

ANIMALS

Goats – restrictive covenants – household pets instead of livestock – The trial court did not err in a declaratory judgment action by granting summary judgment in favor of plaintiff based on its conclusion that plaintiff's two goats were household pets and not livestock under a neighborhood's restrictive covenants. The goats were kept for pleasure rather than for profit or utility. **Steiner v. Windrow Estates Home Owners Ass'n, Inc.,**

APPEAL AND ERROR

Appealability – writ of certiorari – appellate rules violations – In the interests of justice and under N.C. R. App. P. 2 and 21, the Court of Appeals elected to treat the record on appeal and briefs in a workers' compensation case as a petition for writ of *certiorari*. Although defendants failed to articulate grounds for appellate review as required by N.C. R. App. P. 28(b), the error was nonjurisdictional, and thus, did not require dismissal. **Lipscomb v. Mayflower Vehicle Sys.,**

Interlocutory orders and appeals – disqualification of counsel – Although an order granting a motion to disqualify counsel was interlocutory, it affected a substantial right and was addressed on appeal. **Braun v. Trust Dev. Grp., LLC,**

Interlocutory orders and appeals – partial summary judgment – certified for immediate appeal – An immediate appeal was allowed from a partial summary judgment order where the trial court properly certified the case for immediate appeal. **Yost v. Yost,**

Interlocutory orders and appeals – substantial right – inverse condemnation – untimely appeal – Although defendants' counterclaim for inverse condemnation was from an interlocutory order that affected a substantial right, it was dismissed as untimely. **Town of Apex v. Whitehurst,**

Interlocutory orders and appeals – substantial right – taking for public purpose – untimely appeal – Although defendants' appeal in a condemnation case regarding the issue of taking for a public purpose was from an interlocutory order that affected a substantial right, it was dismissed as untimely. **Town of Apex v. Whitehurst,**

Preservation of issues – failure to argue – Defendants failed to make any arguments regarding the 17 February 2010 order as required by N.C. R. App. P. 28(a), and thus, the issues were deemed abandoned. **Town of Apex v.**

Whitehurst,

Preservation of issues – failure to make motion to dismiss at end of evidence — The issue of whether the trial court erred by not dismissing a charge for insufficient evidence was not addressed on appeal where defendant did not make a motion to dismiss at the close of all the evidence. **State v. Whitley,**

ARBITRATION AND MEDIATION

Motion to compel — waived by delay and unnecessary expenditure — An order denying a motion to compel arbitration was affirmed where the trial court properly concluded that plaintiff waived the right to arbitrate by waiting until the eve of a second trial to file the motion to compel. **Estate of Sykes v. Marcaccio,**

ASSAULT

Deadly weapon with intent to kill inflicting serious injury – acquittal for attempted first-degree murder not inconsistent or mutually exclusive – The trial court did not err by accepting the verdict of assault with a deadly weapon with intent to kill inflicting serious injury (AWDWIKISI) as to defendant Wade because the jury’s acquittal of defendant for attempted first-degree murder and his conviction for AWDWIKISI were not inconsistent or mutually exclusive. **State v. Wade,**

Deadly weapon with intent to kill inflicting serious injury – possession of firearm by convicted felon – motion to dismiss – sufficiency of evidence – The trial court did not err by denying defendant’s motions to dismiss the charges of assault with a deadly weapon with intent to kill inflicting serious injury and possession of a firearm by a convicted felon. There was substantial evidence of each essential element of the offenses charged and of defendant Wade being one of the perpetrators of the offense. **State v. Wade,**

ATTORNEY FEES

Challenge to late fees — utilities — The trial court did not err by awarding attorney fees pursuant to N.C.G.S. § 6-21.5 based on plaintiff not raising justiciable issues of law and fact. Plaintiff’s argument was without merit because it was predicated on sanitary districts being subject to the Utilities Commission’s supervisory powers, which they are not. **Wayne St. Mobile Home Park, LLC v. North Brunswick Sanitary Dist.,**

ATTORNEYS

Motion to disqualify — necessary witnesses — The trial court did not abuse its discretion by granting defendants' motion to disqualify plaintiff's attorneys where those attorneys were necessary witnesses on a contested issue. **Braun v. Trust Dev. Grp., LLC,**

BURGLARY AND UNLAWFUL BREAKING OR ENTERING

Attempted – instructions — failure to define larceny — Following precedent, there was no error where the trial court failed to define “larceny” in the instructions in an attempted breaking or entering prosecution. **State v. Whitley,**

CEMETERIES

Grave desecration – summary judgment – The trial court did not err in a grave desecration case by granting summary judgment in favor of defendants. There was no evidence showing that defendants graded the property on which the gravesite is located or in some other way desecrated the gravesite. **Robinson v. Forest Creek Ltd. P'ship,**

CHILD CUSTODY AND SUPPORT

Modification – best interests of child – The trial court did not abuse its discretion by concluding there was substantial evidence that modification of a previous child custody order was in the best interests of the children. **Stephens v. Stephens,**

Modification – substantial change in circumstances – The trial court did not err in a child custody modification case by concluding a substantial change in circumstances affected the welfare of the children. Even if the children have not yet been actually harmed by defendant's actions, the court does not have to wait until the substantial change causes harm. **Stephens v. Stephens,**

CONSTITUTIONAL LAW

Effective assistance of counsel — no motion to suppress — evidence admissible — Defendant was not deprived of effective assistance of counsel where his attorney did not move to suppress evidence discovered as a result of a stop by law enforcement officers. Although defendant argued on appeal that the stop was unlawful, the totality of the circumstances established that the officers had reasonable suspicion to conduct an investigatory stop. **State**

v. Brown,

Equal protection – rational basis – smoking ban differential treatment of for-profit and nonprofit private clubs – The trial court did not violate a private country club’s equal protection rights by upholding two civil penalties against it for allowing smoking in its establishment. There was a rational basis for the legislature’s differential treatment of for-profit and nonprofit private clubs. **Liebes v. Guilford Cnty. Dep’t of Pub. Health,**

Right to confrontation — no objection at trial on constitutional grounds — no plain error — There was no plain error where defendant objected to an affidavit at trial but not on Confrontation Clause grounds. Even assuming that the affidavit violated defendant’s right to confrontation, there was ample evidence to find the two aggravating factors needed to enhance the charge from a misdemeanor to a felony. The exclusion of the affidavit would not have altered the jury’s verdict. **State v. Leonard,**

Right to counsel — pro se representation — required inquiries — The trial court erred by permitting defendant to waive counsel and proceed *pro se* at a probation revocation hearing where the court advised defendant of his right to counsel, but did not conduct a thorough inquiry that showed that defendant understood the consequences of his decision and that he comprehended the nature of the charges, the proceeding, and the range of possible punishments. **State v. Sorrow,**

CRIMINAL LAW

Jury instruction – insanity defense – The trial court did not commit plain error in a first-degree murder and assaults case by failing to instruct the jury that the insanity defense applied if defendant believed due to mental illness that his conduct was morally right. Defendant failed to request a special instruction or show that absent the alleged error, the jury probably would have reached a different result. **State v. Castillo,**

Prosecutor’s argument – mental illness – failure to intervene ex mero motu – The trial court did not err in a first-degree murder and assaults case by failing to intervene *ex mero motu* during the State’s closing argument regarding defendant’s mental illness in light of the wide latitude accorded counsel in closing argument and the substantial and largely unchallenged evidence. **State v. Castillo,**

Restraints during trial — no abuse of discretion — The trial court did not abuse its discretion by not removing defendant’s handcuffs during trial.

The trial court considered the proper factors, including defendant's past record, and reasoned that incarceration for crimes such as second-degree murder and kidnapping raised concerns for safety in the courtroom. **State v. Stanley,**

Restraints during trial — no limiting instruction — no abuse of discretion — There was no prejudicial error in a prosecution for possessing controlled substances in a prison where the trial court did not give a limiting instruction regarding defendant's courtroom restraints. Even if the instruction had been given, it was not reasonably possible that a different result would have been reached at trial. **State v. Stanley,**

DEEDS

Restrictive covenants – nuisance – vague – A neighborhood's board of directors abused its discretion by determining that plaintiffs' goats were a nuisance. The neighborhood's restrictive covenants did not provide sufficient guidance or definitions to permit any sort of objective determination, and thus, were too vague. **Steiner v. Windrow Estates Home Owners Ass'n, Inc.,**

EVIDENCE

Hearsay — explanation of subsequent conduct — Testimony from a correctional officer about a captain's statements about defendant explained the officer's subsequent conduct and were not hearsay. **State v. Stanley,**

Inconsistent statements – plain error review – The trial court did not err or commit plain error in an assault with a deadly weapon with intent to kill inflicting serious injury and possession of a firearm by a convicted felon case by permitting the prosecutor to question the victim regarding his inconsistent statements at a probable cause hearing. **State v. Wade,**

Prior inconsistent statements – impeachment – failure to show prejudicial error – The trial court did not err in an assault with a deadly weapon with intent to kill inflicting serious injury and possession of a firearm by a convicted felon case by permitting the prosecutor, over objection, to state before the jury the prosecutor's recollection of the alleged victim's testimony at a probable cause hearing where the victim denied recollection. Defendant failed to show any prejudicial error when the substantive information had already been introduced into evidence. **State v. Wade,**

Prior inconsistent statement — impeachment — statement not inconsistent — A statement given by defendant to a detective was not

inconsistent with his trial testimony and the trial court did not err by introducing into evidence the statement on direct examination by the State. Reading the statement in context, the witness was stating that he knew of the person called Phillipott, not that he was personally acquainted with him, which was consistent with his testimony in court. The only issue on appeal is the consistency of the statement, not whether the State was surprised. **State v. Phillipott,**

Prior inconsistent statement — not prejudicial — Defendant's argument that introduction of a prior inconsistent statement was prejudicial was overruled. There was no possibility of a different result without testimony about a witness's previous statement. **State v. Whitley,**

Testimony – exclusion – failure to show prejudicial error – The trial court did not err in an assault with a deadly weapon with intent to kill inflicting serious injury and possession of a firearm by a convicted felon case by sustaining the State's objection to testimony that the victim was favoring his back pocket like he was getting ready to whip out a gun and by sustaining the State's objection to testimony from the victim's girlfriend that she heard the victim saying he was going to get his gun. Defendant failed to show a different result would have been reached at trial absent these alleged errors. **State v. Wade,**

Testimony – failure to show prejudicial error based on exclusion – The trial court did not abuse its discretion in an assault with a deadly weapon with intent to kill inflicting serious injury and possession of a firearm by a convicted felon case by sustaining the State's objections and motions to strike and not allowing into evidence certain testimony from witnesses. Defendant failed to show a different result would have been reached at trial absent these alleged errors. **State v. Wade,**

FALSE PRETENSE

Obtaining property by false pretenses – motion to dismiss – sufficiency of evidence – circumstantial evidence – The trial court did not err by denying defendant's motion to dismiss the charge of obtaining property by false pretenses. Every hypothesis of innocence need not be ruled out in order to conclude that the circumstantial evidence was sufficient for a reasonable person to infer that defendant was the person who used the stolen credit card shortly after he stole it. **State v. Griffin,**

HOMICIDE

First-degree murder – premeditation and deliberation — evidence

sufficient — There was sufficient evidence of premeditation and deliberation in a first-degree murder prosecution where there was testimony from witnesses who did not hear provocation from the deceased; testimony from a witness at whom defendant pointed the gun after shooting the victim; and testimony from a doctor who noted that the victim had five gunshot wounds, four of which were to the head. **State v. Phillipott,**

INDICTMENT AND INFORMATION

Felonious operation of motor vehicle to elude arrest — reckless driving as aggravating factor — information sufficient — The body of an indictment for felonious operation of a motor vehicle to elude arrest with reckless driving as an aggravating factor was sufficient to provide defendant with enough information to prepare a defense. **State v. Leonard,**

Habitual felon – notice – The trial court had subject matter jurisdiction over a habitual felon indictment. The indictment was sufficient to give defendant notice of the basis of the habitual felon indictment when it referenced the case number, date, and county of a prior conviction. **State v. Griffin,**

JURY

Not in agreement — mistrial denied — no abuse of discretion — The trial court did not abuse its discretion by not declaring a mistrial even after one juror had indicated that nothing would change. **State v. Phillipott,**

MOTOR VEHICLES

Felonious operation of motor vehicle to elude arrest – disjunctive jury instruction – The trial court’s disjunctive jury instruction in a felonious operation of a motor vehicle to elude arrest case did not constitute error. While the jury may not have been unanimous as to which aggravating factors were present, it was unanimous in finding that defendant was guilty of felonious operation of a motor vehicle to elude arrest. **State v. Banks,**

Felonious operation of motor vehicle to elude arrest – jury instruction – failure to define reckless driving – The trial court did not commit plain error in a felonious operation of a motor vehicle to elude arrest case by declining to define the N.C.G.S. § 20-141.5(b) aggravating factor of reckless driving in the jury instruction. Defendant failed to cite to any legal authority which specifically required this definition, the trial court properly charged the jury with the pattern jury instruction, and there was substantial evidence showing that defendant was guilty. **State v. Banks,**

Felonious serious injury by motor vehicle — proximate cause of injury — not exclusive — The trial court did not err by denying defendant's motion to dismiss the charge of felonious serious injury by motor vehicle where defendant contended that there was insufficient evidence that impaired driving was the proximate cause of the injury. Impaired driving need not be the only proximate cause of the victim's injury for the defendant to be found criminally liable. **State v. Leonard,**

POLICE OFFICERS

Information given to other officers — negligence claim — public duty doctrine — The Industrial Commission did not err by denying defendants' motion for summary judgment on the issue of liability preclusion under the public duty doctrine where plaintiff alleged that the UNC-W police department negligently provided false, misleading, and irrelevant information to sheriff's department officers who were serving an arrest warrant and that this false information proximately caused the decedent's death. In all cases where the public duty doctrine has been held applicable, the breach of the alleged duty has involved the governmental entity's negligent control of an external injurious force or the effects of such a force. Here, the alleged breach was not a negligent action with respect to some external injurious force, but was itself the injurious force. **Strickland v. Univ. of N.C. at Wilmington,**

PROBATION AND PAROLE

Activation of sentence – credit for time served – The trial court did not err in a probation revocation hearing by failing to give defendant credit against her active sentence for the time she spent at a faith-based rehabilitation program because it was not affiliated with or operated by either a State or local government agency as required by N.C.G.S. § 15-196.1. **State v. Stephenson,**

Activation of sentence – failure to show willful violation by failing to pay costs – The trial court's judgment revoking defendant's probation and activating his suspended sentence for failure to register as a sex offender was vacated. The trial court failed to make findings of fact that showed it considered defendant's evidence before concluding he willfully violated his probation by failing to pay the cost of his sexual abuse treatment program. Under revised N.C.G.S. § 15A-1344(a), a court may only revoke probation if a defendant commits a criminal offense or absconds. **State v. Floyd,**

Probation revocation – findings of fact – willful and without valid

excuse – drug addiction – The trial court did not abuse its discretion in a probation revocation hearing by allegedly failing to make proper findings that defendant violated the terms of her probation willfully and without valid excuse. Defendant offered no support for her assertion that drug addiction made her noncompliance with the terms of probation not willful or otherwise lawfully excused. **State v. Stephenson,**

SENTENCING

Aggravating factors – negligent driving – motion to dismiss – reckless driving – driving with license revoked – The trial court did not commit prejudicial error in a felonious operation of a motor vehicle to elude arrest case by denying defendant’s motion to dismiss the aggravating factor of negligent driving. The State was only required to present sufficient evidence of two of the factors, and defendant did not challenge the sufficiency of the evidence of the two aggravating factors of reckless driving or driving with a revoked driver’s license. **State v. Banks,**

TRUSTS

Enforcement of trust provisions — standing — corporation owned by trust— A corporation that was owned by a trust did not have standing to sue the trustees to enforce trust provisions concerning successor trustees where it was not the beneficiary of the trust. **Yost v. Yost,**

Successor trustees — former trustees — standing — Former trustees had standing to bring an action concerning the trust provisions for successor trustees, despite the rule that only beneficiaries and co-trustees have standing to sue to enforce a trust, where a part of the controversy was whether defendants wrongly prevented plaintiffs from renewing their trusteeships. **Yost v. Yost,**

Successor trustees — trust provisions — The trial court did not err in interpreting a trust provision concerning successor trustees and in granting a motion for partial summary judgment. The plain language of the trust provision supported the trial court’s interpretation, which was consistent with the purposes of the trust. The matter was remanded for removal of certain language from the court’s order that reached too far and was not supported by the agreement. **Yost v. Yost,**

UTILITIES

Sanitary districts — collection of late fees — The trial court did not err by granting defendant’s motion to dismiss a complaint challenging defendant’s collection of late fees on the contention that sanitary districts are

public utilities subject to the Utilities Commission's regulation of late charges. A 1950 case stated that sanitary districts are quasi-municipal corporations that are not under the control of the Utilities Commission as to services or rates, and a subsequent change in statutory language was not intended to include sanitary districts within the Commission's supervisory purview. **Wayne St. Mobile Home Park, LLC v. North Brunswick Sanitary Dist.,**

WORKERS' COMPENSATION

Authorized treating physician – treatment appropriate and reasonably necessary – The Industrial Commission did not abuse its discretion in a workers' compensation case by ordering defendants to provide medical compensation for plaintiff's treatment by his requested doctor. The treatment was appropriate and reasonably necessary to provide pain relief and improve plaintiff's function. **Lipscomb v. Mayflower Vehicle Sys.,**

Penalty for late payment – award not due until all appeals exhausted or waiver – The Industrial Commission erred in a workers' compensation case by assessing a ten percent penalty against defendants for their alleged late payment of an award for temporary total disability. N.C.G.S. §§ 97-18(e) and 97-86 provide that payment of an award does not become due until all appeals are exhausted or a party waives the right to appeal. **Norman v. Food Lion,**

Temporary partial disability – amount of payments – The Industrial Commission erred in a workers' compensation case by concluding that plaintiff was entitled to temporary partial disability benefits in the amount of \$330 per month. The case was remanded for a determination of the weekly amount of plaintiff's payments. **Lipscomb v. Mayflower Vehicle Sys.,**