

ADVERSE POSSESSION

Issues of fact — exclusivity — hostility — The trial court did not err by denying defendants' motion for summary judgment in an adverse possession claim where material issues of fact existed as to exclusivity and hostility. **Rushing v. Aldridge,**

Referee's report — confirmed without jury — issues of fact — The evidence was sufficient to go to the jury on a claim of adverse possession and the trial court erred by confirming a referee's report without submitting the issues to a jury where there were material issues of fact as to exclusive possession and hostility. **Rushing v. Aldridge,**

APPEAL AND ERROR

Cross-assignments of error — no longer used — proposed issues on alternative basis or separate cross appeal — The merits of cross-assignments of error were not considered on appeal because cross-assignments of error no longer exist. Appellees can instead denominate proposed issues on appeal as an alternative basis in law; however, the alleged error here did not deprive plaintiffs of an alternative basis in law for supporting the judgment. The alleged error should have been separately preserved and made the basis of a separate cross-appeal. **Bd. of Dirs. of Queens Towers Homeowners' Assoc. v. Rosenstadt,**

Notice of appeal — open court — transcript not included in appeal — no jurisdiction — An appeal by an armed robbery defendant was dismissed for lack of jurisdiction where defendant stated in his brief that he gave notice of appeal in open court but did not include a copy of the transcript. **State v. Parker,**

ASSOCIATIONS

Homeowners — condominium balconies — limited common areas — awnings — The condominium balconies in this case were limited common areas where the balconies were not specified as part of the units but were accessible only through individual units by the unit owners. The Board was responsible for the administration and operation of the limited common areas and acted within its authority when it elected to install awnings and charge the unit owners. **Bd. of Dirs. of Queens Towers Homeowners' Assoc. v. Rosenstadt,**

Homeowners — condominium — individual balconies — repair —

common area — The trial court correctly denied summary judgment for defendant-owners and correctly granted it for plaintiff homeowners' association in a declaratory judgment action to determine whether balconies were common areas for purposes of repair. As defined by the Declaration and the Unit Ownership Act, these balconies were not part of the unit because they were located on the exterior of the building, were not specified by the Declaration as accessory spaces within the units, and did not provide direct access to any common areas or thoroughfares. **Bd. of Dirs. of Queens Towers Homeowners' Assoc. v. Rosenstadt,**

CONSTITUTIONAL LAW

Charter schools — uniform laws — There was no “general law” issue under N.C. Const. art. XIV, § 3 in a charter schools funding case. The statutory provisions governing elementary and secondary education are applied uniformly throughout North Carolina, and nothing in this constitutional provision in any way limits the General Assembly's authority to create and provide funding mechanisms for optional schools that differ from those applicable to traditional public schools. **Sugar Creek Charter Sch., Inc. v. State of N.C., et al.**

Effective assistance of counsel — untimely motion to suppress — no prejudice shown — Defendant did not receive ineffective assistance of counsel in a concealed weapon and possession of a firearm by a felon case. Although defense counsel failed to move to suppress evidence in a timely manner, defendant failed to show the prejudice necessary for him to obtain relief on the basis of this claim. **State v. Best,**

General and uniform school system — charter schools — funding — Charter schools were not entitled to access counties' capital outlay funds by North Carolina Constitutional provisions concerning a general and uniform system of public schools. Charter schools are public schools but differ from traditional public schools in significant respects. There is no basis for constitutional concern arising from the use of differing funding mechanisms to support different types of public schools that are subject to different statutory provisions. **Sugar Creek Charter Sch., Inc. v. State of N.C., et al.,**

CONTRACTS

Forum selection clause — choice of laws — enforcement not unreasonable and unfair — The trial court erred in a usury, violation of the Consumer Finance Act, and unfair and deceptive trade practices case by finding the enforcement of the forum selection clause in the contract between

the parties would be unreasonable and unfair. **Parson v. Oasis Legal Fin., LLC,**

Meeting of minds — last essential act — Illinois — The trial court erred in a usury, violation of the Consumer Finance Act, and unfair and deceptive trade practices case by finding the contract between the parties was entered into in North Carolina. The last act essential to establishing a meeting of the minds and affirming the mutual assent of both parties to the terms of the agreement was the signing of the agreement by defendant's representative in Illinois. **Parson v. Oasis Legal Fin., LLC,**

COSTS

Medical negligence — mandatory costs — N.C.G.S. § 7A-305(d) — The trial court erred in a medical negligence case by granting defendants' motion for costs in the amount of \$1000. Because the Court of Appeals was bound by its decisions in *Springs v. City of Charlotte* and *Priest v. Safety-Kleen Sys., Inc.*, the trial court must award those costs which are mandatory under N.C.G.S. § 7A-305(d). The matter was remanded to the trial court for reconsideration of defendants' motion for costs consistent with the mandates in *Springs*. **Khomyak v. Meek,**

DISCOVERY

Possession of cocaine — confidential informant — identity not disclosed — no error — The trial court did not violate defendant's rights under state law in a possession of controlled substances case by denying defendant's request for a confidential informant's identity to be revealed. The factors weighing against disclosure of the confidential informant's identity were more substantial than the factors supporting disclosure. Furthermore, defendant failed to preserve for appellate review his argument that the trial court violated his federal constitutional rights. **State v. Mack,**

DIVORCE

Consent order — construction of — judicial authority — The trial court acted within its authority by construing the provisions of a consent order concerning the marital residence of a divorced couple at the request of the parties. The parties may, by agreement, properly petition the trial court for a determination of the meaning of disputed terms in a consent order without the requirement that one or both of the parties first be found in contempt. However, the court is without authority to order specific performance pursuant to a consent order in cases such as this, and, to the extent that the trial court required specific performance, those portions of its

order were vacated. **Holden v. Holden,**

Consent order — interpretation — erroneous findings — holding not affected — The trial court did not err in findings made when interpreting a consent order entered into as a part of a divorce settlement where any errors were *de minimis* and did not affect the holding. **Holden v. Holden,**

Property retained — interest — The trial court did not err by determining that plaintiff owed interest on an amount due for property retained during a divorce. **Holden v. Holden,**

EVIDENCE

Motion in limine — motion to suppress — definitions — A pretrial motion to suppress is a type of motion in *limine*; a motion to suppress denotes the type of motion, while a motion in *limine* denotes the timing of the motion. **State v. King,**

Recovered memory — evidence suppressed — Rule 403 — The trial court did not abuse its discretion by granting defendant's motion to suppress evidence of a recovered memory where the trial court concluded that the proposed evidence and expert opinion had become so attenuated that they lacked probative value under N.C.G.S. § 8C-1, Rule 403, even if the test for admissibility was technically met. Although *Barrett v. Hyldborg*, 127 N.C. App. 95, requires expert testimony for repressed memory evidence to be admitted, the trial court must still perform its gatekeeping function. **State v. King,**

FIREARMS AND OTHER WEAPONS

Assault by pointing a gun — air rifle — Juvenile adjudication and disposition orders were reversed where they were based on a finding of assault by pointing a gun in violation of N.C.G.S. § 14-34. That statute does not encompass imitation firearms, and the device in this case was an airsoft pump action imitation rifle. Devices which may not be pointed at another under the statute are limited to those fairly characterized as firearms. **In re N.T.,**

Carrying concealed weapon — possession of firearm by convicted felon — sufficient evidence — The trial court did not err in a carrying a concealed weapon and possession of a firearm by a convicted felon case by denying defendant's motion to dismiss the charges against him. The State presented sufficient evidence of all the elements of the offenses, including that defendant possessed the firearm discovered in the van. **State v. Best,**

JURY

Verdict — unanimity — multiple sexual acts against child — There was no danger of a lack of unanimity between jurors as to thirty-six verdicts of indecent liberties, first-degree statutory sex offense with a child under thirteen, and second-degree sex offense. The victim testified that he was forced to perform multiple sexual acts over a two year period and defendant was indicted for six counts of first-degree sex offense with a child under thirteen, six counts of second-degree sex offense, and twenty-four counts of indecent liberties. **State v. Davis,**

LANDLORD AND TENANT

Deck collapse — hazard not known to landlord — The trial court correctly granted summary judgment for defendant landlord in an action by a visitor of the tenant who was injured when a portion of a deck collapsed. No evidence of the defective condition existed when the apartment was leased; defendant had no knowledge of the potential hazard, created when the tenant's fiancé removed a planter; and the deck was not a common area for the two apartments in the building. **Martin v. Kilauea Properties, LLC,**

MOTOR VEHICLES

Driving while impaired — refusal to submit to chemical analysis — suspension of driving privileges proper — The trial court erred in reversing the suspension of petitioner's driving privileges by the Division of Motor Vehicles. There was evidence in the record supporting the finding that petitioner refused to submit to a chemical analysis and the trial court was bound by this finding. The affidavit of Trooper Campbell complied with the provisions of N.C.G.S. § 20-16.2(c1). **Hoots v. Robertson,**

SATELLITE-BASED MONITORING

Clerical error — remanded for correction — A satellite-based monitoring order was remanded for correction of a clerical error where the transcript of the hearing reflected the judge saying that the conviction (indecent liberties) was not an aggravated offense while the order found that the offense was aggravated. **State v. Jarvis,**

Double jeopardy and cruel and unusual punishment — no violation — There was no violation of defendant's right to be free from double jeopardy

and cruel and unusual punishment in ordering that defendant submit to satellite-based monitoring. **State v. Jarvis,**

Indecent liberties — physical, mental, or sexual abuse of minor — The trial court did not err when ordering an indecent liberties defendant to submit to satellite-based monitoring by finding that defendant’s conviction involved the physical, mental, or sexual abuse of a minor. **State v. Jarvis,**

Indecent liberties with child — sexual activity by substitute parent — finding of aggravated offense erroneous — The trial court erred in an indecent liberties with a child and sexual activity by a substitute parent case by ordering defendant to register as a sex offender and enroll in satellite-based monitoring for his natural life. The trial court’s finding that defendant committed an aggravated offense was erroneous and the trial court’s consideration of the risk assessment before deciding whether defendant committed an aggravated offense was not harmless error. **State v. Mann,**

Low risk — highest level of monitoring — The trial court did not err when ordering defendant to submit to satellite-based monitoring by determining that defendant required the highest possible level of supervision and monitoring, even though the risk assessment classified defendant as a low risk for reoffending. However, it was not clear whether the trial court found that defendant’s *Alford* plea itself showed a lack of remorse or whether defendant’s actions showed a lack of remorse and the case was remanded for additional findings. **State v. Jarvis,**

Notice — no constitutional violation — There was no constitutional due process violation in ordering defendant to enroll in satellite-based monitoring (SBM) without providing notice of the grounds where defendant was placed on probation with a condition that he be incarcerated for 120 days. His eligibility for SBM was determined by N.C.G.S. § 14-208.40A, not N.C.G.S. § 14-208.40b, and neither the Department of Correction nor the trial court was responsible for any type of notice about eligibility for SBM. **State v. Jarvis,**

Subject matter jurisdiction — statutory provisions — The trial court properly exercised subject matter jurisdiction in ordering satellite-based monitoring (SBM) despite defendant’s contention that the State failed to file a written pleading providing notice of the basis for the SBM. The General Assembly has devised a separate procedure for determining eligibility for SBM and clearly granted the superior courts subject matter jurisdiction to conduct these determinations pursuant to specific statutory procedures. **State v. Jarvis,**

SCHOOLS AND EDUCATION

Charter schools — capital funds — The pertinent statutory provisions clearly preclude charter schools from seeking access to the capital outlay funds maintained in the counties in which they operate. **Sugar Creek Charter Sch., Inc. v. State of N.C., et al.,**

Charter schools — funding — Constitutional provisions concerning the exclusive use of monies for public schools and the use of local revenues to supplement public school programs did not apply in a case concerning charter school funding. Plaintiffs did not assert that funds intended for public schools were used for another purpose, and the generalized provision authorizing the use of local funds did not address the criteria that the General Assembly must utilize in making funding decisions or preclude the General Assembly from adopting specific provisions authorizing different funding systems for traditional public schools and charter schools. **Sugar Creek Charter Sch., Inc. v. State of N.C., et al.,**

Sound basic education — non-traditional public schools — funding — The North Carolina Constitution merely requires that all North Carolina students have access to a sound basic education and does not preclude the creation of schools or other education programs with attributes or funding options different from traditional public schools. Plaintiff charter schools were not entitled to access their county's capital outlay fund. **Sugar Creek Charter Sch., Inc. v. State of N.C., et al.,**

SEARCH AND SEIZURE

Search of home — general inquiry — no reasonable expectation of privacy — plain view doctrine applicable — motion to suppress properly denied — The trial court did not err in a manufacturing marijuana and maintaining a dwelling place for the purpose of storing or selling controlled substances case by denying defendant's motion to suppress evidence obtained as a result of a search at his home. The trial court's unchallenged findings established that the officer had a right to be on defendant's porch because he was conducting a general inquiry in a place where defendant had no reasonable expectation of privacy and defendant's argument that the plain view doctrine did not apply was overruled. **State v. Lupek,**

SENTENCING

Prior record level calculation — prior felony not double-counted — The trial court did not erroneously calculate defendant's prior record level in a carrying a concealed weapon and possession of a firearm by a convicted felon case. The trial court did not err by using defendant's 1988 felonious breaking or entering conviction for the purposes of both supporting the possession of a firearm by a felon charge and calculating his prior record level. **State v. Best,**

SEXUAL OFFENSES

Multiple counts — sufficiency of evidence — testimony of each act not present — The trial court did not err by denying defendants' motions to dismiss multiple counts of indecent liberties, first-degree statutory sex offense with a child under thirteen, and second-degree sex offense where the victim did not testify to each attack as a separate incident. The victim clearly described discrete instances of different types of sexual acts perpetrated upon him by defendant over a long period of time. **State v. Davis,**

WORKERS' COMPENSATION

Reasonable search for employment — continuing to seek better position after hiring — The Industrial Commission did not err in a workers' compensation case by concluding that plaintiff engaged in a reasonable search for employment. Although defendants argued from cross-examination testimony that plaintiff did not do so, that testimony could plausibly be construed to mean that plaintiff did not continue to seek an even better position after leaving defendant and obtaining another job. **Wynn v. Untied Health Servs./Two Rivers Health—Trent Campus,**

Refusal to accept suitable employment — pre-maximum medical improvement — The Industrial Commission did not err by not terminating plaintiff's workers' compensation insurance where defendants alleged that she had unjustifiably refused to accept suitable employment. Defendant contended that there should be a different, more lenient standard for determining whether plaintiff refused suitable employment where plaintiff had not reached maximum medical improvement. This approach does not accurately reflect existing North Carolina law. **Wynn v. Untied Health Servs./Two Rivers Health—Trent Campus,**

Testimony of rehabilitation specialist — not relied upon by Commission — The Industrial Commission did not err in a workers' compensation case by not relying on testimony from defendants' rehabilitation specialist that plaintiff could have obtained higher post-injury earnings. Fact finding is the Commission's function, and there was ample evidentiary support for not crediting the testimony. **Wynn v. Untied Health Servs./Two Rivers Health—Trent Campus,**