Garcell and Jury Instructions on Multiple Counts

Author : Jeff Welty

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Update: I knew it. One reader emailed me to say that our appellate courts have approved truncated jury instructions for at least *thirty years*, and referred me to *State v. Gainey*, 355 N.C. 72 (2002), which collects some cases and states that the court "has discouraged needless repetition" during jury instructions.

Original Post: One of the aspects of my job that's both a blessing and a curse is that I get to -- and have to -- read every published criminal law opinion by our appellate courts. The state supreme court released a new batch of opinions a few days ago, and I sat down with them yesterday. Today, I want to focus on *State v. Garcell*, and in a day or two, I'll have something to say about State v. Miller.

Garcell was a capital case. Although the defendant raised a large number of issues, most of them were pretty thin. (Bob Farb's summary of the case was distributed via his listserv, to which you can subscribe here.) I want to focus on one tidbit from the case, and in particular, on its application outside the capital context.

During the penalty phase, the defendant requested, and the trial judge agreed, to submit three statutory mitigating circumstances and twenty-four non-statutory mitigating circumstances. The judge instructed the jury as to each statutory mitigating circumstance individually, and then provided a single instruction about how the jury was to consider the non-statutory mitigating circumstances before simply reading a list of them. On appeal, the defendant argued that the judge's failure to provide a complete individual instruction as to each of the non-statutory circumstances meant that those circumstances were presented in a way that made the seem less worthy of consideration than the statutory mitigating circumstances, in violation of *State v. Johnson*, 298 N.C. 47 (1979) (stating that both statutory and non-statutory mitigating circumstances should be on an "equal footing before the jury"). Our supreme court disagreed, finding that the trial judge's method of instruction was a "practical" one that "spared the jury the possibly mind-numbing, trance-inducing experience of hearing the same individualized instruction repeated twenty-four times."

This reasoning seems to apply equally to, for example, fraud cases where there are 100 counts of obtaining property by false pretenses. In such cases, judges and lawyers sometimes wonder whether the judge has to repeat the entire pattern jury instruction 100 times, or whether the judge can give the entire instruction once, and then, for each subsequent count, provide a truncated instruction that incorporates by reference the complete instruction and highlights any appropriate differences, such as the name of the victim and the time that the offense took place. I've always opined that such a streamlined procedure was permitted, but I never had a case to support my opinion. Now I do. (Inevitably, one of you will leave a comment with the case I should have found, but never did.)

The court's resolution of this issue seems eminently sensible -- a triumph of substance over form, and a sweet victory for the sanity of jurors. Anyone disagree?

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