



## State v. Mumford: A Consistent Rule for Inconsistent Verdicts

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I wrote [here](#) about the court of appeals decision in *State v. Mumford*, \_\_\_ N.C. App. \_\_\_, 688 S.E.2d 458 (2010), vacating the defendant's convictions for felony serious injury by vehicle based on his acquittal of driving while impaired, a lesser included offense. The [state supreme court reversed](#) the court of appeals on Friday, holding that because the verdicts were merely inconsistent, rather than legally contradictory, and sufficient evidence was presented at trial to support the defendant's convictions for felony serious injury by vehicle, the court of appeals erred in vacating the jury's verdicts.

The supreme court explained the long-established rule that mere inconsistency does not invalidate a verdict supported by sufficient evidence, but that when a verdict is inconsistent and mutually exclusive, a defendant is entitled to relief. The verdicts in *Mumford's* case were of the former variety as he was convicted of the greater offense and acquitted of the lesser. In contrast, verdicts are mutually exclusive when they "purport[] to establish that the [defendant] is guilty of two separate and distinct criminal offenses" notwithstanding that the guilt of one offense necessary excludes guilt of the other. (Slip. Op. at 10 (quoting *State v. Meshaw*, 246 N.C. 205, 207 (1957).) For example, verdicts finding a defendant guilty of both embezzlement and obtaining property false pretenses were considered inconsistent and mutually exclusive in *State v. Speckman*, 326 N.C. 576, 577 (1990), as property acquired through embezzlement must be acquired lawfully, pursuant to a trust relationship, and then wrongly converted, whereas property acquired by false pretenses must be acquired unlawfully pursuant to a false representation.

In addition to rejecting the exception to the inconsistent verdict rule created by the court of appeals decision in *Mumford*, which afforded a claim for relief to defendants charged with and acquitted of a lesser included offense and convicted of the greater offense, the supreme court opinion in *Mumford* eliminated the narrower exception to the inconsistent verdict rule applied in earlier felonious possession of stolen goods cases. (Jeff Welty blogged about that exception [here](#).) Recognizing that the court's decisions in *State v. Perry*, 305 N.C. 225 (1982) (vacating the defendant's conviction for felonious larceny committed pursuant to a breaking and entering based upon the defendant's acquittal of breaking and entering), and *State v. Holloway*, 265 N.C. 581 (1965) (per curiam) (ordering a new trial upon charges of felonious larceny based on defendant's acquittal of breaking and entering and the court's failure to instruct the jury regarding the state's burden to prove the value of the stolen property), departed from "long-standing inconsistent verdict precedent" the court overruled those cases to the extent that they are contrary to *Mumford* and that long-standing precedent.

[State v. Mumford](#) thus leaves us with a consistent rule for inconsistent verdicts.