nonpayment of the premium and defendant employer failed to pay its quarterly premium. **Bell v. Hype Mfg. LLC,**