

ADVERSE POSSESSION

Color of title — execution and delivery of deeds — The trial court erred by finding that some of the respondents had acquired title by adverse possession under color of title where four groups of relatives who had been paying property taxes on family property assumed they were the proper owners and exchanged reciprocal deeds dividing the property. Although the date inscribed at the top of the deeds was more than seven years prior to the action, some of the deeds were not signed, and therefore not delivered, until less than 7 years before the action. **White v. Farabee,**

ANIMALS

Attack by dangerous dog — elements — cost of treatment — A sentence for a class 1 misdemeanor, attack by a dangerous dog in violation of N.C.G.S. § 67-4.3, was remanded where the warrant omitted the element that the injuries required medical treatment costing more than \$100.00. Resentencing should be for a violation of N.C.G.S. § 67-4.2(a), failure to confine a dangerous dog. **State v. Burge,**

APPEAL AND ERROR

Denial of writ of certiorari — adequate remedies remaining — The Court of Appeals declined defendant's request for a writ of *certiorari* to permit review of the challenged order on the merits given defendant's right to seek redress for any inappropriate conduct by plaintiff and its agents in New Hanover County File No. 10 CVS 1767. **Hous. Auth. of Wilmington v. Sparks Eng'g, PLLC,**

Interlocutory order — adverse possession — all interests not resolved — An order addressing the property interests of some of the parties to an adverse possession claim was interlocutory, but the appeal was nevertheless heard, where there were overlapping factual issues between the claims being appealed and those left to be determined in a partition action. **White v. Farabee,**

Interlocutory order — motion to dismiss — jurisdiction over person — Although an order denying defendant Linx's motion to dismiss for lack of jurisdiction was interlocutory, appeal of the decision was proper under N.C.G.S. § 1-277(b). **State Farm Fire & Cas. Co. v. Durapro,**

Interlocutory order — partial denial of class certification — no jurisdiction — The Court of Appeals lacked jurisdiction over plaintiff's appeal from an interlocutory order under N.C.G.S. §§ 1-277(a) and 7A-

27(d)(1) that partially denied class certification. Plaintiff failed to show a substantial right or the risk of inconsistent verdicts. Further, the Court of Appeals declined plaintiff's request to treat its appeal as a petition for *certiorari*. **Hamilton v. Mortg. Info. Servs., Inc.**,

Interlocutory order — workers' compensation opinion and award — continuing disability to be determined — An appeal from a workers' compensation opinion and award was dismissed as interlocutory where the order expressly reserved the extent of plaintiff's continuing disability for future determination. **Allison v. Wal-Mart Stores**,

Mootness — zoning — An appeal from a zoning decision was not moot even though amendments to a zoning ordinance before the appeal was filed would have entitled respondent Crown to a building permit for its development. A permit issued under the prior ordinance was void *ab initio* and the amendments would not have eradicated the effects of the violation. **Wilson v. City of Mebane Bd. of Adjust.**,

Preservation of issues — failure to object — failure to argue plain error — Although defendant contended that the trial court erred in a felonious operation of a motor vehicle to elude arrest case by denying defendant's motion to suppress, defendant failed to preserve this issue by failing to object at trial and by failing to argue plain error. **State v. Jackson**,

Rule 41(a) voluntary dismissal — original action no longer existed — mootness — The Court of Appeals lacked jurisdiction over defendant's challenge to the propriety of the trial court's decision to deny its dismissal motion in a breach of contract, negligence, and negligent misrepresentation case because plaintiff's original action no longer existed once it voluntarily dismissed it under N.C.G.S. § 1A-1, Rule 41(a). Thus, defendant's appeal was dismissed. **Hous. Auth. of Wilmington v. Sparks Eng'g, PLLC**,

ATTORNEY FEES

Release — justiciable issue present — The trial court did not abuse its discretion by denying defendants attorney fees after it granted summary judgment for defendants in an action involving a release. It could not be said that there was a complete absence of a justiciable issue. **Runnels v. Robinson**,

CHILD CUSTODY AND SUPPORT

Change in custody — failure to find substantial change of circumstances — The trial court erred by changing custody of the minor children without first determining there had been a substantial change of circumstances. The case was remanded. **Hibshman v. Hibshman,**

Parents not yet separated — subject matter jurisdiction — The trial court erred by dismissing claims for child custody and support for lack of subject matter jurisdiction where the parties had not yet separated. **Baumann-Chacon v. Baumann,**

CITIES AND TOWNS

Utilities agreement with developers — not between municipalities — not an annexation agreement — Agreements between a municipality and developers that provided for extension of water and sewer services in exchange for a petition for annexation and the payment of fees were not annexations governed by N.C.G.S. § 160A-58.21 *et seq.* because the agreements were not between participating municipalities and were not annexation agreements as defined by statute. **Cunningham v. City of Greensboro,**

Utilities agreement with developers — not covenant running with the land — Summary judgment was properly granted for plaintiffs in an action arising from agreements between defendant and developers to extend utilities in exchange for annexation where defendant argued that the agreements were enforceable covenants that ran with the land. **Cunningham v. City of Greensboro,**

Utilities agreement with developers — subsequent owners — withdrawal of consent to annexation — Summary judgment was properly granted for plaintiffs where the original developers entered into annexation agreements with defendant in exchange for water and sewer services, but the deeds to lots subsequently sold made no reference to those agreements. Allowing plaintiffs to withdraw their consent to the annexation of the properties is not contrary to the literal language or the intent underlying N.C.G.S. § 160A-31, the statute governing voluntary annexation proceedings. **Cunningham v. City of Greensboro,**

Utilities agreement with developers — support for annexation — not agreed to by subsequent owners — Defendant was not authorized by N.C.G.S. § 160A-314(a) to require annexation as a condition for the extension of utility services where defendant and the original developers had agreed to such terms but the deeds to individual lots made no reference to those agreements. Even if a municipality had the authority to condition the

provision of water and sewer services on a customer's agreement to support annexation, the record contained no indication that defendant did so when it connected any individual customer. **Cunningham v. City of Greensboro,**

CONFESSIONS AND OTHER INCRIMINATING STATEMENTS

Pre-Miranda statement — not custodial — Defendant was not in custody when he confessed to first-degree murder and other offenses where he was twice told that he was not under arrest, voluntarily accompanied officers, was never handcuffed, rode in the front of the officers' vehicle, was offered food, water, and the use of the restroom, was never misled or deceived, was not questioned for a long period of time, and the officers kept their distance during the interview and did not employ any form of physical intimidation. A pat-down did not automatically create a custodial situation, and a policeman's unarticulated plan had no bearing on whether a suspect was in custody. **State v. Hartley,**

CONSTITUTIONAL LAW

Confrontation Clause — officer's description of autopsy exhibit — There was no Confrontation Clause violation in a rape and murder prosecution where an officer testified that an exhibit contained swabs taken from a victim at an autopsy. **State v. Hartley,**

Confrontation Clause — pathologist who did not perform autopsy — Defendant's right to confront the witnesses against him was not violated where autopsy results were not presented by the pathologist who had performed the victims' autopsy. While the pathologist who testified made minimal reference to the reports of the pathologist who performed the autopsies, those reports were not admitted and the testimony primarily consisted of a description of the victims' injuries as depicted in photos, the result of the wounds, and ultimately the cause of death. Moreover, there was overwhelming evidence of the manner in which defendant killed the victims. **State v. Hartley,**

Effective assistance of counsel — failure to object — A defendant was not denied effective assistance of counsel in a felonious operation of a motor vehicle to elude arrest case based on his trial counsel's failure to object to evidence obtained from an alleged illegal search. Defendant failed to show he was prejudiced when defendant voluntarily answered the front door of his house to answer the officers' questions and did not challenge the voluntariness of his later statements to the officers in which he admitted to being the driver of the motorcycle. **State v. Jackson,**

Effective assistance of counsel — no objection at trial — Defendant did not receive ineffective assistance of counsel, and no further investigation was needed, where his trial attorney did not object to his confession at trial but there was no error in the admission of the confession. **State v. Hartley**,

Right to speedy trial — waiver of review — pro se motion while represented by counsel — The trial court did not deprive defendant of his right to a speedy trial. Defendant waived appellate review of this issue by filing *pro se* motions for a speedy trial while represented by counsel. Further, defendant failed to show actual substantial prejudice in the delay between his arrest and trial. **State v. Twitty**,

Two-stage interrogation — no violation of Fifth Amendment — Defendant's Fifth Amendment rights were not violated by a two-stage interrogation process in which defendant confessed, was given *Miranda* warnings, and confessed again. Defendant was not in custody when the first confession was given. **State v. Hartley**,

CORPORATIONS

Dissolution — request for purchase of shares at fair market value — reasonable expectation analysis — The trial court did not err by granting summary judgment in favor of defendant corporations on plaintiff's claims requesting dissolution of the corporations, or alternatively, that the corporations purchase decedent's shares at fair market value. Decedent did not possess an enforceable right or interest based upon a reasonable expectation shared by all shareholders that her ownership in the corporations would be redeemed at fair market value upon her death. **High Point Bank & Trust Co. v. Sapona Mfg. Co., Inc.**,

CRIMINAL LAW

Instructions — insanity — pattern jury instructions — the trial court did not err by giving the pattern jury instruction on the consequences of a verdict of not guilty by reason of insanity rather than defendant's requested instruction. **State v. Hartley**,

Prosecutor's argument — defendant a con man, liar, and parasite — no contradictory evidence — The trial court did not abuse its discretion in an obtaining property by false pretenses case by failing to intervene *ex mero motu* during the State's closing argument referring to defendant as a con man and a liar because these terms accurately described the offense. Although calling defendant a parasite was unnecessary and unprofessional, it did not rise to the level of gross impropriety. Further, the prosecutor's comment that

there was no evidence to contradict the State's evidence was not a reference to defendant's right to remain silent. **State v. Twitty,**

Prosecutor's argument — specific intent — personal belief — The trial court did not err in a prosecution for first-degree murder and other offenses by failing to intervene *ex mero motu* in the prosecutor's argument on diminished capacity and specific intent. Moreover, remarks by the prosecutor which defendant contended expressed a personal belief did not warrant a new trial. **State v. Hartley,**

Reinstruction — specific intent and diminished capacity — burden of proof not shifted — There was no plain error in a prosecution for first-degree murder where defendant contended that the trial court's reinstruction on specific intent to kill did not lower the State's burden of proof. The reinstruction was an attempt to remedy any confusion about the burden of proving specific intent; it was never unclear that specific intent, and not just the ability to form it, was required for a conviction of first-degree murder. **State v. Hartley,**

DIVORCE

Post-separation support — pre-separation claim — no subject matter jurisdiction — The trial court correctly dismissed a claim for post-separation spousal support for lack of subject matter jurisdiction where the parties had not yet separated. The relevant statutory language clearly presupposed that the parties had already separated. **Baumann-Chacon v. Baumann,**

DRUGS

Constructive possession of marijuana — proximity — The trial court did not err by denying defendant's motion to dismiss the charge of possession with intent to distribute marijuana where there was substantial evidence of constructive possession based on proximity alone. This was not a case in which any of the individuals detained might have had control over a single baggie of marijuana or in which defendant may have had no knowledge of the contraband. Defendant was found in a 150-square-foot-room with bags of marijuana and paraphernalia in plain view. **State v. Slaughter**

Possession of paraphernalia — proximity — The trial court did not err by denying defendant's motion to dismiss the charge of possession of drug paraphernalia based on proximity. **State v. Slaughter,**

Possession with intent to manufacture — possession — trafficking — A jury necessarily found defendant guilty of possession of cocaine when it

found him guilty of possession with the intent to manufacture. The case was remanded for judgment and sentencing for possession since the trial court erred by instructing the jury on possession with intent to manufacture cocaine as a lesser included offense of trafficking. **State v. McCain,**

ESTATES

Legal heir — father — The superior court did not err by finding that petitioner was a legal heir of his child's estate. The birth and death certificates, the parenting agreement, and that fact that petitioner held himself out as the child's father was enough to support the corresponding findings of fact. **In re Estate of Mangum,**

EVIDENCE

DNA swabs — authentication — chain of custody — There was no plain error in the admission of swabs used for DNA matching in a rape prosecution where the evidence was sufficiently authenticated and any weakness in the chain of custody did not render the exhibit inadmissible. **State v. Hartley,**

Subsequent crimes or bad acts — failure to show prejudice — The trial court did not err in an obtaining property by false pretenses case by admitting evidence of defendant obtaining money from other churches. Defendant failed to show how he was prejudiced by his trial counsel's failure to object to these subsequent bad acts that were admissible under N.C.G.S. § 8C-1, Rule 404(b). **State v. Twitty,**

Untimely motion to strike — witness testimony — The trial court did not abuse its discretion in a possession of cocaine case by denying defendant's untimely motion to strike an SBI forensic chemist's testimony when an objection was not made during direction examination, but made after the completion of this witness and another witness's testimony plus a motion to suppress. **State v. McCain,**

FALSE PRETENSE

Obtaining property by false pretenses motion to dismiss — sufficiency of evidence — The trial court did not err in an obtaining property by false pretenses case by denying defendant's motions to dismiss. The evidence taken in the light most favorable to the State supported a conclusion that defendant was telling a false story about his wife dying in order to elicit sympathy and obtain property. **State v. Twitty,**

INSURANCE

Automobile — exclusion — no permission to use vehicle — The trial court correctly granted summary judgment for plaintiff in a declaratory judgment action to determine insurance coverage after an automobile accident. The policy excluded coverage for an insured using a vehicle without a reasonable belief that he was entitled to do so, the owner had told the driver (Perez) not to use his vehicles when Perez had been drinking, Perez had been drinking on the night of the accident, and Perez knew that he did not have permission to operate the vehicle on that night. **State v. Farm Mut. Auto. Ins. Co. v. Bustos-Ramirez,**

JUDGES

Motion to recuse — denied — The trial court did not err by denying defendant's motion to recuse in a domestic action in which defendant alleged bias from a prior judicial campaign. Defendant did not show substantial evidence of such a personal bias, prejudice, or interest that the trial judge would not be able to rule impartially or circumstances that would cause a reasonable person to question whether the judge could rule impartially. **Harrington v. Wall,**

JURISDICTION

Personal — motion to transfer — jurisdictional defense waived — The trial court properly denied defendant Linx's motion to dismiss for lack of personal jurisdiction where Linx had filed a motion to transfer the action from district to superior court two months earlier. Although an earlier extension of time to answer or otherwise respond did not in itself waive the defense, it did not mean that any Rule 12(b) defense was preserved through the date of the extension regardless of other motions that might be filed. **State Farm Fire & Cas. Co. v. Durapro,**

JUVENILES

Privilege against self-incrimination — court's failure to advise — There was no prejudicial error in a juvenile delinquency adjudication where the trial court failed to comply with N.C.G.S. § 7B-2405 by allowing the juvenile to testify without determining if the juvenile understood his privilege against self-incrimination. The error was harmless because the juvenile's testimony was consistent with the State's prior evidence or otherwise favorable to the juvenile. **In re J.R.V.,**

MORTGAGES AND DEEDS OF TRUST

Foreclosure — evidence of owner of note and amount owed — photocopies — The trial court erred by granting summary judgment for plaintiff in a foreclosure action based on the court's erroneous conclusions that defendants failed as a matter of law to present sufficient evidence to show the amount owed and that Wells Fargo is the holder of the note. Such a conclusion on this evidence should not be made summarily, but only after meaningful consideration of the evidence. **Dobson v. Substitute Tr. Servs. Inc.,**

MOTOR VEHICLES

Felonious operation of motor vehicle to elude arrest — motion to dismiss — aggravating factors — The trial court did not err by denying defendant's motion to dismiss the charge of felonious operation of a motor vehicle to elude arrest because sufficient evidence was presented of the aggravating factors necessary to support the conviction. **State v. Jackson,**

PARENT AND CHILD

Voluntary parenting agreement — statutory requirements — The assistant clerk of court and the superior court judge did not err by concluding that the parties' voluntary parenting agreement satisfied the requirements of N.C.G.S. § 29-19(b)(2). **In re Estate of Mangum,**

REAL ESTATE

Implied equitable servitude — not adopted in North Carolina — The doctrine of implied equitable servitude has not been adopted in North Carolina and did not apply in an action involving an attempt to enforce against individual subsequent landowners an agreement between defendant and developers to extend utilities service in exchange for annexation. **Cunningham v. City of Greensboro,**

RELEASE

Incidental or intended third-party beneficiary — summary judgment — The trial court did not err by granting summary judgment for defendants in an action arising from a real estate sale where plaintiff contended that defendants were only incidental beneficiaries of a release, so that a rescission and revised release were valid. It was clear from the language of the original release that defendants were intended third-party beneficiaries. **Runnels v. Robinson,**

SEARCH AND SEIZURE

Probable cause for warrant — drugs in defendant's home — There was a substantial basis in a search warrant application to believe that drugs would be found in defendant's home and the trial court correctly denied defendant's motion to suppress for lack of probable cause. **State v. McCain,**

SENTENCING

Aggravating range — findings not required when also within presumptive range — The trial court did not err in an obtaining property by false pretenses case by sentencing defendant in the aggravated range without finding any aggravating factors. Defendant's sentence straddling both the presumptive and aggravated ranges did not create any ambiguity. **State v. Twitty,**

TAXATION

Property Tax Commission — findings and conclusions — not sufficient — A decision of the Property Tax Commission affirming appraised values was remanded for specific findings and conclusions where the Commission's order did not explain why the County's methods ascertained true value despite being arbitrary or illegal. **In re Appeal of Parkdale Am.,**

ZONING

Prior ordinance — common law vested right — Expenditures on a real estate development project prior to the enactment of a Unified Development Ordinance were not made in reasonable reliance on and after the issuance of a building permit. Respondent Crown did not acquire a common law vested right to have its development plan evaluated under the prior ordinances. **Wilson v. City of Mebane Bd. of Adjust.,**