

Case Summaries: 9/27/19 and 10/1/19

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This post provides summaries of the published criminal opinions issued by the North Carolina Supreme Court on September 27, 2019, and the North Carolina Court of Appeals on October 1, 2019.

North Carolina Supreme Court:

Evidence that the defendant had a relationship with the victim's mother was insufficient to support an aggravating factor that the defendant took advantage of a position or trust or confidence to commit a sexual offense against the victim.

[State v. Helms, ___ N.C. ___ \(Sept. 27, 2019\)](#)

The defendant began a relationship with B.F. in 2012. The criminal offenses occurred in 2014, when B.F. brought her daughter L.F. (age 3 at the time) to the defendant's parents' house. While B.F. and L.F. were sitting on a bed with the defendant and watching a children's television show, the defendant instructed B.F. to take off both her own and L.F.'s clothes, and she complied. At the defendant's request, B.F. touched L.F. in a sexual manner while the defendant watched and masturbated. Afterwards, again at the defendant's request, B.F. moved L.F. into a position where the defendant could place L.F.'s mouth on his penis. When L.F. later told her stepmother what had happened, the stepmother contacted law enforcement and social services, leading to an investigation and criminal charges. At trial, the defendant was convicted of two counts of engaging in a sex offense with a child under 13 years of age, and two counts of taking indecent liberties with a child. The jury also found that the state proved two aggravating factors: the victim was very young, and the defendant took advantage of a position of trust or confidence to commit the offense. On appeal, the defendant argued that there was insufficient evidence to support the second aggravating factor under G.S. 15A-1340.16(d)(15), because the only relationship involving a position of trust or confidence was between the defendant and B.F., rather than with the victim of the offense, L.F. The Supreme Court agreed, reversing the Court of Appeals, and held that the state's evidence "failed to show that the relationship between L.F. and defendant was conducive to her reliance on him" and only established "that L.F. trusted defendant in the same way she might trust any adult acquaintance, a fact which our courts have found to be insufficient to support this aggravating factor." Justice Newby dissented, and would have held that the aggravating factor was appropriate on these facts because the defendant took advantage of his position of trust or confidence with B.F. in order to facilitate the commission of the offense against L.F., and the statute does not require that the relationship be between the defendant and the victim.

Defendant received ineffective assistance of counsel when his attorney failed to adequately dispute the state's DNA evidence or call witnesses who could have supported his alibi and impeached other witnesses. In a 3-3 per curiam decision, the trial court's order granting defendant's MAR and vacating his convictions for murder and armed robbery on the basis of ineffective assistance of counsel was not disturbed.

[State v. Ryan, ___ N.C. ___ \(Sept. 27, 2019\)](#)

After a hung jury and mistrial in 2009, the defendant was convicted of first-degree murder and robbery with a

dangerous weapon in 2010 and sentenced to death. Defendant appealed, but the case was remanded to the trial court to resolve the defendant's post-conviction motions, including a motion for appropriate relief ("MAR") alleging ineffective assistance of counsel. After conducting a hearing on the MAR, the trial court found that the defendant received ineffective assistance of counsel and ordered the convictions vacated. In its written order, the trial court found that the state's DNA expert "failed to follow scientific protocol and included scientifically invalid interpretations of DNA samples," and defendant's counsel was deficient for failing to obtain an expert to assist him in cross-examining the state's expert and presenting a contrary interpretation. Additionally, the trial court found that defendant's counsel was deficient for failing to call three witnesses who could have testified in support of defendant's alibi or impeached other witnesses. The defense witnesses also could have testified that they were "threatened...with criminal charges if they testified in criminal court in accordance with their out of court statements," a fact that "should have been brought to the attention of the trial court and the jury." The state appealed the order granting the MAR, and argued that the trial court: (i) made findings in its order that were not supported by the evidence developed at the hearing; (ii) overstated the significance of the flawed DNA evidence in light of other evidence of the defendant's guilt; and (iii) misapplied the standard for evaluating ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), which requires showing that counsel's performance "fell below an objective standard of reasonableness" as well as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

In a per curiam decision, three justices voted to affirm the order granting the MAR and three justices voted to reverse it. (Justice Ervin did not participate in the decision.) As a result, the superior court's order granting the MAR and vacating the defendant's conviction is undisturbed, but stands without precedential value. [Note: the per curiam opinion does not include a factual summary or legal analysis. To review the parties' arguments, see [Appellant's Brief](#) (12/21/18), [Appellee's Brief](#) (2/22/19), and [Appellant's Reply Brief](#) (3/11/19).]

North Carolina Court of Appeals:

Prosecutor's amendment of a citation impermissibly changed the nature of the offense, so the district court lacked jurisdiction to enter a judgment; the superior court erred by denying defendant's petition for writ of certiorari to review the district court's denial of her MAR.

[State v. Bryant](#), ___ N.C. App. ___ (Oct. 1, 2019)

Defendant was charged by citation with misdemeanor larceny under G.S. 14-72. The prosecutor amended the citation by striking through the charging language and handwriting the word "shoplifting" on the citation, along with the prosecutor's initials and the date. The defendant entered a guilty plea to a lesser charge of shoplifting under G.S. 14-72.1, but later filed an MAR in district court arguing that the amendment was improper and the court lacked subject matter jurisdiction to enter judgment. The district court denied the MAR, and the superior court denied defendant's petition for writ of certiorari to review the denial. The Court of Appeals granted the defendant's petition for writ of certiorari, and held that the lower courts erred and the MAR should have been granted. The purported amendment to the citation impermissibly changed the nature of the offense because larceny and shoplifting are separate crimes with different elements. "Thus, the amendment was not legally permissible and deprived the district court of jurisdiction to enter judgment against Defendant." The Court of Appeals reversed the superior court's denial of the petition for writ of certiorari and vacated the shoplifting judgment.

In a "hybrid" bench trial that incorporated procedures from criminal jury trials and civil bench trials, the defendant's convictions for first-degree murder by starvation and negligent child abuse were supported by competent evidence and there was no fatal variance between the child abuse indictment and the evidence presented at trial.

[State v. Cheeks, ___ N.C. App. ___ \(Oct. 1, 2019\)](#)

This case arose out of the death of a malnourished and neglected child with a genetic condition and developmental delays. The defendant, who was the stepfather and caregiver of the child, was convicted of first-degree murder by starvation and negligent child abuse. The trial judge adopted a “hybrid” procedure for conducting the bench trial that included holding a charge conference on the substantive law, as in a criminal jury trial, and making detailed findings of fact and conclusions of law, as in a civil bench trial. The Court of Appeals noted that the additional steps taken by the trial judge were not required by the rules of procedure or applicable statutes governing criminal bench trials, but they were “fully within the trial court’s discretion” and helped provide “a full understanding of the law applied and the facts it determined to be true.” Finding no case precedent addressing the appropriate standard of review for the hybrid procedures used at trial, the appellate court held that it would “review the trial court’s order based upon the standards of review as set forth for findings of fact in criminal cases regarding motions to suppress and motions for a new trial.” Under that standard, the trial court’s findings of fact are binding on appeal if supported by any competent evidence, while conclusions of law are reviewed de novo. Applying those standards of review, the Court of Appeals addressed five issues.

First, even if there was conflicting evidence that the child was given some food, there was sufficient evidence to support the finding that the child was provided with an inadequate amount of food to keep him alive, which constituted “starvation” pursuant to *State v. Evangelista*, 319 N.C. 152 (1987) (starvation means “death from the deprivation of liquids or food necessary in the nourishment of the human body”). Second, the Court of Appeals rejected the argument that a “legal duty to feed” is a requisite element of murder by starvation under G.S. 14-17, and even if it is, the defendant was the primary caregiver for the child and therefore he did have a legal duty to feed him. Third, as with murder by poison or torture, murder by starvation implies the element of malice, and therefore no separate showing of malice is required. Fourth, given the ample and credible evidence that starvation was the proximate cause of the child’s death, the trial court acting as the finder of fact could choose to believe or disbelieve conflicting testimony regarding other physical abuse or neglect may have contributed to the child’s death. Finally, there was no fatal variance between the child abuse indictment and the evidence at trial. The indictment adequately alleged all the essential elements of the offense, and any additional statements it contained about the failure to provide medical care, nutrition, or hydration were mere surplusage.

Warrantless search of a probationer’s residence, conducted by law enforcement officers acting in coordination with probation officers, was permissible since it was “directly related” to probation supervision based on the defendant’s risk assessment, suspected gang affiliation, and positive drug screen.

[State v. Jones, ___ N.C. App. ___ \(Oct. 1, 2019\)](#)

The defendant was on probation for a conviction of possession of a firearm by a convicted felon, and he was classified by his probation officer as “extreme high risk” for supervision purposes. Officers from several law enforcement agencies, working in conjunction with probation officers, conducted warrantless searches of the residences of high risk probationers in the county, including the defendant. Officers found drugs and paraphernalia during the search of defendant’s residence, and he was charged with several drug-related felonies. The defendant moved to suppress the evidence from the warrantless search, arguing that it was illegal because it was not “directly related” to his probation supervision, as required by G.S. 15A-1343(b)(13). The appellate court disagreed and affirmed the denial of the defendant’s suppression motion. The facts of this case were distinguishable from *State v. Powell*, ___ N.C. App. ___, 800 S.E.2d 745 (2017). In *Powell*, a U.S. Marshals task force conducted warrantless searches of random probationer’s homes as part of an ongoing operation for its own purposes and did not even notify the probation office. The *Powell* court held that those warrantless searches were not “directly related” to probation supervision. By contrast, the defendant in this case was selected for the enforcement action by his probation officer based on “his risk assessment, suspected gang affiliation, and positive drug screen,” and the “purpose of the search was to give the added scrutiny and closer supervision required of ‘high risk’ probationers such as the Defendant.” The search was therefore directly related to his supervision.

The state did not violate the defendant's due process rights by knowingly presenting false testimony; the defense did not show that the state knew the witness would testify differently from her prior statements, or that the testimony was material.

[State v. Kimble. N.C. App. \(Oct. 1, 2019\)](#)

The defendant was convicted of murder for shooting and killing the victim in the parking lot of a dance club. Before trial, a witness to the shooting met with prosecutors to review her 35-page statement to the police and prepare her trial testimony. During that interview, the witness stated that she did not see the shooting but she saw the defendant holding a gun and running towards the victim. The state provided notes from that interview to the defense. At trial, however, the witness testified that she saw the defendant stand over the victim and shoot him. The defense asked the court to instruct the state to enter into a stipulation or make a statement to the jury explaining that the witness had not previously claimed she saw the shooting. The state responded that it had no knowledge the witness would testify inconsistently with her prior statement, it had complied with the discovery rules by turning over the prior statement and interview notes, and any discrepancies should be addressed on cross-examination. The trial court did not order the state to enter a stipulation or address the jury, and instead offered the defense an opportunity to conduct additional cross-examination, which the defense declined. The Court of Appeals affirmed the trial court's ruling and rejected the defendant's argument that the state knowingly presented false testimony in violation of defendant's due process rights. Even if the witness's trial testimony was false, the defendant failed to show that: (1) the testimony was material; and (2) the state knowingly and intentionally used that false testimony to convict the defendant. First, the defendant did not show that the testimony was material because other witness testimony and circumstantial evidence established that the defendant shot the victim. Second, the defendant did not show that state deliberately used false testimony because the state was not aware that the witness would testify inconsistently with her prior statement and pretrial interview. Any discrepancies between the witness's prior statements and her trial testimony were matters of credibility, and they were properly addressed through impeachment on cross-examination.

A defendant who fires one shot into a moving vehicle occupied by two people may be charged and convicted for two offenses under G.S. 14-34.1, but judgment must be arrested on the lesser of the two counts.

[State v. Miller. N.C. App. \(Oct. 1, 2019\)](#)

After getting into an argument at a holiday party, the defendant fired a warning shot from a rifle into the air and then fired a single shot into a moving vehicle occupied by two people, striking one of them in the neck and seriously injuring him. Defendant was subsequently convicted and sentenced for four felonies related to the shooting, including charges for both: (1) discharging a weapon into an occupied vehicle in operation inflicting serious bodily injury, a Class C felony under G.S. 14-34.1(c) (for the injured victim); and (2) discharging a weapon into an occupied vehicle in operation, a Class D felony under G.S. 14-34.1(b) (for the second occupant). On appeal, the defendant argued that the trial court should have arrested judgment on the lesser of the two charges for firing into an occupied vehicle, because he could not be sentenced twice for the single act of firing one shot. The Court of Appeals agreed and held that although the defendant could be indicted and tried for both charges, upon conviction the trial court should have arrested judgment for the lesser offense. This case was distinguishable from other cases in which multiple judgments were supported because the defendant fired multiple shots or fired into multiple vehicles. In this case, where there was only one shot fired into one vehicle, the relevant inquiry under the statute is only whether the vehicle was occupied; the number of occupants is immaterial. To the extent that the presence of additional occupants in the vehicle increases the risk of injury or enhances the culpability of the act, that factor is accounted for by the ascending levels of punishment prescribed under the statute.

When multiple charges arising out of a single incident are adjudicated together in the same proceeding, only one court cost may be imposed.

[State v. Rieger. N.C. App. \(Oct. 1, 2019\)](#)

The defendant was stopped in his vehicle for following too closely, and officers discovered marijuana and drug paraphernalia in his possession. The defendant was charged with two separate misdemeanor drug offenses and convicted of both at a jury trial. The trial court entered two judgments and assessed two court costs. G.S. 7A-304(a) states that court costs shall be assessed “in every criminal case,” so the issue on appeal was whether this matter represented one case or two (i.e., the one underlying event or the two separate criminal charges). The Court of Appeals concluded that there were reasonable arguments in favor of both interpretations, and neither the plain language nor the legislative history of the statute provides a clear answer. Turning to the spirit and purpose behind the act, the appellate court held that court costs are not intended to be a punishment or a fine; instead, they are only intended to recoup the actual costs imposed on the justice system. “With this in mind, we hold that when multiple criminal charges arise from the same underlying event or transaction and are adjudicated together in the same hearing or trial, they are part of a single ‘criminal case’ for purposes of the costs statute. Accordingly, we vacate the imposition of costs in one of the two judgments against Rieger.”

A defendant who attempted suicide during trial and was held for an involuntary commitment evaluation was voluntarily absent by her own action, waiving her right to be present. The trial could continue in her absence, and the court was not required to order a competency evaluation sua sponte. Trial court also did not err by amending judgments in defendant’s absence to correct clerical errors that did not change the sentence.

[State v. Sides, ___ N.C. App. ___ \(Oct. 1, 2019\)](#)

After the third day of her embezzlement trial, the defendant took 60 Xanax pills in apparent intentional overdose and suicide attempt. The defendant was taken for an involuntary commitment evaluation and the trial was postponed until the following week. When the trial resumed, the defendant was still in the hospital for evaluation and treatment. Over the defendant’s objection, the trial judge ruled that pursuant to *State v. Minyard*, 231 N.C. App. 605 (2014), the defendant was voluntarily absent by her own actions and the trial would continue. The defense made a pro forma motion to dismiss at the close of the state’s evidence, but not on the grounds of either her absence or her competency. The defendant was convicted of three counts of embezzlement and sentenced a few days later when she returned to court. The judgments were later amended, again in the defendant’s absence, to correct a clerical error regarding the offense dates.

On appeal, the defense argued that the trial court erred by failing to order a competency hearing *sua sponte* after the defendant’s apparent suicide attempt. The Court of Appeals disagreed and held that it was not error to continue the trial in the defendant’s absence or decline to order a competency hearing. Under *Minyard*, the defendant was voluntarily absent and thus waived her right to be present for trial; the fact that it may have been an attempted suicide does not change that analysis. The court is only required to examine competency *sua sponte* if there is substantial evidence before it that defendant may be incompetent. Based on a review of the record as a whole, the appellate court was not persuaded that the defendant’s suicide attempt was a result of mental illness rather than a voluntary act intended to avoid facing prison. The Court of Appeals further held that it was not error to amend the judgments in defendant’s absence. The changes only corrected clerical errors and did not change the sentences actually imposed, so the defendant did not have to be present.

When an incompetent defendant responded to treatment and regained competency, the trial court did not err by declaring him competent based on updated psychological evaluations, a joint motion from the state and defense, and the defendant’s demonstrated ability to understand the proceedings and assist in his own defense; the trial court was not required to conduct another competency hearing sua sponte.

[State v. Williams, ___ N.C. App. ___ \(Oct. 1, 2019\)](#)

In 2007, the defendant shot and killed one victim, a family friend, and seriously injured a second victim, his mother. After he was arrested and charged with murder and attempted murder, the defendant was evaluated and found to be suffering from paranoid schizophrenia and substance abuse disorder, rendering him unable to assist in his own

defense and incompetent to stand trial. The state dismissed the charges with leave to reinstate. The defendant was re-evaluated by two doctors in 2015 and 2016, and both doctors concluded that the defendant had substantially improved in response to medication and treatment and was now competent to proceed. Based on the new evaluations and a joint motion from the defense and the state, the court declared the defendant competent. The state reinstated the criminal charges and the defendant proceeded to trial, where he was convicted of murder and attempted murder. On appeal, the defense argued that the trial court erred by not ordering another competency assessment *sua sponte*, in light of the defendant's history and mental condition. Based on the record as a whole, the Court of Appeals held that the trial court did not err. Although the defendant still appeared to hold a number of delusional beliefs, "irrational beliefs and nonsensical positions" do not, by themselves, raise a bona fide doubt about competency. The trial court heard testimony from two doctors opining that the defendant was competent, and the defendant demonstrated that he was able to confer with his counsel, assist in his defense, engage in colloquies with the court on legal issues, make a knowing and voluntary waiver of his right to remain silent, and testify "lucidly and at length on his own behalf." Therefore, the defense failed to demonstrate that there was substantial evidence he was incompetent during the trial, and the trial court did not err by declining to order another competency hearing *sua sponte*.