

## CONFESSION

### **Violation of Vienna Convention (Requiring Notification to Arrested Foreign National of Right to Have Consul of National's Country Notified of Arrest) Does Not Provide Remedy of Suppression of Confession**

*State v. Herrera*, \_\_\_ N.C. App. \_\_\_, 672 S.E.2d 71 (3 February 2009).

Officers obtained an arrest warrant charging the defendant with first-degree murder. They notified Virginia authorities of the warrant because it was believed he might be there. A Spanish interpreter called the defendant's grandmother in Honduras to determine if the defendant had returned there. The grandmother expressed concern about the defendant and asked the interpreter to notify her if law enforcement found him. The defendant was eventually arrested in Virginia and taken to Durham. During interrogation, in which the same interpreter was used, the defendant asserted the right to counsel and questioning stopped. The officer then prepared to take the defendant to a magistrate. The interpreter advised the officer of his call to the grandmother in Honduras and her desire to be notified when the defendant was in custody. The officer then allowed the interpreter to place a call on speaker phone to the defendant's grandmother and offered to let the defendant speak with her, to which he assented. He and his grandmother conversed in Spanish over the speaker phone in the presence of the officer and interpreter, with the interpreter translating for the officer. During the call, the grandmother asked the defendant, "Son, did you do this?," and he replied affirmatively. The grandmother told him to tell the truth to the police, and he indicated he would. Thereafter, the defendant re-initiated interrogation with the officer by informing the interpreter that he wanted to tell the truth. The court ruled, relying on *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006), that a violation of the Vienna Convention on Consular Relations (requiring notification to arrested foreign national of right to have consul of national's country notified of arrest) does not provide the remedy of suppression of a confession.

### **Admission of Defendant's Confession Through Reading to Jury of Officer's Handwritten Notes Was Error Because Officer Did Not Have Defendant Review and Confirm Notes as Accurate Representation of Defendant's Answers, Nor Were Notes a Verbatim Account of Defendant's Confession**

*State v. Spencer*, \_\_\_ N.C. App. \_\_\_, 664 S.E.2d 601 (19 August 2008).

The court ruled, relying on *State v. Walker*, 269 N.C. 135 (1967), and *State v. Bartlett*, 121 N.C. App. 521 (1996), that the admission of the defendant's confession through the reading to the jury of an officer's handwritten notes was error because the officer did not have the defendant review and confirm the notes as an accurate representation of the defendant's answers, nor were the notes a verbatim account of the defendant's confession. [Author's note: For a discussion of the admissibility of a written confession, see page 236 of *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).]

## **(2) Confession Was Not Involuntary Based on Officer's Statements to Defendant**

*State v. Shelly, 181 N.C. App. 196, 638 S.E.2d 516 (2 January 2007).*

The defendant was convicted of first-degree murder. (2) The court ruled that the defendant's confession was not involuntary based on the officer's statements to the defendant. The officer said that a person who cooperates and shows remorse and is honest and has no criminal background has the best chance of obtaining leniency because he cooperated. The court upheld the trial judge's findings that no improper promises were made to the defendant. The officer did not promise the defendant any different or preferential treatment as a result of the defendant's cooperation. The officer did not create a hope of leniency that induced the defendant to confess to the murder.

## **Confessions and Incriminating Statements-Defendant not in custody-Statement voluntary**

*State v. Smith, 180 N.C. App. 86 (2006)*

Defendant's motion to suppress his inculpatory statements to the police was properly denied. There was competent evidence to support the court's findings, which supported its conclusions, that defendant was not in custody for Miranda purposes and that his statements were voluntary.

## **Confessions And Incriminating Statements -- Miranda Warnings -- Vietnamese Translation**

*State v. Nguyen, 178 N.C. App. 447 (2006)*

The trial court's conclusion that a Vietnamese defendant's waiver of his Miranda rights was knowing and voluntary was supported by the findings, to which he did not assign error. Although defendant finds fault with the use of a police officer to translate rather a certified interpreter, there was no evidence that the officer was deceitful or acted improperly; furthermore, the officer was raised in Vietnam and could communicate clearly with defendant.

## **Evidence – Hearsay - Statement Against Interest**

*State v. Laney, 178 N.C. App. 337 (2006)*

A hearsay statement from an indecent liberties defendant to the mother of the child that he would "be guilty" in court was admissible under N.C.G.S. § 8C-1, Rule 801(d)(A) as a statement against interest.

### **(1) Confessions And Incriminating Statements -- Miranda Warnings -- Flawed Translation To Spanish**

### **(2) Confessions And Incriminating Statements -- Knowing Waiver Of Rights-- Borderline IQ -- Spanish Only Speaker**

*State v. Ortez, 178 N.C. App. 236 (2006)*

(1) The Spanish translations of Miranda warnings used here contained grammatical errors, but reasonably informed defendant of his rights. (2) The trial court's unchallenged findings of fact support its conclusion of a knowing waiver of rights by a defendant with borderline or low average intellectual function who spoke only Spanish.

### **Confessions And Incriminating Statements-Statement After Right To Counsel Invoked-Recorded Jailhouse Telephone Call To Girlfriend**

*State v. Hocutt, 177 N.C. App. 341 (2006).*

The police did not impermissibly elicit statements from defendant after he invoked his right to counsel where defendant made incriminating statements to his girlfriend in a recorded jailhouse telephone call. Although a detective told the girlfriend some facts which she discussed with defendant, **she was not acting as an agent of the State.**

### **Confessions And Incriminating Statements -- Booking Question --Defendant's Address -- Maintaining A Dwelling For Drugs**

*State v. Boyd, 177 N.C. App. 165 (2006)*

A booking question about a cocaine defendant's address did not fall within a Miranda exception and defendant's answer was not admissible where the charges against defendant included maintaining a dwelling for the possession or sale of cocaine. There was **prejudice** because, in the absence of the booking question, there was insufficient evidence of the charge.

### **Evidence--Defendant's Statements--Exculpatory--Integral And Natural Part Of Development Of Facts--Chain Of Circumstances**

*State v. Yelton, 175 N.C. App. 349 (2006)*

The trial court did not err in a second-degree murder, possession with intent to sell and deliver methamphetamine, and sale and delivery of methamphetamine case by admitting into evidence five statements elicited from defendant during a police interrogation even though defendant contends they violated N.C.G.S. § 8C-1, Rule 404(b), because: (1) two of the statements could only have exculpated defendant since they suggest defendant did not sell methamphetamine to the

deceased on 6 March 2002, and defendant does not show how these statements could have been prejudicial; (2) while a third statement was not necessarily exculpatory, it did not refer to prior crimes, wrongs, or acts, and thus, fell outside the scope of Rule 404(b); and (3) regarding the fourth and fifth statements, defendant's statements that he had turned the deceased on to some meth two to three weeks prior to his death and that he would give drugs to the deceased when he worked for defendant were an integral and natural part of the development of the facts and were necessary to complete the story of defendant's crimes for the jury.

**(1) Confessions and Incriminating Statements--voluntariness--not a part of trickery or deception**

**(2) Confessions and Incriminating Statements statements to county officer no violation of federal plea agreement**

*State v. Lacy, 175 N.C. App. 370 (2006)*

(1) The trial court did not err in an assault with a deadly weapon inflicting serious injury, second-degree kidnapping, and double first-degree burglary case by concluding as a matter of law that defendant's statements were freely and voluntarily made and were not a part of any trickery or deception, because: 1) the trial court found as a finding of fact, which defendant did not assign as error and is thus binding on appeal, that defendant agreed to and in fact solicited participation in a debriefing to disclose information related to the indictment or other crimes as part of a plea agreement; 2) defendant readily and willingly participated in the debriefing, and no questions were asked of defendant and defendant was not otherwise prompted regarding any of the information pertaining to defendant's involvement in these crimes; and 3) defendant had previously read and signed the plea agreement and had gone over the terms of the agreement with his attorney who was also present at the debriefing. (2) The trial court did not err in an assault with a deadly weapon inflicting serious injury, second-degree kidnapping, and double first-degree burglary case by concluding as a matter of law that use of defendant's statements to a county officer did not violate his plea agreement with the federal government, because: 1) the plea agreement provided that the United States District Court for the Eastern District of North Carolina would not prosecute defendant for any crimes he confessed to except for crimes of violence, and a Beaufort County police officer's subsequent statement giving a specific example of a crime of violence, i.e. murder, did not modify defendant's plea agreement; 2) defendant knew the contents of the plea agreement, had counsel present, and knew the police officer was not a party to the agreement; and 3) as the officer's statement did not modify the plea agreement, the federal government did not breach the plea agreement by informing Wilson County authorities of defendant's confession to a home invasion which was a crime of violence.

**Drugs -- Conspiracy To Traffic In More Than 400 Grams Of Cocaine – Confession -  
- Sufficiency Of Evidence**

*State v. Sims, 174 N.C. App. 829 (2005)*

The trial court did not err by denying defendant's motion to dismiss the charge of conspiracy to traffic in more than 400 grams of cocaine, because: 1) our Supreme Court has held that in noncapital cases where the State relies upon defendant's confession to obtain a conviction, it is no longer necessary that there be independent proof tending to establish the corpus delicti of the crime charged if the accused's confession is supported by independent evidence tending to establish its trustworthiness; 2) defendant's statements that he had purchased a half kilo (500 grams) of cocaine from a Mexican on three occasions provided sufficient evidence; and 3) two items of independent proof establish the trustworthiness of defendant's statement including that a substantial quantity of cocaine was found in defendant's possession at the time of his arrest and a controlled buy was conducted prior to the search of defendant's home in which an informant purchased twenty-six grams of cocaine from defendant in his home.

**Constitutional Law -- Right To Remain Silent - -Miranda Protections Not  
Applicable When Questioned By Neither An Officer Nor Someone Acting As An  
Agent**

*State v. Pittman, 174 N.C. App. 745 (2005)*

The trial court did not commit plain error in a first-degree kidnapping of a child, conspiracy to commit kidnapping, and attempted first-degree murder case by allowing the child's mother to testify regarding defendant's failure to respond to questions she asked him in letters concerning why he kidnapped their daughter, because: 1) the mother's testimony did not reference any silence of defendant in response to questioning by law enforcement, and Miranda's protections apply only when a defendant is subject to custodial interrogation; 2) the mother's questions were posed by her and the record contains no indication that she was acting at the behest of law enforcement; and 3) even if Miranda were applicable, defendant chose not to remain silent when he voluntarily wrote back to the mother.

**(1) Confessions and Incriminating Statements \_-custodial statement--motion to  
suppress**

**(2) Evidence -- Codefendant's Redacted Custodial Statement -- Replacing  
Defendant's Name With Word “Someone”**

*State v. Jacobs, 174 N.C. App. 1 (2005)*

(1) The trial court did not err in an impersonation of a law enforcement officer, armed robbery, burglary, and kidnapping case by denying defendant's motion to

suppress his custodial statement, because: 1) the trial court was not required to make written findings of fact when there was no material conflict in the evidence of this case; 2) the waiver form signed by defendant on 6 August 2002 indicated that he was willing to make a statement and answer questions and that he did not want a lawyer at that time; 3) defendant failed to introduce any evidence during the suppression hearing tending to show he invoked his right to counsel on 6 August 2002, and if anything, he invoked his right to remain silent regarding an unrelated incident; and 4) law enforcement officials involved in the investigation of the pertinent incident honored defendant's invocation of his right to remain silent regarding an unrelated incident. (2) The trial court committed harmless error, if any at all, in an impersonation of a law enforcement officer, armed robbery, burglary, and kidnapping case by allowing the State to introduce a redacted version of the codefendant's custodial statement where defendant's name was replaced with the word "someone," because: 1) assuming *arguendo* that it was improper for the trial court to allow a detective to read the redacted version of the codefendant's statement, defendant is not entitled to a new trial when the State presented overwhelming evidence to establish defendant's guilt notwithstanding the codefendant's statement, including testimony from a victim and a coparticipant which tended to show that defendant entered the victim's residence during the incident and was referred to by the name "Sarge;" and 2) defendant's own statement to law enforcement officers described his involvement in the incident, including his getting out of the car, walking to the house, and telling a coparticipant they needed to go.

### **Motor Vehicles--Driving While Impaired--Motion To Dismiss--Corpus Delicti Rule-- Confession--Corroborating Evidence**

*State v. Cruz, 173 N.C. App. 689 (2005)*

The trial court did not err by denying defendant's motion to dismiss the charge of driving while impaired, because evaluating the evidence under either the traditional or trustworthiness approach to the corpus delicti rule reveals that: 1) the State offered corroborating evidence of the essential facts of defendant's confession through the testimony of various witnesses; and 2) several officers and witnesses testified to defendant's drinking and impairment.

### **Suppression Of A Defendant's Statements To Law Enforcement Is Not A Remedy For A Violation Of The Vienna Convention On Consular Relations**

*Sanchez-Llamas v. Oregon, 548 U.S. 331 (2006).*

The Court ruled, assuming without deciding that the Vienna Convention on Consular Relations (an international treaty requiring law enforcement to inform an arrested foreign national of the right to consular notification) creates judicially enforceable rights, (1) **suppression of a defendant's statements to law enforcement is not a remedy for a violation of the treaty**; and (2) a state may

subject claims of treaty violations to the same procedural default rules that apply generally to other federal law claims. [Author's note: For a discussion of law enforcement obligations under the treaty, see the text on page 44 and note 347 on page 63 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).]

### **Confessions And Incriminating Statements--Custodial Statements--Voluntariness—Intoxication**

*State v. Fisher, 171 N.C. App. 201 (2005)*

The trial court did not commit plain error in a prosecution for assault with a deadly weapon with intent to kill inflicting serious injury and multiple assaults with a deadly weapon with intent to kill by denying defendant's motion to suppress his custodial statement to an officer even though **defendant contends he was intoxicated and does not remember waiving his Miranda rights**, because: 1) a confession is admissible unless defendant is so intoxicated that he is unconscious of the meaning of his words; 2) in the instant case the officer testified that he read defendant the Miranda warnings, defendant acknowledged that he understood the warnings, and thereafter defendant waived his rights and agreed to answer any of the officer's questions; 3) the officer testified that he did not smell alcohol on defendant, that defendant did not seem impaired in the slightest, and that defendant made no indication that he had any difficulty at all in understanding the officer's questions; 4) if there is a conflict between the State's evidence and defendant's evidence on material facts, it is the duty of the trial court to resolve the conflict and such resolution will not be disturbed on appeal; and 5) an unsigned statement taken in longhand is not precluded from admission if it contains a record of defendant's actual responses to the recorded questions.

### **Confessions And Incriminating Statements -- Miranda Rights -- Mentally Retarded Defendants**

*State v. Andrews, 170 N.C. App. 68 (2005)*

The trial court did not err in a first-degree felony murder and conspiracy to commit robbery case by denying defendant's motion to suppress his statement to the police allegedly obtained in violation of his Miranda rights even though defendant had **an IQ of 61**, because the findings all support the conclusion that the statement was voluntarily given and that defendant knowingly waived his Miranda rights.

### **Questioning Concerning Immigration Status of House Occupant Detained During Execution of Search Warrant Concerning Gang Shooting Did Not Violate Fourth Amendment When Questioning Did Not Prolong Length of Detention**

*Muehler v. Mena*, 544 U.S. 93 (22 March 2005)

Officers obtained a search warrant for a house and premises to search for deadly weapons and evidence of gang membership related to an investigation of a gang-related drive-by shooting. A SWAT team and other officers (a total of 18 officers altogether) executed the warrant. Aware that the gang was composed primarily of illegal immigrants, an INS officer accompanied the officers. One or two officers guarded four occupants detained at the scene, who were handcuffed for about two to three hours while the warrant was executed. In addition, an INS questioned the occupants about their immigration status while the warrant was executed. One of the occupants (the plaintiff in this case) sued the officers for allegedly violating her Fourth Amendment rights during the execution of the search warrant. (2) The Court ruled that the questioning of the plaintiff about her immigration status did not violate the Fourth Amendment because the plaintiff's detention during the execution of the search warrant was not prolonged by the questioning. **Mere questioning by law enforcement does not constitute a seizure.**

[Author's note: This ruling appears to affirm validity of cases that have ruled that law enforcement questioning during a traffic stop is not limited by the Fourth Amendment, even though the questioning is unrelated to the traffic stop, when the questioning does not prolong the detention of the motorist during the stop. See cases in note 163 on page 55 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003).]

### **Confessions and Incriminating Statements--post-Miranda statements--voluntariness**

*State v. Houston*, 169 N.C. App. 357 (2005)

The trial court did not err in a trafficking in cocaine by possession of more than 200 but less than 400 grams case by allowing the introduction of **defendant's incriminating post-Miranda statements that were allegedly induced by the hope of some benefit**, because: (1) defendant was a thirty-year-old high school graduate with significant knowledge and experience with the criminal justice system based upon his numerous prior arrests, defendant was advised of and waived his Miranda rights both orally and in writing, and defendant did not appear scared or intimidated during the one hour to one hour and fifteen minutes interview and at no time asked for a break or to speak to an attorney; (2) the officers did not discuss what the specific rewards or benefits of cooperation might be, nor did they tell defendant that his sentence would be reduced or the amount of his release bond was dependent on his cooperation; and (3) **a suggestion of hope created by statements of law enforcement officers that they would talk to the District Attorney regarding defendant's cooperation where there was no indication that preferential treatment might be given in exchange for cooperation did not render the inculpatory statements involuntary.**

### **Confessions And Incriminating Statements--Motion To Suppress--Videotape Of Interrogation--Right To Counsel--Right To Remain Silent**

*State v. Ash, 169 N.C. App. 715 (2005)*

The trial court did not err in a first-degree murder and conspiracy to commit robbery with a dangerous weapon case by denying defendant's motion to suppress the videotape of his interrogation by a detective which he contends denied his rights to counsel and to remain silent, because: 1) defendant was informed of his right to counsel and subsequently voluntarily waived his right to counsel by signing a waiver form; 2) defendant indicated his desire to answer questions without a lawyer being present and his desire to waive his rights by initialing the rights form in the proper place; 3) **defendant failed to unambiguously invoke his right to remain silent**; and 4) assuming arguendo that the trial court erred, the error was harmless beyond a reasonable doubt when the State presented overwhelming evidence of defendant's guilt including the testimony of two witnesses, and further, defendant failed to object during a detective's testimony regarding defendant's confession and statements made to the detective which are consistent with the videotape.

#### **(1) Confessions And Incriminating Statements–Statements By Defendant Just After Arrest–Admissible**

#### **(2) Confessions And Incriminating Statements–Miranda Warnings–Public Safety Exception**

*State v. al-Bayyinah, 359 N.C. 740 (2005)*

(1) The trial court did not abuse its discretion in a prosecution for first-degree murder and attempted robbery by admitting statements made by defendant to an officer just after his arrest that he couldn't understand being released from prison without a job and being expected to make a living, that he committed the robbery with an accomplice, that he wanted to go back to the correctional facility, and that he didn't belong in society. These statements were probative of defendant's motive and intent. (2) The trial court did not err in a prosecution for first-degree murder and attempted armed robbery by admitting a statement made without Miranda warnings where defendant was pursued into a wooded thicket by an unarmed officer with a tracking dog, the officer asked defendant where the knife was, and defendant said that he did not have a knife. One of the Miranda exceptions is for public safety. Under the circumstances in this case, the question was necessary to secure the officer's safety.

#### **Law Enforcement Officers Deliberately Elicited Statements From Defendant In Violation Of His Sixth Amendment Right To Counsel**

*Fellers v. United States, 540 U.S. 519 (January 26, 2004)*

A grand jury indicted the defendant for conspiracy to distribute methamphetamine. Law enforcement officers went to the defendant's home to

arrest him. They knocked on the door, the defendant answered the door, and they identified themselves and asked if they could come in. The defendant invited them in. The officers advised him that they wanted to discuss his involvement in methamphetamine distribution. They informed him that they had a federal warrant for his arrest and that a grand jury had indicted him for conspiracy to distribute methamphetamine. They then told him that the indictment referred to his involvement with certain people, four of whom they named. The defendant then told the officers that he knew the four people and had used methamphetamine during his association with them. After spending 15 minutes in the defendant's home, the officers took the defendant to a county jail. There they advised the defendant for the first time of his Miranda rights. He waived those rights and reiterated the incriminating statements that he had made in his home. The Court ruled, relying on *Massiah v. United States*, 377 U.S. 201, 84 S. Ct. 1199, 12 L. Ed. 2d 246 (1964), and other cases, that the officers deliberately elicited the statements that the defendant made in his home in violation of his Sixth Amendment right to counsel. The discussion at home occurred after the defendant had been indicted, outside the presence of counsel, and in the absence of any waiver of the defendant's Sixth Amendment rights. Responding to the argument that the defendant's statements were not the product of interrogation by the officers, the Court noted that standard of deliberating eliciting statements under the Sixth Amendment is different from the Fifth Amendment custodial interrogation. [Author's note: If the officers had advised the defendant of his Miranda rights and had obtained a valid waiver of those rights at his home, then under *Patterson v. Illinois*, 487 U.S. 285, 108 S. Ct. 2389, 101 L. Ed. 2d 261 (1988), the statements likely would have been properly obtained. For a discussion of the distinction between Fifth and Sixth Amendment rights to counsel, the Sixth Amendment right to counsel, and waiver of the Sixth Amendment right to counsel, see Robert L. Farb, *Arrest, Search, and Investigation in North Carolina*, pp. 206-10 (3d. ed. 2003).] The Court remanded the case to the federal court of appeals to determine whether the defendant's statements at the county jail were admissible—that is, whether the rationale of *Oregon v. Elstad*, 470 U.S. 298, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985), applies to the Sixth Amendment violation in this case. [Author's note: For a summary of *Elstad*, see Robert L. Farb, *Arrest, Search, and Investigation in North Carolina*, p. 466 (3d. ed. 2003).]

### **Failure to Give a Defendant Miranda Warnings Did Not Require Suppression of Firearm Obtained as a Result of Defendant's Unwarned But Voluntary Statement**

*United States v. Patane*, 542 U.S. 630 (28 June 2004).

An officer arrested the defendant at his residence for violating a restraining order involving his exgirlfriend. When another officer began to give Miranda warnings, the defendant interrupted the officer, asserting he knew his rights, and neither officer attempted to complete the Miranda warnings. Because one of the officers had been previously informed that the defendant, a convicted felon, illegally possessed a Glock pistol, he asked the defendant about it. The defendant, after

persistent questioning, told the officer that the pistol was in his bedroom. The officer received consent from the defendant to retrieve the pistol. The pistol was admitted at his trial, and he was convicted of possession of a firearm by a convicted felon. An opinion representing the views of three Justices and announcing the judgment of the Court ruled, distinguishing *Dickerson v. United States*, 530 U.S. 428 (2000) (Miranda announced a constitutional rule that Congress may not supersede legislatively), that the Fifth Amendment's self-incrimination privilege is not implicated by the admission into evidence of the physical fruit of a voluntary statement taken in violation of the Miranda ruling. An opinion representing the views of two other Justices and concurring in the judgment stated that it agreed with the opinion announcing the judgment of the Court that the nontestimonial physical fruit of the defendant's unwarned statement, the Glock pistol, was admissible-although it did not necessarily agree with all of the statements in the opinion. [Author's note: *State v. May*, 334 N.C. 609, 434 S.E.2d 180 (1993) (physical evidence discovered as a result of a voluntary statement taken in violation of Miranda is admissible), is consistent with this ruling.]

**(1) State Appellate Court's Ruling That Defendant Was Not in Custody to Require Miranda Warnings Was Not Unreasonable Application of Federal Law Under Federal Habeas Corpus Standard**

**(2) Court States That Defendant's Age or Inexperience with Law Enforcement Are Not Factors in Determining Whether Custody Exists Under Miranda**

*Yarborough v. Alvarado*, 541 U.S. 652 (June 1, 2004)

An officer was investigating the involvement of the defendant, a 17 year old, in committing a murder. In response to the officer's request, the parents of the defendant brought him to the sheriff's facility for questioning. Without giving Miranda warnings and without the parents' presence, the officer questioned the defendant for about two hours. A state appellate court ruled that the defendant was not in custody to require Miranda warnings. A federal appellate court ruled that the state court ruling unreasonably applied federal law under the federal habeas corpus standard, 28 U.S.C. § 2254(d)(1). The United States Supreme Court reversed the federal appellate court. (1) The Court examined its rulings on custody under Miranda and the facts of this case and ruled that the state appellate court ruling on custody was not an unreasonable application of federal law under the federal habeas corpus standard. (2) The Court states that a defendant's age or inexperience with law enforcement are not factors in determining whether custody exists under Miranda. The Court noted that whether custody exists involves an objective, not subjective, test.

**Confessions And Incriminating Statements--Motion To Suppress--Custody**

*State v. Sutton, 167 N.C. App. 242 (2004)*

The trial court did not err in a trafficking by sale or delivery of OxyContin case by denying defendant's motion to suppress statements he made to an officer even though defendant was not read Miranda warnings before he was questioned, because: 1) **no reasonable person in defendant's position at the time defendant made the inculpatory statement would have thought that they were in custody for purposes of Miranda**; and 2) the mere fact that an officer performed an investigative stop of defendant and then patted him down did not result in defendant being in custody, and the officer's questions were brief and directly related to the suspicion that gave rise to the stop.

### **Confessions And Incriminating Statements--Custody--Miranda Warnings--Statement To A Superior Officer In The Armed Forces**

*State v. Walker, 167 N.C. App. 110 (2004)*

The trial **court did not err** in a robbery with a dangerous weapon and assault with a deadly weapon inflicting serious injury case by **admitting evidence of defendant Walker's statement made to a superior officer in the armed forces without Miranda warnings**, because: 1) the evidence does not indicate that defendant was in custody at the time he was discussing the incidents of 7 April 2004 with his superior; 2) there was no testimony that defendant felt he could not leave or that he had to answer his superior's questions; 3) the superior was simply inquiring into why defendant was being questioned; and 4) even assuming arguendo that defendant's statements to his superior were made during a custodial investigation, the admission of defendant's statements were harmless beyond a reasonable doubt when the statement was substantially identical to defendant's own testimony at trial.

### **(1) Confessions and incriminating statements--motion to suppress--miranda warnings--Voluntariness**

### **(2) Confessions And Incriminating Statements--Motion To Suppress--Miranda Warnings--Voluntariness**

### **(3) Constitutional Law--Right To Counsel--Separate Charges**

*State v. Strobel, 164 N.C. App. 310 (2004)*

**(1)** The trial court did not err by denying defendant's motion to suppress a statement given by her to the police, because: 1) it is not essential that Miranda warnings be given orally rather than in written form, although the better practice would be to give the accused both; 2) although defendant contends she did not read the voluntary statement form before she signed it, it is presumed that the accused has read it or has knowledge of its contents unless it is shown that defendant was willfully misled or misinformed by the opposing party; 3)

defendant's statement amounted to an equivocal request for an attorney, a detective attempted to clarify whether defendant wanted an attorney and gave her every opportunity to contact her attorney, and defendant never availed herself of these opportunities; and 4) the lack of evidence that defendant felt threatened or was being coerced supports the trial court's conclusion that defendant's statement was voluntary. [See Farb p. 26] (2) The trial court did not err by denying defendant's motion to suppress a statement given by her to the police, because: 1) it is not essential that Miranda warnings be given orally rather than in written form, although the better practice would be to give the accused both; 2) although defendant contends she did not read the voluntary statement form before she signed it, it is presumed that the accused has read it or has knowledge of its contents unless it is shown that defendant was willfully misled or misinformed by the opposing party; 3) defendant's statement amounted to an equivocal request for an attorney, a detective attempted to clarify whether defendant wanted an attorney and gave her every opportunity to contact her attorney, and defendant never availed herself of these opportunities; and 4) the lack of evidence that defendant felt threatened or was being coerced supports the trial court's conclusion that defendant's statement was voluntary. [See Farb p. 26] (3) It was permissible for the police to question defendant about a robbery charge outside the presence of the attorney who had been appointed to represent her in the conspiracy to commit robbery charge, because: 1) robbery and conspiracy to commit robbery are separate crimes; and 2) defendant's Sixth Amendment right to counsel had not attached to the robbery with a dangerous weapon charge.

### **Confessions And Incriminating Statements--Motion To Suppress--Custody--Miranda Warnings**

*State v. Garcia, 358 N.C. 382 (2004)*

The trial court did not err in a first-degree murder case by denying defendant's motion to suppress an inculpatory statement made at the police station because defendant was not in custody and Miranda warnings were not required where: 1) defendant was not under arrest and defendant's movement was not restrained to the degree associated with a formal arrest at the time he made the contested statement; 2) after reviewing the totality of circumstances surrounding defendant's interview, the four factors defendant identifies including three pat-downs, a closed interview room door, a detective's statement that defendant's girlfriend had "given him up," and the fact that defendant would not have been able to leave either police car on his own because the rear doors of police vehicles lock automatically, did not render him in custody; 3) non-communicated subjective suspicions and non-communicated subjective intent of individual officers have no bearing on Miranda analysis; and 4) defendant's case is **not analogous to State v. Buchanan, 355 N.C. 264, when there was no abruptly elevated security in defendant's case nor did the defendant make the same type of incriminating initial confession.**

### **Confessions And Incriminating Statements--Motion To Suppress--Ambiguous Request For Counsel**

*State v. Boggess, 358 N.C. 676 (2004)*

The trial court did not err in a first-degree murder and robbery with a dangerous weapon case by denying defendant's motion to suppress his custodial statements, because: (1) in regard to defendant's interview on 24 August 1995 at the sheriff's department, defendant's words that "[i]f y'all going to treat me this way, then I would probably want a lawyer" **did not constitute a request for an attorney**, and thus, his voluntary statements after a knowing waiver of his rights were admissible; (2) investigators did not violate defendant's Fifth Amendment rights when they responded to his 25 August 1995 request to discuss his case, and defendant waived his Sixth Amendment right to counsel; and (3) in regard to defendant's 17 October 1995 statement, defendant knowingly waived his Fifth and Sixth Amendment rights to counsel when he gave this statement since he initiated this conference.

### **Confessions And Incriminating Statements – Confession -- Unavailable Codefendant**

*State v. Pullen, 163 N.C. App. 696 (2004)*

The confession of an unavailable codefendant in a robbery trial was **erroneously admitted** but did not constitute plain error in light of other evidence. The testimony was given during the police interrogation of a witness who had given notice that he intended to invoke his Fifth Amendment rights, there was no opportunity for cross-examination, and admission of the statement violated the Confrontation Clause under Crawford v. Washington, 541 U.S. \_\_\_\_ (2004).

### **Confessions And Incriminating Statements--Post-Polygraph Interview--Motion To Suppress**

*State v. Shepherd, 163 N.C. App. 646 (2004)*

The trial court did not err in a first-degree statutory rape, first-degree sexual offense, and indecent liberties case by denying defendant's motion to suppress his confession made during the post-test interview after a voluntary polygraph examination, because: 1) even though the line of questioning during the posttest interview constituted an interrogation, defendant's waiver of rights covered his answers to the questions; 2) several waivers of rights that defendant and his attorney signed leading up to the polygraph examination constituted competent evidence that defendant understood his Miranda rights and waived his right to counsel; and 3) there was competent evidence that the statement was voluntary and within the waiver coverage.

**Confessions And Incriminating Statements--Noncustodial Interrogation--  
Defendant's Age--Statutory Rape--Miranda Warnings Not Required**

*State v. Clark, 161 N.C. App. 316 (2003)*

The trial court did not err in a statutory rape case by concluding that defendant's responses to questions asked by the police about his age were not given while in custody and thus did not require Miranda warnings, because: 1) defendant was questioned at home in his living room as part of the investigatory process prior to being charged or arrested; and 2) defendant's freedom of movement was not restrained to the degree normally associated with a formal arrest and he was made aware that he was not under arrest or in custody.

**Confessions And Incriminating Statements--Drive To Magistrate's Office--  
Comments By Officer--Not An Interrogation**

*State v. Gantt, 161 N.C. App. 265 (2003)*

A defendant's statement to an officer during the drive to the magistrate's office was not the result of a custodial interrogation. The exchange between the officer and the unruly defendant was not the functional equivalent of questioning.

**(1) Evidence--Defendant's Statement--Partial Statement Not Used--Whole Not  
Required**

**(2) Criminal Law--right to present defense--officer's statement excluded**

*State v. Alston, 161 N.C. App. 367 (2003)*

(1) A detective's synopsis of a nontestifying defendant's statement was not required to be admitted as the whole of the part after a detective testified about the same subject matter. The officer's testimony was based on his personal observations and no part of defendant's statement was offered as evidence. (2) A nontestifying defendant claiming self-defense was not deprived of the right to present his defense by the proper exclusion of a detective's synopsis of his statement to officers.

**Confessions And Incriminating Statements--Miranda Warnings--Motion To  
Suppress--Custodial Interrogation**

*State v. Smith, 160 N.C. App. 107 (2003)*

The trial court did not err in a first-degree kidnapping, second-degree kidnapping, assault with a deadly weapon with intent to kill inflicting serious injury, common law robbery, felonious breaking or entering, and possession of a firearm by a convicted felon case by denying defendant's motion to suppress his 7 May 2001

statement to a detective, because: 1) defendant was not interrogated within the meaning of Miranda and Innis when a detective posed no questions to defendant but instead defendant questioned the detective, and defendant's statement was made after the detective responded to defendant's question; 2) the detective's factually correct answer called for no response on the part of defendant; and 3) there was no evidence that suggested either any prior knowledge on the part of the detective that defendant was unusually susceptible to any particular form of persuasion or that the detective's response was designed to elicit an incriminating response.

### **Confessions And Incriminating Statements--Statements By Marine To Platoon Commander--Miranda Warnings**

*State v. Davis, 158 N.C. App. 1 (2003)*

**Statements made by a Marine to his Platoon Commander without Miranda warnings were inadmissible as the product of a custodial interrogation**, but admission of the statements was harmless in light of other testimony. Under the totality of the circumstances, including the rules and regulations governing the military, a reasonable person in defendant's circumstances would have believed that he effectively had no freedom of movement.

**(1) Confessions and Incriminating Statements--motion to suppress--failure to give Miranda warnings--inmate**

**(2) Constitutional Law--right to remain silent--custody**

**(3) Confessions and Incriminating Statements--motion to suppress--failure to give Miranda warnings**

*State v. Fisher, 158 N.C. App. 133 (2003)*

**(1)** The trial court did not err in a first-degree murder case by denying defendant's motion to suppress his statement to a jail sergeant given without Miranda warnings while defendant was an inmate, because: 1) defendant was at all times free not to talk and return to his cell, and defendant exercised both of these rights at different points during the interview; 2) defendant initiated the meeting with the sergeant; 3) defendant's presence was not required, and at no time was defendant physically restrained from leaving the sergeant's office; and 4) defendant was thus not in custody for purposes of Miranda. **(2)** Although defendant contends the trial court erred in a first-degree murder case by concluding that a jail sergeant was not required to terminate her interrogation of defendant once defendant invoked his right to remain silent, defendant was not in custody for purposes of Miranda and the sergeant was not prohibited from inquiring into the motivation behind defendant's sudden change of heart regarding the fact that he had

previously **stated he wanted to make a confession to the pertinent crime and then changed his mind.** (3) The trial court did not err in a first-degree murder case by denying defendant inmate's motion to suppress his statement to an officer on 14 July 1999 even though defendant did not receive any Miranda warnings prior to the officer interviewing him, because: (1) Miranda warnings are only required when a criminal defendant is subjected to custodial interrogation; and (2) defendant was not in custody when he asked to speak with the officer, remained at all times free to terminate the conversation with the officer, and in fact did so once he was told that another officer would take his statement the following day.

### **Confessions And Incriminating Statements - Voluntariness - Waiver Of Miranda Rights – Mental Capacity**

*State v. Mahatha, 157 N.C. App. 183 (2003)*

The trial court did not err in a first-degree murder and robbery with a dangerous weapon case by denying defendant's motion to suppress post-arrest inculpatory statements he made to police even though defendant contends they were made involuntarily and obtained in violation of Miranda, because: (1) four officers who interviewed defendant testified that a Miranda waiver was obtained and the interview was conducted under noncoercive conditions; (2) evidence was presented that defendant understood his Miranda rights and that he was not intoxicated or otherwise impaired when he made his Miranda waiver and statements; (3) the trial court's findings and the evidence permitted a conclusion that defendant had sufficient mental capacity to waive his Miranda rights and voluntarily make inculpatory statements; (4) the totality of circumstances surrounding defendant's post-arrest statements support the trial court's conclusion that the statements were made pursuant to defendant's knowing, intelligent, and voluntary waiver of his Miranda rights including that interrogations of longer duration than the one at hand have been held to be not so lengthy as to render them coercive, defendant made no complaints of being hungry and was provided with drinks and bathroom breaks, the police did not make any threats of physical violence against defendant or promises to him in exchange for his Miranda waiver and statement, and defendant had some familiarity with the criminal justice system; (5) evidence of an officer's deception or trickery leading defendant to mistakenly believe that his fingerprints had been recovered from the victim officer's holster was insufficient standing alone to render defendant's inculpatory statements inadmissible; and (6) the actions of the police in not allowing an attorney to see defendant even though he was appointed by the public defender to represent defendant did not invalidate defendant's Miranda waiver or statements when defendant never requested an attorney.

### **Confessions And Incriminating Statements--Statement Inquiring About Keys To Truck--Custodial Interrogation--Cocaine--Inevitable Discovery Doctrine**

*State v. Harris, 157 N.C. App. 647 (2003)*

Assuming that a detective's inquiry about whether defendant had keys to an old truck amounted to custodial interrogation without Miranda warnings, defendant's response that he had the keys and cocaine found in the truck's tool box by use of the keys were properly admitted in a prosecution for trafficking in and possession of cocaine because: 1) there was no reasonable possibility that the exclusion of defendant's statement that he had keys would have resulted in a different verdict when the keys to the old truck were in defendant's front jeans pocket and there was no suggestion that the jeans belonged to anyone else; 2) defendant made no attempt to demonstrate that he was subjected to actual coercion; and 3) the keys and cocaine would still have been admissible under the inevitable discovery doctrine when the officers had a search warrant authorizing them to search defendant's person.

### **Evidence - Admissions - Drinking And Driving - Statements To Medical Personnel**

*State v. Smith, 157 N.C. App. 493 (2003)*

An officer's testimony that defendant admitted drinking and driving to nurses and a doctor in an emergency room was admissible as an admission by a party opponent. The officer was standing at the head of defendant's bed during treatment and defendant was aware that he had been in a high-speed chase that ended in an accident. N.C.G.S. § 8C-1, Rule 801(d)(A).

### **Confessions And Incriminating Statements--Juvenile--Motion To Suppress--Statement**

*In re Butts, 157 N.C. App. 609 (2003)*

obtained in absence of parent The trial court erred in a case adjudicating respondent juvenile a delinquent for commission of first-degree sexual offense by denying respondent's motion to suppress under N.C.G.S. § 7B-2101 his statement obtained by a detective after respondent's father voluntarily left the room and by failing to determine whether respondent was in custody when he signed the statement, because: 1) N.C.G.S. § 7B-2101 allows a juvenile a right to the presence of a parent, guardian, custodian, or attorney and to be informed of this right while he is in custody, and that right cannot be waived by a parent on the juvenile's behalf; 2) respondent's statement that "it happened" was insufficient, without more detail, to constitute the equivalent of a full confession to first-degree sex offense so as to render the later admission of his written statement harmless; and 3) absent the signed confession, the evidence would have presented a much closer case when there was no physical evidence or eyewitnesses and the only basis for the fact finder to determine the truth was to weigh the credibility of respondent and the alleged victim.

## **Confessions And Incriminating Statements--Custodial Interrogation--Motion To Suppress-Failure To Give Miranda Warnings**

*State v. Crudup, 157 N.C. App. 657 (2003)*

The trial court erred in a felonious possession of cocaine case by denying defendant's motion to suppress incriminating statements made without Miranda warnings in response to police questioning while he was handcuffed and detained, and defendant is entitled to a new trial because: 1) the totality of circumstances revealed that defendant was in custody when he was immediately handcuffed and detained as a possible burglary suspect; 2) defendant was being interrogated when a reasonable officer would have known that any response to the pertinent questions would have incriminated defendant; 3) defendant was not subjected to general on-the-scene questioning and the circumstances of this case exceeded the narrow scope of the public safety exception; and 4) the error was not harmless when the State's evidence of constructive possession rested upon defendant's unconstitutionally procured statement claiming possession of the items in an apartment which rested on defendant's physical presence in a house where he did not reside.

### **(1) Confessions And Incriminating Statements--Possession Of Crack Cocaine--Officer's Statement--Interrogation--Defendant's Response--Absence Of Miranda Warnings--Harmless Error**

### **(2) Confessions and Incriminating Statements--voluntariness--coercion--failure to give Miranda warnings--exclusionary rule--motion to suppress cocaine**

*State v. Phelps, 156 N.C. App. 119 (2003)*

(1) An officer's post-arrest statement to defendant that defendant "needed to let me know right now before we went past the jail door if he had any kind of illegal substance or weapons on him, that it was an automatic felony no matter what it was" constituted interrogation within the meaning of the Miranda decision because the officer knew or should have known that his statement was reasonably likely to evoke an incriminating response, and defendant's response that he had crack cocaine in his pocket was improperly admitted in defendant's trial because the officer failed to give defendant the Miranda warnings prior to the custodial interrogation. However, the admission of defendant's statement was harmless error because 1) the illegal substance was found in the pocket of the coat worn by defendant, and there was no evidence to suggest that defendant did not own the coat or that the coat had only recently come into his possession; and 2) there is no reasonable possibility that the exclusion of defendant's statement would have resulted in a different verdict. (2) The trial court did not err in a felony possession of cocaine case by denying defendant's motion to suppress cocaine obtained as a result of an alleged coerced statement without the benefit of a Miranda warning when an officer had a friendly conversation with defendant during the ride to jail explaining to defendant that defendant needed to let the officer know if defendant

had any illegal substances or weapons on him and defendant told the officer he had crack cocaine in his coat pocket, because: 1) there was not any evidence of coercion on the part of the officer when during the ride to jail and prior to searching defendant, the officer did not threaten or promise defendant anything, and defendant was calm during the ride to the jail and while admitting to the officer that he had cocaine in his pocket; and 2) even if defendant's statement was coerced, the cocaine would have been admissible under the inevitable discovery doctrine which allows admission of evidence which was illegally obtained when the evidence ultimately or inevitably would have been discovered by lawful means since defendant's clothing would have been searched and the cocaine would have been found at the jail in accordance with police procedure.

### **Confessions And Incriminating Statements—Statement Not Coerced—Confession And Cooperation Distinguished—Threat To Girlfriend Insufficient**

*State v. Carmon, 156 N.C. App. 235 (2003)*

A cocaine defendant's statement to officers was not coerced where defendant contended that the statement was made from fear that his girlfriend would be charged, but defendant was told that his girlfriend could be arrested, not that she would be, and defendant was offered the opportunity to assist police in their investigation of defendant's supplier to avoid his immediate arrest. Defendant was not induced to confess but to cooperate, and officers kept their promise and did not immediately arrest defendant even though he did not fully cooperate with them.

### **Confessions And Incriminating Statements - Answers To Officer's Questions - Motion To Suppress - General Investigation**

*State v. Cockerham, 155 N.C. App. 729 (2003)*

The trial court did not err in a discharging a firearm into occupied property case by denying defendant's motion to suppress his answers to an officer's questions that were asked prior to defendant being given his Miranda warnings, because: 1) the officers did not pat down defendant, search him, handcuff him, or restrain his movement until they formally arrested him; and 2) even assuming *arguendo* that defendant was in custody, these circumstances are more similar to the general investigation situation in which Miranda warnings need not be given. **Def. not in custody in his apt. investigation into shooting**

#### **(1) Confessions And Incriminating Statements--Motion To Suppress--No Formal Arrest--No Restraint On Movement**

#### **(2) Confessions And Incriminating Statements--Motion To Suppress--Handwritten Statement—Voluntariness**

*State v. Kemmerlin, 356 N.C. 446 (2002)*

(1) The trial court did not err in a first-degree capital murder prosecution by denying defendant's motion to suppress her statement given to SBI special agents during an interview on 25 March 1999 even though defendant contends the conditions of the interview constituted a restraint on her freedom of movement to the degree associated with a formal arrest, because: 1) defendant was advised before the interview began that she was not under arrest and could leave at any time, and defendant admitted that she understood these instructions; 2) at no time during the interview was defendant restrained in her freedom of movement; 3) defendant was given ample opportunity to interrupt the interview to get something to eat or drink or to use the bathroom, but declined to do so; and 4) at the conclusion of the interview, defendant was not guarded by law enforcement officers but instead was allowed to move freely throughout the sheriff's department. (2) The trial court did not err in a first-degree capital murder prosecution by denying defendant's motion to suppress her handwritten statement resulting from the interview contemporaneous with her arrest on 26 March 1999 even though defendant contends it was simply another version of her 25 March 1999 statement that allegedly should have been suppressed, because: 1) even though it was a mere reduction to writing by an officer of defendant's earlier statement on 25 March 1999, it was admissible just as the 25 March 1999 statement was admissible; 2) the totality of the circumstances demonstrated that the handwritten statement was made voluntarily when defendant was advised of her Miranda rights and chose to waive them, at no point in time was defendant threatened or coerced, defendant never indicated that she was tired or wished to terminate the interview nor did she request the assistance of counsel, and defendant was not interrogated further although she remained at the sheriff's department following the conclusion of her confession; and 3) defendant failed to reveal how she suffered any prejudice by the admission of both the 25 March and 26 March statements.

**(1) Confessions And Incriminating Statements--Voluntariness--Use Of False Statements Or Trickery--Intoxication At Time Of Confession**

**(2) Confessions And Incriminating Statements--Custodial Interrogation--Invocation Of Right To Counsel**

*State v. Barnes, 154 N.C. App. 111 (2002)*

(1) The totality of circumstances revealed that the trial court did not err in an attempted statutory rape of a person between the ages of thirteen and fifteen case by denying defendant's motion to suppress his statements to an officer concerning the sexual assault of defendant's daughter even though defendant contends the statements were made involuntarily and violated his due process rights allegedly based on the false information given to defendant by an officer about the pregnancy of defendant's daughter and based on defendant's prior consumption of

prescription drugs and alcohol, because: 1) the use of false statements and trickery by police officers during interrogations is not illegal as a matter of law; 2) the tactics used did not implant fear of physical violence or hope of better treatment; 3) defendant was not tricked about the nature of the crime involved or possible punishment; 4) the officer did not subject defendant to threats of harm, rewards for confession, or deprivation of freedom of action; 5) the evidence in the record does not show an oppressive environment; 6) a defendant's intoxication at the time of a confession does not preclude a conclusion that a defendant's statements were freely made, and the record does not show that defendant was so heavily under the influence that he could not understand the implications of confessing to sexually assaulting his daughter; 7) defendant's own testimony was the only evidence tending to prove any use of prescription drugs and alcohol; and 8) defendant was able to relate the events of 20 July 1998 to a degree of detail inconsistent with someone who was impaired and unaware of the meaning of his words. (2) The totality of circumstances revealed that the trial court did not err in an attempted statutory rape of a person between the ages of thirteen and fifteen case by denying defendant's motion to suppress his statements to an officer concerning the sexual assault of defendant's daughter even though defendant contends the circumstances surrounding the interview constituted a custodial situation requiring that he be given Miranda warnings, because: 1) defendant went to the sheriff's department voluntarily; 2) an officer told defendant that he was free to leave and that he did not have to answer questions; 3) defendant was not subjected to a degree of restraint associated with a formal arrest when defendant was placed in an unlocked interview room without handcuffs, defendant was free to visit the restroom and smoke a cigarette while in the company of a single officer, and defendant was allowed to leave the sheriff's department after the interview concluded; and 4) defendant did not invoke his right to counsel by merely asking whether he needed an attorney without stating that he actually wanted an attorney.

### **Confessions And Incriminating Statements--"Secure Custody"--Custodial Interrogation--Absence Of Miranda Warnings--Harmless Error**

*State v. Johnston, 154 N.C. App. 500 (2002)*

A defendant was in custody for Miranda purposes when he was ordered out of his vehicle at gunpoint, handcuffed, placed in the back of a patrol car, and questioned by detectives. Despite being told that he was in "secure custody" rather than under arrest, defendant's freedom of movement was restrained to the degree associated with a formal arrest. Therefore, the trial court erred by admitting a statement made by defendant in response to interrogation without Miranda warnings, "So what if I threw the shotgun out," but this error was harmless in light of the other overwhelming evidence of defendant's guilt.

## **Confessions And Incriminating Statements--Motion To Suppress--Traffic Stop--Not In Custody**

*State v. Mark, 154 N.C. App. 341 (2002)*

The trial court did not err in a driving while impaired and habitual impaired driving case by denying defendant's motion to suppress his statement made during a traffic stop that he had a few alcoholic drinks over at a friend's house, because during a traffic stop a driver is not considered in custody when he is asked a moderate number of questions and when he is not informed that his detention will be other than temporary, and Miranda warnings were not required.

## **Confessions And Incriminating Statements - Juvenile's Statements To Detective During Home Visit – Not In Custody**

*In Re Hodge, 153 N.C. App. 102 (2002)*

The trial court did not err in a simple assault case by allowing a detective to testify to statements respondent juvenile made to the detective during a home visit where respondent was neither advised of his constitutional rights nor knowingly and willingly waived those rights, because: 1) N.C.G.S. § 7B-2101 provides that a juvenile must be in custody before it becomes necessary to inform him of his rights, and respondent was not in custody when he made the statements since no proceeding had been initiated against respondent and the purpose of the detective's visit was solely to investigate the allegation; and 2) there was no requirement that defendant be informed of or waive such rights prior to the interview.

### **(1) Confessions and Incriminating Statements--motion to suppress--failure to give Miranda warnings--no arrest or restraint**

### **(2) Confessions and Incriminating Statements--motion to suppress--voluntariness**

*State v. Barden, 356 NC 316 (2002)*

(1) The trial court did not err in a capital first-degree murder prosecution by denying defendant's motion to suppress evidence of statements he made to police on 5 April 1998 and 16 April 1998 and by allowing the subsequent admission of those statements into evidence at trial even though defendant was not given Miranda warnings, because the totality of circumstances shows that defendant was not in custody in that a reasonable person in defendant's position would not have believed that he was under arrest or that he was restrained to a degree that would cause him to believe he was formally arrested when: 1) for both interviews, defendant voluntarily drove his own car to meet police for questioning; 2) defendant was repeatedly informed both before he agreed to talk with investigators and after he arrived for questioning that he was not under arrest and was free to leave at any time; 3) at no point during the interaction between

defendant and the police was defendant ever restrained or confined to the degree associated with a formal arrest; and 4) at the conclusion of each interview, defendant was allowed to go. **(2)** The trial court did not err in a capital first-degree murder prosecution by denying defendant's motion to suppress evidence of statements he made to police on 5 April 1998 and 16 April 1998 even though defendant contends they were not voluntary, because: 1) defendant was offered drinks and cigarettes during one of his interviews; 2) defendant was allowed to use the restroom without being escorted by an officer; 3) defendant was not restrained or handcuffed during either session; 4) neither interview was prolonged; and 5) the record is devoid of any suggestion of physical threats to or pressure exerted on defendant to obtain a statement.

### **Confessions And Incriminating Statements--Plea Negotiations--No Authority--No Offer Made**

*State v. Curry, 153 N.C. App. 260 (2002)*

The trial court did not err in a prosecution for indecent liberties with a student, statutory rape and statutory sexual offenses by denying defendant's motion to suppress statements to law enforcement officers where defendant contended that the statements were made in the course of plea negotiations and were thus inadmissible under N.C.G.S. § 8C-1, Rule 410, but the assistant district attorney made clear that she had no authority to negotiate a plea and no offer was laid on the table.

### **(1) Confessions and Incriminating Statements--custodial interrogation--age--mental capacity**

### **(2) Confessions and Incriminating Statements--voluntary and intelligent waiver--age--mental capacity**

*State v. Jones, 153 N.C. App. 358 (2002)*

**(1)** The trial court did not err by denying defendant sixteen-year-old's motion to suppress statements he made to law enforcement officers in an interview room at a police station detailing his involvement in the victim's death even though defendant contends his statements were the result of a custodial interrogation and were therefore inadmissible given his age and subnormal mental capacity, because: 1) defendant was not in custody when he understood that he was free to leave at any time, he made no incriminating statements at his first interview, and he demonstrated a marked level of familiarity with the criminal justice system; and 2) a reasonable person in defendant's position would not have believed himself to be in custody. **(2)** The trial court did not err by denying defendant sixteen-year-old's motion to suppress statements he made to law enforcement officers in an interview room at a police station detailing his involvement in the victim's death even though defendant contends he was incapable of voluntarily

and intelligently waiving his rights based on his age and subnormal mental capacity, because: 1) the circumstances were not sufficient to render defendant's will overborne and his capacity for self-determination critically impaired; 2) the trial court was confronted with conflicting evidence concerning defendant's true mental capacity; and 3) there is no evidence indicating that defendant was in any way mistreated or coerced by the police.

### **Confessions And Other Incriminating Statements--Confession Of Sixteen-Year-Old--Coercive Factors**

*State v. McKinney, 153 N.C. App. 369 (2002)*

The totality and degree of coercive factors surrounding the confession of a sixteen-year-old murder and burglary defendant were not sufficient to render the confession involuntary and inadmissible considering defendant's youth and unfamiliarity with the justice system, the officer's deceptive statements, the length of the interrogation, and defendant's access to food, drink, and restroom facilities.

### **Confessions And Incriminating Statements--Interrogation--Not In Custody--Miranda Warnings Not Required**

*State v. Trull, 153 N.C. App. 630 (2002)*

The trial court did not err in an attempted first-degree murder, possession of a handgun by a felon, and discharging a firearm into occupied property case by denying defendant's motion to suppress statements he made to the police when defendant had not been given Miranda warnings, because: 1) with respect to statements made to an officer during the ride to the station or while waiting in the interview room, defendant was not interrogated by that officer and therefore Miranda does not apply; and 2) although defendant was interrogated with respect to statements made to two other officers, he was not in custody during the interrogation and was not therefore entitled to Miranda warnings.

### **(1) Confessions and Incriminating Statements--foreign national--statement made before detention--no rights under Vienna Convention**

### **(2) Confessions and Incriminating Statements--Spanish-speaking SBI agent--no independent notes or interpretations**

*State v. Aquino, 149 N.C. App. 172 (2002)*

(1) The trial court did not err by denying the motion of a Mexican national to suppress his statement to officers based upon the Vienna Convention (which requires law enforcement authorities to inform detained or arrested foreign nationals that they may have their consulates notified of their status) where any statements received from defendant were obtained prior to detention and prior to

his eligibility for any rights under the Convention. Moreover, courts have refused to hold that suppression is a remedy for a violation of the Convention. (2) The trial court did not abuse its discretion by allowing a Spanish-speaking SBI agent who had interviewed defendant to testify concerning defendant's statements, even though there were no independent interpretations or notes of the interview. The agent testified to a conversation he had in Spanish with defendant and not as an expert; whether defendant actually understood the agent goes to the weight of the testimony rather than its admissibility.

### **Confessions And Incriminating Statements--Free To Leave Test--Formal Arrest Test--Defendant Not In Custody**

*State v. Kornegay, 149 N.C. App. 390 (2002)*

The trial court did not err in a first-degree murder and armed robbery case by failing to suppress statements that were obtained before defendant received Miranda warnings because although the trial court applied the less restrictive "free to leave" test to conclude that defendant's statements should not be suppressed, instead of the newly articulated "formal arrest" test, it follows that an application of the more restrictive "formal arrest" test would yield the same conclusion that defendant was not in custody for purposes of Miranda.

**(1) Confessions and Incriminating Statements - assertion that defendant would not be arrested that day - statement voluntary**

**(2) Confessions and Incriminating Statements - mental condition - totality of circumstances – statement voluntary**

*State v. Thompson, 149 N.C. App. 276 (2002)*

(1) An armed robbery defendant's confession was voluntary despite his assertion that it was induced by promises; a detective's repeated assertions that defendant would not be arrested that day regardless of what he said did not lead defendant to believe that the criminal justice system would treat him more favorably if he confessed to the robbery, especially in light of his familiarity with the criminal justice system. (2) An armed robbery defendant's mental condition did not make his confession involuntary under the totality of the circumstances where he had been diagnosed as a Willie M. child at age 6 and received Social Security benefits as a result of his condition.

**(1) Confessions and Incriminating Statements--motion to suppress--Sixth Amendment right to counsel**

**(2) Confessions and Incriminating Statements--motion to suppress--Fifth Amendment right to be free from self-incrimination**

*State v. Stokes, 150 N.C. App. 211 (2002)*

(1) The trial court did not violate defendant's Sixth Amendment right to counsel in a first-degree felony murder and felonious child abuse case by denying defendant's motion to suppress a purported confession made by defendant to an officer who was walking by the cell block where defendant was being held and who initiated the conversation with defendant even though a first-degree murder warrant had been secured and served on defendant, and defendant had been arrested and had appeared before a magistrate, because: 1) an arrest warrant for first-degree murder in North Carolina is not a formal charge such that the Sixth Amendment right to counsel is invoked; 2) a defendant's Sixth Amendment right to counsel does not attach either at the issuance of the warrant or at the time of his arrest upon the warrant; and 3) a defendant's appearance before a magistrate does not trigger his Sixth Amendment right to counsel since no adversary judicial proceedings have commenced at that point. (2) The trial court violated defendant's Fifth Amendment right to be free from self-incrimination in a first-degree felony murder and felonious child abuse case by denying defendant's motion to suppress a purported confession made by defendant to an officer who was walking by the cell block where defendant was being held and who initiated the conversation with defendant, and defendant is entitled to a new trial because: 1) defendant was in custody at the time the statement to the officer was made; 2) defendant was being interrogated by the officer since the officer's question of "how?" is the type of question that necessarily invites a response, and the officer's question was designed for the purpose of eliciting a response he knew or should have known was reasonably likely to be incriminating; 3) defendant's meeting with his counsel, as well as his arrest and the passage of nineteen hours, diluted the first and only Miranda warning given to defendant; and 4) the State failed to meet its burden to show admission of defendant's statement to the officer was harmless beyond a reasonable doubt.

### **Prison's Sexual Abuse Treatment Program and Consequences for Nonparticipation in Program Did Not Violate Prisoner's Privilege Against Compelled Self-Incrimination**

*McKune v. Lile, 536 U.S. 24 (10 June 2002)*

A four-Justice plurality ruled that a prison's sexual abuse treatment program and consequences for nonparticipation in the program did not violate the prisoner's Fifth Amendment privilege against compelled self-incrimination. Inmates participating in the program were required to admit responsibility for the crime(s) for which they were convicted and admit to any other sexual crimes they had committed, without receiving any immunity from prosecution. In addition, a refusal to participate in the program resulted in the loss of specified prison privileges. A fifth Justice agreed that the prisoner's Fifth Amendment privilege was not violated, but did not agree with the plurality's reasoning.

## **Confessions And Incriminating Statements - Allegations Of Harassment, Threats, Promises - Contradictory Law Enforcement Testimony - Denial Of Motion To Suppress**

*State v. Gainey, 355 N.C. 73 (2002)*

The trial court did not err in a capital first-degree murder prosecution by denying defendant's motion to suppress statements to investigators where defendant alleged that he was threatened, harassed, and told that he could avoid the death penalty by confessing, but there was contradictory testimony from law enforcement officers. The trial court's finding of fact that no promises or offers of reward were made was supported by competent evidence in the record, and the court's conclusion that defendant's statement was voluntary is supported by the finding of fact and the law.

### **(1) Confessions and Incriminating Statements--juvenile--right to be questioned with a guardian present**

### **(2) Confessions and Incriminating Statements--juvenile--voluntariness--waiver**

*State v. Jones, 147 N.C. App. 527 (2001)*

(1) The trial court did not err in a first-degree murder, first-degree sexual offense, and first-degree kidnapping case by denying a thirteen-year-old defendant's motion to suppress a statement he made to police during questioning even though defendant contends that his aunt was not his guardian under the law and therefore his juvenile right to be questioned with a guardian present under N.C.G.S. § 7A-595 was allegedly violated, because: 1) the aunt acted as a guardian since she was responsible for the defendant and he was dependent upon his aunt for room, board, education, and clothing; and 2) although the aunt may have had a conflict of interest since her brother was a coparticipant, an officer testified that the aunt did not intimidate defendant, twice encouraged defendant to tell the truth, and acted like a natural concerned parent. (2) The trial court did not err in a first-degree murder, first-degree sexual offense, and first-degree kidnapping case by denying a thirteen-year-old defendant's motion to suppress a statement he made to police during questioning even though defendant contends he was not afforded all statutory procedural protections during his interrogation by the police, because the evidence reveals that defendant knowingly and intelligently waived his rights based on the facts that: 1) defendant made good grades in school and had the level of intelligence necessary to effect a knowing and intelligent waiver of his rights; and 2) the warnings defendant received complied with the requirements of Miranda.

### **Right To Remain Silent--Mentioning Defendant's Invocation Of Right**

*State v. Parks, 148 N.C. App. 600 (2002)*

Although the trial court erred in a trafficking in cocaine and conspiracy to traffic in cocaine case by allegedly allowing the State to elicit testimony regarding defendant's invocation of his right to remain silent and his refusal to be interviewed, defendant was unable to show there was plain error because: 1) there was testimony of officers who observed defendant throughout the transaction; 2) a witness identified defendant as the person from whom the witness had obtained the cocaine for an undercover officer on several occasions; 3) defendant made various voluntary inculpatory statements to a deputy, including that defendant wanted to help himself out of trouble, that defendant could show the deputy where defendant had gone in the woods and where defendant had put the jar that had contained the cocaine, and that defendant had thrown the money given to him by the witness out of defendant's car window when defendant realized that he was being followed by law enforcement officers; 4) defendant retrieved the jar which appeared to contain cocaine residue; 5) at the time defendant invoked his right to remain silent, he had already inculpated himself through prior statements to the officers; and 6) the prosecutor did not imply that defendant's invocation of his right to remain silent was an admission of guilt.

### **Confessions And Other Incriminating Statements--Improper Inducement-- Statements Of Officers--Charges And Punishments--Better To Tell The Truth**

*State v. Bailey, 145 N.C. App. 13 (2001)*

The trial **court did not err** in a prosecution for statutory rape (for which defendant was acquitted) and statutory sexual offense by denying defendant's motion to suppress his statement to officers where defendant contended that the statement resulted from improper inducement. The only factor weighing in favor of a finding of improper inducement is the fact that defendant apparently had no prior experience with the criminal justice system. Defendant was not in custody and was free to leave, he was not deceived, the duration of the interview does not appear to have been excessively long and the nature of the interview does not appear to have been improperly coercive; there were no physical threats or shows of violence and there was no evidence of that defendant's mental condition was impaired; statements that things would go easier if defendant gave a truthful statement do not amount to improper promises; and informing defendant of the crimes for which he might be charged and the range of punishment does not constitute improper inducement.

### **Evidence--Recorded Exculpatory Statement--Testimony About Subsequent Statement--Door Not Opened**

*State v. Safrit, 145 N.C. App. 541 (2001)*

The **State did not "open the door" to the admission of defendant's recorded exculpatory statement** to a deputy in a prosecution for felonious assault and

armed robbery when it elicited testimony from the deputy that he and defendant had a conversation at the conclusion of defendant's recorded interview during which defendant mentioned having a head injury and asked the deputy to look at it because defendant's remarks to the deputy about his head injury constituted a separate verbal transaction from defendant's prior recorded statement, and the State did not attempt to offer into evidence any portion of defendant's recorded statement or any testimony concerning its contents.

### **Confessions And Other Incriminating Statements--Miranda Warnings--Defendant Not Told He Could Leave--Not In Custody**

*State v. Linton, 145 N.C. App. 639 (2001)*

The trial court did not err in a prosecution for the first-degree sexual offense of a child and attempted first degree rape of a child by admitting a statement which defendant contended he gave to police without Miranda warnings while he was in custody. Defendant went to the police station of his own volition and gave a statement without any promises being made; while he did not know that he was a suspect and contends that no one told him that he was free to go, he was not in custody and Miranda warnings were not required.

### **Confessions And Incriminating Statements--Traffic Stop--Marijuana In Car--Volunteered Statement**

*State v. Kincaid, 147 N.C. App. 94 (2001)*

There was no error in the trial court's refusal to suppress marijuana seized from a car after a traffic stop based on the failure to advise defendant of his Miranda rights where defendant was free to leave and the officer was simply conducting a consensual questioning. Defendant knowingly volunteered his statements.

### **Confessions And Incriminating Statements--Voluntariness--Alleged Misstatements And False Promise By Detective**

*State v. Bone, 354 N.C. 1 (2001)*

The trial court **did not err** in a first-degree burglary and capital first-degree murder trial by denying defendant's motion to suppress his confession even though defendant contends it was involuntary when it was induced by alleged misstatements and a false promise by a detective, because: 1) the detective's representations that shoe prints were just like fingerprints and that defendant's shoes matched those impressions found at the murder scene were exaggerations, but not outright fabrications; 2) although the detective made no promises to defendant in exchange for a confession during defendant's initial interview but told defendant he might receive a lesser sentence if he confessed, the detective made no commitment and defendant made no statement in response to this

suggestion; and 3) defendant asked to speak to an officer only after he was formally arrested where he was given his Miranda rights and signed a written waiver.

### **Confessions And Incriminating Statements--Motion To Suppress--Sixth Amendment Right To Counsel--Extradition**

*State v. Taylor, 354 N.C. 28 (2001)*

The trial court did not abuse its discretion in a capital first-degree murder and robbery with a dangerous weapon trial by denying defendant's motion to suppress his confession made to North Carolina police officers while he was placed in custody in Florida for the sole purpose of extradition to North Carolina, because: 1) defendant's Sixth Amendment right to counsel had not attached prior to or during defendant's confinement for extradition to North Carolina; 2) defendant knowingly, voluntarily, and understandingly signed a waiver of his rights; and 3) there is no evidence of coercion.

#### **(1) Confessions And Incriminating Statements--Miranda Warnings--Lapse Of Time Until Questioning**

#### **(2) Confessions And Incriminating Statements--Promises And Coercive Environment--Statement Not Induced**

#### **(3) Confessions And Incriminating Statements--Promises Or Threats--Statements About Defendant's Child**

#### **(4) Confessions And Incriminating Statements--Environment--Not Coercive**

*State v. Stephenson, 144 N.C. App. 465 (2001)*

(1) The trial court did not err in a prosecution for robbery and first-degree murder by denying defendant's motion to suppress her statements because she was not properly advised of her constitutional rights where, assuming that she was in custody and that Miranda warnings were required, warnings given at 6:30 p.m. were still in effect at the time of defendant's questioning 30 to 45 minutes later and at the time of her inculpatory oral statement one and a half hours later. (2) Statements given by the defendant in a prosecution for first-degree murder and robbery were not induced by promises and a coercive environment where the officers were merely speaking in generalities and asking defendant to tell the truth, and there was evidence to support the finding that officers had made no promises of leniency. (3) Statements by officers to a robbery and murder defendant regarding her child did not amount to promises or threats regarding defendant's child where the detective told her that he had seen defendant's closeness with her child and that the child deserved a better life. (4) A robbery and first-degree murder defendant was not questioned in a coercive environment

where defendant was not physically or mentally impaired and showed a willingness to talk to the officers; she never asked for a lawyer, asked to go home, or requested to remain silent; she was never handcuffed, physically restrained or threatened, and the officers were in plain clothes; she was told that she was free to leave and that the interview was to be entirely voluntary; the officers did not accuse her of lying and did not yell at her or show anger; and defendant's requests to smoke and use the telephone were allowed.

### **(1) Confessions And Incriminating Statements--Motion To Suppress--Voluntariness--Custody**

### **(2) Evidence--Opinion Testimony--Confession--Not Under Influence Of Drugs, Narcotics, Or Alcohol**

*State v. Patterson, 146 N.C. App. 113, (2001)*

(1) The trial court did not err in a first-degree murder case by denying defendant's motion to suppress statements he made to State Bureau of Investigation Special Agents at the Pitt County Mental Health Center and a diagram defendant drew for the agents with a note describing his involvement in the victim's death, because: 1) the agents did not promise, threaten, or coerce defendant into making his statements; 2) defendant appeared coherent in his responses to the agents' questions; 3) defendant had an opportunity to confer privately with his sisters prior to making his statements; (4) defendant told the agents he had not taken any drugs in the last twenty-four hours; 5) defendant was in voluntary commitment at the Detox Center and could leave if he so desired; 6) the agents were granted permission by the supervisor at the Detox Center to speak to defendant prior to questioning him; 7) defendant had voluntarily agreed to speak to the agents about the victim's death; and 8) defendant was not in custody or restrained in any way and was told that he could end the interview at any time by telling the agents he wished to stop. (2) The trial court did not err in a first-degree murder case by allowing an S.B.I. agent to testify that defendant did not appear to be under the influence of drugs, narcotics, or alcohol or any other controlled substance when defendant spoke to agents at the Pitt County Detox Center about the victim's death, because: 1) a lay person may give his opinion as to whether a person is under the influence of an intoxicating substance so long as that opinion is based on the witness's personal observation; 2) a police officer is allowed to give his opinion of the defendant's mental capacities at the time of a confession; and 3) it was necessary for the agent in this case to give his opinion as to defendant's mental state at the time of the confession to help with the determination that defendant voluntarily gave the statement to police.

### **Confessions And Incriminating Statements--Voluntariness--Juvenile**

*State v. Mckeithan, 140 N.C. App. 422 (2000)*

The trial court did not err in a double first-degree murder case by denying defendant juvenile's motion to suppress his confession, because: 1) defendant was advised both orally and in writing of his rights under Miranda, and the warning fully satisfied the requirements of N.C.G.S. § 7A-595 (now N.C.G.S. § 7B-2101); and 2) defendant stated he understood his rights, was willing to waive his rights, and executed a written waiver.

### **Right To Remain Silent--Refusing To Write A Statement--Subsequent To Oral Statement**

*State v. Hanton, 140 N.C. App. 679, (2000)*

The trial court did not err in a second-degree murder prosecution by admitting testimony that defendant refused to write a statement after answering questions. The refusal to reduce a voluntarily given oral statement to writing is **not an invocation of the right to remain silent.**

### **Confessions And Incriminating Statements--Miranda Warnings--Test For Custody**

*State v. Buchanan, 353 N.C. 332 2001*

A ruling by the trial court suppressing a first-degree murder defendant's statement was remanded where the trial court mistakenly applied the "free to leave" test in determining whether defendant was in custody for purposes of Miranda. The appropriate inquiry is whether, based on the totality of the circumstances, there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. The broader "free to leave" test and "restraint on freedom of movement of the degree associated with formal arrest" are not synonymous; circumstances supporting an objective showing that one is "in custody" might include a police officer standing guard at the door, locked doors, or handcuffs. Moreover, the subjective unspoken intent of a law enforcement officer, provided it is not communicated or manifested to the defendant in any way, and the subjective interpretation of a defendant are not relevant to the objective determination of whether the totality of the circumstances support the conclusion that defendant was in custody. ( See Farb's text in August 2001 Update p.4)

### **Confessions And Incriminating Statements--Miranda Warnings--Not In Custody**

*State v. Briggs, 137 N.C. App. 125 (2000)*

Even though the State concedes defendant made his incriminating statements during an interrogation, the trial court did not err in an extortion case by denying defendant's motion to suppress his incriminating statements to a correction unit manager and an assistant superintendent for operations at a correction institute because: 1) an inmate is not automatically in custody for the purposes of Miranda

because of his incarceration; and 2) defendant was free to not talk and to return to his cell at any time.

**(1) Confessions And Incriminating Statements--Miranda Warnings--Booking Process--Statutory Rape--Defendant's Date Of Birth**

**(2) Confessions And Incriminating Statements--Miranda Warnings--Booking Process--Statutory Rape--Defendant's Date Of Birth**

*State v. Locklear, 138 N.C. App. 549 (2000)*

(1) The trial court erred in a first-degree statutory rape case under N.C.G.S. § 14-27.7A(a) by admitting the investigating officer's testimony of defendant's statement of his date of birth during the booking process without the benefit of the Miranda warnings because: 1) Miranda applies to the gathering of biographical information necessary to complete the booking process if the questions posed by the police are designed for the purpose of eliciting a response they know or should know is reasonably likely to be incriminating; 2) defendant's age was an essential element of the crime charged; and 3) the investigating officer knew or should have known that her question regarding defendant's date of birth would elicit an incriminating response. **But see State v Banks 322 NC 753 1988.** (2) The trial court erred in a first-degree statutory rape case under N.C.G.S. § 14-27.7A(a) by admitting the investigating officer's testimony of defendant's statement of his date of birth during the booking process without the benefit of the Miranda warnings because: 1) Miranda applies to the gathering of biographical information necessary to complete the booking process if the questions posed by the police are designed for the purpose of eliciting a response they know or should know is reasonably likely to be incriminating; 2) defendant's age was an essential element of the crime charged; and 3) the investigating officer knew or should have known that her question regarding defendant's date of birth would elicit an incriminating response.

**Confessions And Incriminating Statements - Voluntariness - Promises**

*State v. Cabe, 136 N.C. App. 510 (2000)*

The trial court correctly concluded in a first-degree sexual offense prosecution that defendant's confession was voluntary where defendant was not under arrest, he was advised of and waived his rights, the interview lasted approximately forty-five minutes and defendant was allowed to go home, the statements made by the detective were in response to questions asked by defendant, the statement that the detective could not see why defendant would lose his job cannot be construed as a promise to keep his job, and any improper promises that may have been made concerned collateral matters.

## **Confessions And Incriminating Statements - Initiation Of Conversation - Nodding Of Head**

*State v. Johnson, 136 N.C. App. 683 (2000)*

In a first-degree murder and robbery with a dangerous weapon case where defendant-juvenile stated he did not wish to answer any questions, his mother interjected that "we need to get this straightened out today and we'll talk with him anyway," defendant thereafter nodded affirmatively to the detective after considering his mother's statement, and then the detective asked if defendant wanted to answer questions without a lawyer or parent being present, the trial court did not err by denying defendant's motion to suppress his statement to the Shelby Police because defendant initiated the conversation in which he made the incriminating statement by nodding his head to the officer. N.C.G.S. 7A-595.

## **Confessions And Incriminating Statements - Delay - Voluntariness - Miranda Warnings - No Fruit Of The Poisonous Tree**

*State v. Wallace, 351 N.C. 481 (2000)*

The trial court did not err by denying defendant's motion to suppress his pretrial statements to police in a case involving defendant's convictions for nine counts of first-degree murder, eight counts of first-degree rape, one count of second-degree rape, two counts of first-degree sexual offense, two counts of second degree sexual offense, one count of assault with a deadly weapon, and five counts of robbery with a dangerous weapon, because: 1) the delay in taking defendant before a judicial official was not unnecessary within the meaning of N.C.G.S. §15A-501(2) in light of the number of crimes to which defendant confessed, the amount of time necessary to record the details of the crimes, the investigators' accommodation of defendant's request to sleep; furthermore, there was no indication that taking defendant to the Law Enforcement Center before he saw a magistrate caused him to confess, no indication that police asked defendant about any of the crimes to which he later confessed before he was read his Miranda rights, and no indication that any portion of his confession was a result of the delay during which he discussed unrelated subjects with investigators; 2) defendant's later confessions could not be termed "fruit of the poisonous tree" since there was no prior inadmissible statement or evidence to function as the "poisonous tree"; and 3) investigators did not improperly induce defendant to confess based on their statements that they would attempt to contact defendants' girlfriend and the mother of his child since they made the statement only in response to defendant's request to see his girlfriend and hold his child, defendant admitted his confession was not given in exchange for the request to see his girlfriend and child, and investigators advised defendant that the police had no control over whether they would come to the station.

## **Confessions And Incriminating Statements--Right To Silence--Equivocal**

*State v. Golphin, 352 N.C. 364 (2000)*

The trial court did not commit plain error in a capital trial by admitting into evidence a portion of one defendant's statement to police after defendant's alleged invocation of his right to silence because defendant's statement, that he did not want to say anything about the jeep and that he did not know who it was or he would have told the officers, did not constitute an unequivocal request to remain silent.

**(1) Confessions And Other Incriminating Statements--Not Custodial**

**(2) Confessions And Other Incriminating Statements--Statements After Request For Counsel**

*State v. Brewington, 352 N.C. 489 (2000)*

(1) The trial court did not err by admitting statements by a capital first-degree murder defendant where defendant voluntarily drove himself to the Sheriff's Department in a private automobile after a detective requested an interview; defendant was not confined, handcuffed, restrained, threatened, or subjected to any show of force; he consented to a polygraph examination, returning to a waiting room while the test was prepared and voluntarily going to the examination room; when the examiner told defendant that she did not think he was telling the entire truth, he replied that he had been present when the fire was set and blamed it on one of the victims; and when the examiner returned after speaking with the detectives, defendant stated before she could speak that his fiancée had set the fire. Under the totality of the circumstances, defendant was not in custody during his interview. (2) The trial court did not err in a prosecution for capital first-degree murder and other crimes by admitting statements made by defendant after he indicated that he wished to talk with counsel where defendant was then subjected to interrogation only after continuing to ask questions about the case, telling detectives that he wished to talk without the presence of counsel, and formally waiving his Miranda rights.

**In-Custody Interrogation - Ambiguous Invocation Of Right To Counsel - Clarification By Questions - Admissibility Of Incriminating Statements**

*State v. Barber, 335 N.C. 120 (1993)*

Defendant did not invoke her right to counsel when, in response to warnings as to her Miranda and juvenile rights, she asked the interrogating officer whether she needed a lawyer where the officer responded that he could not tell her whether she needed a lawyer but was merely advising her of her rights to a lawyer; the officer asked whether defendant understood each of the rights explained to her and defendant answered affirmatively

**Murder - Silence When Rights Read - Subsequent Statements By Defendant And Consent To Search - Implied Waiver Of Rights**

*State v. Williams, 334 N.C. 440 (1993)*

**Statement to SBI Agent - Miranda Warnings Not Given - No Custodial Interrogation**

*State v. Wiggins, 334 N.C. 18 (1993)*

**Incriminating Statement - No Custodial Interrogation - Miranda Warnings Not Required**

*State v. Lane, 334 N.C. 148 (1993)*

Defendant's first incriminating statement during an interview by SBI investigators was not the result of custodial interrogation for Miranda purposes where the trial court found that defendant was told that he was free to leave on several occasions during the interview, that defendant did not ask to leave or request an attorney at any time, and that defendant was not placed under arrest after making his first statement but was taken home by the SBI investigators. Therefore, this statement was admissible even though defendant was not given the Miranda warnings.

**Murder - Incriminating Statement In Defendant's Presence - Silence - Admissible**

*State v. Williams, 333 N.C. 719 (1993)*

**Murder - Statement By Defendant Following Invocation Of Right To Remain Silent - Not Prejudicial**

*State v. Harris, 333 N.C. 543 (1993)*

There was no prejudicial error in a murder prosecution where defendant made an oral statement, officers told defendant that he was not telling the truth, defendant said that he had nothing more to say, an SBI agent assured defendant that he wanted defendant's side of the story and was willing to record it, defendant gave the agent a detailed statement

**(1) Murder - Confession - Custodial**

**(2) Murder - Multiple Confessions - Miranda Violation In First - Second Admissible**

*State v. Hicks, 333 N.C. 467 (1993)*

(1) A confession made before Miranda warnings were given should have been suppressed in a murder prosecution where officers asked defendant to take a polygraph test to "clear his name" and transported defendant over an hour's drive away from his home in Mocksville to an S.B.I. office in Hickory for the purpose of administering a polygraph test; defendant never was taken home or offered transportation home even though he refused to take the polygraph on three separate occasions during two hours of questioning (2) The trial court properly admitted evidence concerning a murder defendant's second confession, made voluntarily after a waiver of rights, where a first confession was taken in violation of Miranda. Although defendant was in custody when he made his first, unwarned incriminating statement, that confession was made without coercion or other circumstances intended to undermine the exercise of his free will. Therefore, under *Oregon v. Elstad*, 470 U.S. 298, the officers' failure to advise defendant of his Miranda rights before he made his first confession did not taint his subsequent waiver of his constitutional rights.

### **Custodial Interrogation - Invocation Of Right To Counsel - Further Interrogation**

*State v. Pope, 333 N.C. 106 (1992)*

When a defendant has invoked his Fifth Amendment right to counsel during custodial interrogation, an officer may not further interrogate the defendant about the crime for which defendant has been arrested or any other crime unless his attorney is present or the defendant himself initiates the interrogation.

**(1) Murder - Statements By Defendant - Prior Statement Inadmissible - Second And Third Statements Admissible**

**(2) Murder - Statements At Sheriff's Office - Not Custodial - Properly Admitted**

**(3) Murder - Statement To Officers - Not The Result Of Psychological Coercion**

**(4) Murder - Incriminating Statement - Totality Of Circumstances - Voluntary**

*State v. Greene, 332 N.C. 565 (1992)*

(1) Although a murder defendant's first statement should have been suppressed under the presumption of involuntariness rule of Miranda, his second and third statements were properly admitted because there was no evidence that the first statement had been induced by promises or threats.

### **Murder - Incriminating Statement - No Miranda Warning - Not In Custody**

*State v. Mahaley, 332 N.C. 583 (1992)*

The trial court did not err by concluding that a murder defendant was not in custody for Miranda purposes when she gave three statements at the police station where the police first spoke with defendant at her home; she agreed to accompany them to the police station, where she was interviewed; defendant was returned to her home; her home was searched for the second time and she agreed to return to the police department for another interview; and defendant was interviewed for a third time when an officer approached her in the snack room of the police station approximately two hours after the second interview and told her that he believed that she knew more than she was telling. The court's findings were amply supported by substantial evidence tending to show that defendant never indicated that she wanted to terminate an interview, that the officers continuously informed the defendant that she was free to leave at any time during the interviews, and that she understood that she was free to go and was not required to make a statement.

### **Custodial Interrogation - Invocation Of Right To Counsel - Reinitiation Of Interrogation - Incriminating Statement - Admission As Prejudicial Error**

*State v. Morris, 332 N.C. 600 (1992)*

Defendant invoked his right to counsel during custodial interrogation when he responded "I don't know" to an officer's question as to whether he would like to waive his right to counsel and responded "No, because I don't know how much I want to tell you" when asked if he would sign a waiver of counsel form

### **Murder - Invocation Of Right To Counsel - Mistake In Signing Form - Further Questioning**

*State v. Mckoy, 332 N.C. 639 (1992)*

### **Statements To Cellmate - Cellmate Not State Agent - No Sixth Amendment Violation**

*State v. Taylor, 332 N.C. 372 (1992)*

### **(1) Statements By Nontestifying Codefendant – Implied Admissions By Defendant - Bruton Rule Inapplicable**

### **(2) prima facie case of conspiracy - admissibility of declarations by defendant**

*State v. Willis, 332 N.C. 151 (1992)*

(1) The trial court properly admitted testimony by one witness as to what the nontestifying codefendant said in defendant's presence about plans to divide a murder victim's jewelry and money after he was killed and testimony by a second

witness that the codefendant stated in defendant's presence that defendant had a chance to get the victim when the victim was beating her and not to worry about a friend's talking because the friend was "cool," since these statements were admissible against defendant as implied admissions and were not barred by the rule of *Bruton v. United States*, 391 U.S. 123.

### **Recorded Telephone Conversation With Defendant – Implied Admissions - Tapes And Transcripts Admissible**

*State v. Thompson*, 332 N.C. 204 (1992)

### **Murder - Confession - Waiver Of Rights - Defendant's Mental Capacity**

*State v. Pittman*, 332 N.C. 244 (1992)

The trial court did not err in a noncapital murder prosecution by failing to suppress defendant's signed confession where defendant contended that the confession was involuntary due to his mental condition. Although there was substantial evidence that defendant had a history of schizophrenia and that he had sought and obtained medication for this condition approximately three days prior to the crimes at issue, that evidence alone fails to establish that defendant lacked the capacity to knowingly, intelligently, and voluntarily waive his rights.

### **Right To Counsel - Incriminating Statements Made After Request For Counsel - No Custodial Interrogation - No Adversary Proceedings - No Attachment Of Right**

*State v. Willis*, 109 N.C. App. 184 (1993)

### **Custodial Interrogation - No Miranda Warnings - Public Safety Exception**

*State v. Garcia-Lorenzo*, 110 N.C. App. 319 (1993)

### **(1) Murder - Statement By Defendant In His Home – Custodial Interrogation**

### **(2) Murder - Inquiry Into What Happened - Interrogation**

*State v. Dukes*, 110 N.C. App. 695 (1993)

(1) A murder defendant was in custody when he made a statement to an officer where defendant was escorted to his trailer by an officer, who remained with him for some time; another officer arrived and was instructed in defendant's presence to stay in the trailer with defendant and not to permit defendant to wash his clothing; and that officer remained in the trailer with defendant and accompanied

defendant to the bathroom. (2) A murder defendant was subject to interrogation where an officer was told to stay with defendant and ensure that defendant did not wash or change his clothes and the officer asked defendant if he knew what was happening.

**Sixth Amendment Right To Counsel - Right Offense Specific - Subsequent Interrogation As To Different Offense - Assertion Of Right In Earlier Case Inapplicable To Interrogation**

*State v. Harris, 111 N.C. App. 58 (1993)*

Invocation of the right to counsel under the Sixth Amendment acts only to prevent subsequent interrogation of a defendant on the same offense for which he has invoked his right to counsel;

**Failure To Follow Miranda Procedure – Statement Inadmissible - Subsequent Statement Not Tainted**

*State v. Gish, 111 N.C. App. 165 (1993)*

**Waiver Of Rights - Voluntariness - Understanding - Sufficiency Of Evidence**

*State v. Owen, 111 N.C. App. 300 (1993)*

Evidence was sufficient to support the trial court's finding that defendant's waiver of his rights was freely, voluntarily, and understandingly made where the evidence tended to show

**Confession - Invocation Of Right To Counsel – Conversation Initiated By Defendant**

*State v. Jones, 112 N.C. App. 337 (1993)*

**Confession Of Mentally Retarded Defendant - Waiver Of Miranda Rights - Sufficiency Of Findings**

*State v. Brown, 112 N.C. App. 390 (1993)*

**Confession - Interval Between Coerced Confession And Second Confession**

*State v. Jones, 336 N.C. 229 (1994)*

The Supreme Court declined to reconsider its prior ruling upholding the admission of a second confession following a coerced confession in light of *Arizona v. Fulminante*, 499 U.S. 279.

**First-Degree Murder - Defendant's Mental State Following Confession - Officer's Testimony Excluded - No Error**

*State v. Daniels*, 337 N.C. 243 (1994)

The trial court did not err in a first-degree murder prosecution by excluding portions of the testimony of a law enforcement officer regarding defendant's mental state following his confession where defendant's first questions were improper because they pertained only to whether defendant "could have waived" his rights and his last question, as to whether defendant understood the Miranda form, was also improper as calling for a legal conclusion. Witnesses may testify as to whether defendants had the capacity to understand certain words on the Miranda form, such as "right" or "attorney," but may not testify as to whether defendants had the capacity to waive their rights.

**Accusation Of Murder - Silence By Defendant – SBI Agent's Testimony - Cross-Examination Of Defendant - Violation Of Constitutional Right To Silence**

*State v. Quick*, 337 N.C. 359 (1994)

The trial court in a capital resentencing hearing erred by permitting the State to elicit testimony from an SBI agent that, during interrogation after defendant had been advised of his Miranda rights and had been informed that he was under arrest, defendant had remained silent when faced with the agent's accusation that he murdered the victim, since this testimony amounted to an impermissible reference to defendant's exercise of his right to silence.

**(1) Assertion Of Right To Counsel - Further Communication Initiated By Defendant - Subsequent Confession Admissible**

**(2) Miranda Warnings - Assertion Of Right To Counsel – Further Communication [Communication] Initiated By Defendant -Additional Warnings Unnecessary**

*State v. Harris*, 338 N.C. 129 (1994)

**Fantasy Statements To Another Inmate - Admission Of Party Opponent**

*State v. Gregory*, 340 N.C. 365 (1995)

A "fantasy statement" made by defendant to another inmate while he was in Central Prison awaiting trial which detailed defendant's participation in the

shooting of the male victim and the kidnapping, rape and murder of each of the two female victims was admissible as an admission of a party opponent. N.C.G.S. 8C-1, Rule 801(d)(A). Defendant's statement to the inmate clearly implicated defendant in the crimes charged

### **Incriminating Statement - Defendant Not In Custody - Edwards v. Arizona Inapplicable**

*State v. Daughtry, 340 N.C. 488 (1995)*

Defendant's freedom of movement was not restrained during his interview by the police so as to render him in custody for Fifth Amendment purposes where defendant testified that he knew he was free to leave, even when the door to the interview room was shut; defendant was never handcuffed or frisked; at most the police patted him down before the interview to make sure he was unarmed; and the officers never threatened defendant, raised their voices, or ordered defendant to do anything. When defendant asked for a lawyer, a reasonable person would have felt free to leave, the prohibitions of *Edwards v. Arizona*, 451 U.S. 477, which established the custodial interrogation must cease when an accused requests an attorney and may not be resumed by police officers without an attorney present, thus did not apply, and defendant's rights were not violated when an officer told him he could continue talking to the officers without an attorney if he wished.

### **(1) Codefendant's Confession Defendant Implicated Confession Corroborated By Other Evidence**

### **(2) Redacted Confession Defendant Not Prejudiced By Excluded Evidence**

*State v. Littlejohn, 340 N.C. 750 (1995)*

(1) Even if defendant Littlejohn's confession implicated defendant Dayson in the crime charged, Dayson was not prejudiced since the confession was largely corroborated by other evidence, including eyewitness testimony and Dayson's own testimony that he went armed to the crime scene and participated in an armed robbery in which the victim was killed. (2) There was no merit to defendant's contention that his rights were violated by the introduction of a redacted confession and that, based on N.C.G.S. 8C-1, Rule 106, when a part of his confession was introduced, he had a right to have the other part introduced, since defendant was in no way prejudiced by the redaction.

### **Confession Detective's Urging Defendant To Tell The Truth Voluntariness**

*State v. Mccullers, 341 N.C. 19 (1995)*

The trial court properly concluded that defendant's statements to police officers were voluntarily and freely made where the detective did not accuse defendant of lying, but rather informed him of the crime with which he might be charged and urged him to tell the truth and think about what would be better for him

**(1) Defendant's Statement To Police Right To Silence Not Invoked**

**(2) Inculpatory Statement Admission Of Party Opponent Admissibility**

**(3) Defendant's Demeanor At Crime Scene Admissibility Of Investigating Officers' Testimony**

*State v. Lambert, 341 N.C. 36 (1995)*

(1) Admission of testimony by a deputy regarding defendant's statements that she had "blacked out" and could not remember anything and the prosecutor's subsequent cross-examination of defendant about those statements did not violate defendant's Fifth Amendment right to silence, since defendant's statements, though made while she was in custody, were not the result of police interrogation; and defendant's statement that she could not remember anything did not invoke her right to silence but instead could only be construed as her indication that she would willingly have discussed the case had she been able to recall further information. (2) In a prosecution of defendant for the murder of her husband, the trial court did not err in admitting defendant's statement, "Honey, why did you make me do it?" while she was viewing her husband's body at the funeral home (3) In a prosecution of defendant for the murder of her husband, the trial court did not err in allowing the testimony of the investigating officers which related to defendant's lack of emotion at the scene of the killing, since the testimony stemmed from the officer's personal experience combined with their observation of defendant, was helpful to a clear understanding of a relevant issue, and had probative value which was not outweighed by the danger of unfair prejudice. N.C.G.S. 18C-1, Rule 701.

**Defendant's Confession No Impairment From Alcohol Telling Defendant He Failed Polygraph No Coercive Tactic**

*State v. Thibodeaux, 341 N.C. 53 (1995)*

**First-Degree Murder Statement By Defendant Self-Serving Door Not Opened By State**

*State v. Vick, 341 N.C. 569 (1995)*

There was no error in a first-degree murder prosecution where the court did not allow defendant to present an exculpatory statement made by defendant to an

officer where defendant contended that the State opened the door when it introduced defendant's earlier remarks into evidence. Although it has been held that if the State submits parts of a defendant's confession the defendant must be allowed to present other parts of the statement even though they are self-serving, defendant's remarks here constituted two verbal transactions. The first remarks took place while defendant was being processed and fingerprinted, were unsolicited, and the conversation was terminated by the officer. The second remarks were made after a period of time had elapsed, after defendant had left one room and entered another, and after defendant had been given Miranda warnings and interrogation had begun.

### **First-Degree Murder Right To Counsel Invoked Subsequent Inculpatory Statements Remain Silent Voluntary**

*State v. Walls, 342 N.C. 1 (1995)*

The trial court did not err in a first-degree murder prosecution by denying defendant's motion to suppress statements made to a detective where defendant contended that the statements were the result of a custodial interrogation after he had invoked his right to remain silent and could not be spontaneous. While defendant was in custody, he was not interrogated: the court found that the detective asked defendant nothing further after defendant signed a paper that he no longer wished to make a statement, the detective asked defendant what had happened to his hand after he complained that it hurt during fingerprinting, defendant replied that he had hit a tree, the detective asked why, and defendant said, "I should have hit her a little harder so I could really hurt my hand." The detective had no reason to believe that his questions about defendant's hand were reasonably likely to evoke an incriminating response; defendant's remarks were volunteered statements and the detective's questions did not convert the conversation into an interrogation under Miranda.

### **Presence Of Parents And Attorney In Police Station Failure To Advise Juvenile Admissibility Of Juvenile's Confession**

*State v. Gibson, 342 N.C. 142 (1995)*

Law enforcement officials are not required to inform a juvenile that his parents or attorney are actually present in the police station before taking his voluntary confession, and their failure to do so does not render the juvenile's confession involuntary as a matter of law or otherwise inadmissible.

### **Defendant's Failure To Offer Explanation Of Events - No Violation Of Right Against Self-Incrimination**

*State v. Alkano, 119 N.C. App. 256 (1995)*

In a prosecution of defendant for second-degree sexual offense, the prosecutor's questions to the arresting officers concerning defendant's pre-Miranda post-arrest lack of explanation of the events in question did not violate defendant's right against self-incrimination, since defendant did not choose to remain silent but instead, without any interrogation whatever by the officers, spontaneously made several inculpatory statements after being arrested, and the prosecutor's line of questioning served only to show the extent of defendant's spontaneous utterances.

### **Statement Resulting From Polygraph Examination Voluntariness Of Statement**

*State v. Soles, 119 N.C. App. 375 (1995)*

There was no merit to defendant's contention that the trial court committed reversible error in denying his motion to suppress a statement given by him as a result of a polygraph examination because the statement was obtained in a coercive and oppressive manner

### **Confession - Defendant's Mental Capabilities - Officer's Opinion**

*State v. Jones, 342 N.C. 523 (1996)*

There was no error in a first-degree murder prosecution where an officer was allowed to give his opinion regarding defendant's mental capabilities at the time he confessed but defendant was not allowed to introduce evidence regarding his mental capabilities. The State has the burden of establishing that a confessing defendant possesses the proper mental capacity to waive his rights and the testimony meets the standards of N.C.G.S. 8C-1, Rule 701 in that the opinion was rationally based on the officer's perception of defendant at the time of the confession and it was necessary that the officer give his opinion to help determine whether defendant voluntarily gave the statement, a crucial fact in issue.

### **Defendant's Statement - Made During Booking Into Jail**

*State v. Decastro, 342 N.C. 667 (3-8-1996)*

The trial court did not err in a first-degree murder prosecution by admitting a defendant's statement that some of the money he had was his where the statement was not the result of an interrogation but in response to a question from a detective to an SBI agent and in the general course of turning over defendant's clothing and property in exchange for an inmate jumpsuit. The exchange between the officers did not constitute an initiation of questioning or badgering of defendant with words or actions reasonably likely to elicit an incriminating response from defendant.

**Right To Silence -Invoked - Interrogation- Reinitiated By Police Within 15 Minutes  
- Right To Silence Violated**

*State v. Murphy, 342 N.C. 813 (3-8-1996)*

**Miranda Warnings - Request For Counsel- Subsequent Incriminating Statements -  
Conversation Not Initiated By Defendant**

*State v. Munsey, 342 N.C. 882 (3-8-1996)*

The trial court properly suppressed incriminating statements made by defendant on 11 June 1993 on the ground that defendant did not initiate the dialogue with officers after defendant requested an attorney where defendant was arrested and given the Miranda warnings; defendant told officers he would like to have a lawyer; an officer unsuccessfully attempted to contact an attorney requested by defendant; defendant then asked the officer to call his brother and said "that would do instead of" the attorney; defendant's brother was contacted and visited defendant in jail; defendant answered that he would talk with the sheriff and another officer when they asked him if he was then ready to talk with them

**Detective's Notes Of Confession Unsigned By Defendant Admissibility**

*State v. Wagner, 343 N.C. 250 (1996)*

A detective's handwritten notes of an interview of defendant containing the detective's questions and defendant's answers was properly admitted into evidence in defendant's murder trial, although the notes were not reviewed and signed by defendant, where the detective testified that **the notes constituted an exact word-for-word rendition of his interview of defendant**, and any unrecorded conversation that took place between the detective and defendant was unrelated to the questioning of defendant. Furthermore, the notes were not inadmissible because they contained a comment by the detective that defendant appeared to be bragging when he stated that he would have used a more powerful gun if he had intended to kill anyone, since the detective could testify as to what he observed about defendant's demeanor during the interrogation.

**Officer's "Attempt" To Record Defendant's Answers To Questions Document Not  
Signed By Defendant Document Inadmissible**

*State v. Bartlett, 121 N.C. App. 521 (1996)*

Where an officer testified that he did not write down questions asked of defendant, never testified that his handwritten notes were an exact reflection of the answers given by defendant, and testified only that he "attempted" to write down defendant's answers, and there was no evidence that defendant acquiesced in the correctness of the writing but in fact refused to sign it, the trial court erred

in admitting the document into evidence and allowing the officer to read it to the jury.

**(1) Confession Nonprosecution Agreement Between Officers And Defendant State's Refusal To Honor Defendant's Reliance On Agreement Right To Relief**

**(2) Police Promises Disregarded By State Defendant's Reliance On Promises Confession Suppressed New Trial**

*State v. Sturgill, 121 N.C. App. 629 (1996)*

(1) Though a police detective was not vested with either actual or apparent authority to make a nonprosecution agreement with defendant in return for his confession, defendant was nevertheless entitled to relief when the State refused to honor the agreement since he changed position in a fashion constituting detrimental reliance upon the agreement in derogation of his constitutional rights, including his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel.

**Defendant Not In Custody Voluntariness Of Statement**

*State v. Sanders, 122 N.C. App. 691 (1996)*

The trial court's findings were sufficient to support a conclusion that a reasonable person in defendant's position would not have believed himself to be in custody and his statement to officers was voluntary where the court found that defendant agreed to accompany detectives to the police station as requested; the interview room had doors for privacy but no locks; two detectives were in the room with defendant for the two-hour interview and were joined by a third officer for a brief time; defendant was never threatened or promised that he would not be prosecuted or would obtain a lesser sentence by cooperating with police; defendant was allowed to relieve himself upon request and was allowed a 20-minute break outside the interview room to smoke a cigarette; defendant was told he was free to leave and could call his wife later; defendant was confronted with physical evidence found at the crime scene, which was true, and was told that the victim had identified him, which was not true; and defendant admitted robbing and beating the victim but consistently denied that he had used a weapon.

**First-Degree Murder Confession Atmosphere Of Interrogation**

*State v. Chapman, 343 N.C. 495 (1996)*

The fact that defendant saw a photograph of the deceased in every direction he turned does not indicate that his free will was overturned; the photographs contained no threat or promise of reward which would invalidate the confession. The deceit practiced by the detective in implying that a note found next to the

victim had been determined to be in defendant's handwriting and that defendant's fingerprints were on the note, when the detective knew that this was not true, did not require the court to find that the confession was not of defendant's own free will, that it was the product of fear or hope of reward, or that the deceit was calculated to produce an untrue statement.

### **Pre-Arrest Statements At Police Station Defendant Not In Custody Miranda Warnings Not Required**

*State v. Bates, 343 N.C. 564 (1996)*

Defendant was not in custody at the time he made three prearrest statements to law officers so that Miranda warnings were not required and those statements thus did not taint a subsequent statement made by defendant after he had been given the Miranda warnings where the trial court made findings supported by evidence that the defendant agreed to talk with law enforcement officers and agreed to go to the Sheriff's Department; defendant drove to the Sheriff's Department, accompanied by a friend; when defendant arrived, he spoke with three law enforcement officers; the officers thanked defendant for coming to the Sheriff's Department and told defendant that he was not under arrest and was free to leave at any time; the officers spoke to defendant for approximately forty minutes, during which time defendant told three different stories about what happened on the night in question; thereafter, defendant went to the bathroom alone; after defendant returned from the bathroom, the officers asked defendant if he would tell the truth, and defendant said that he would; defendant was then advised of his Miranda rights, and defendant signed a written waiver of those rights; and defendant was given a drink and cigarettes throughout the interview.

### **Noncapital First-Degree Murder Statement By Codefendant To Officer Other Defendant Not Implicated Admissible**

*State v. Taylor, 344 N.C. 31 (1996)*

There was no error as to defendant Leander Taylor in a noncapital first-degree murder prosecution where an officer was allowed to testify that when defendant Bennie Lee was advised about the shooting, he said he "didn't know anything about it, that he had been home all night." The Bruton rule prohibits the introduction of a statement by defendant if the statement implicates a codefendant; the testimony of the officer here as to what defendant Bennie Lee said did not implicate defendant Leander in any way.

### **(1) First-Degree Murder Voluntarily Showing Officers The Murder Weapon In Custody Warnings Given No Error**

## **(2) First-Degree Murder Inculpatory Statements Electronic Recording Not Required**

*State v. Burrus, 344 N.C. 79 (1996)*

(2) There was no error in a first-degree murder prosecution in the admission of inculpatory statements which were not electronically recorded. The North Carolina Supreme Court has ruled against requiring the recordation of in-custody interrogation; thus, there is no presumption in North Carolina against the admissibility of statements obtained during in-custody interrogations.

## **(1) Confession Standard For Determining Custody Objective Rather Than Subjective**

### **(2) Confession Not Custodial**

*State v. Leary, 344 N.C. 109 (1996)*

(1) The North Carolina Supreme Court declined to adopt a subjective rather than objective state of mind test for determining whether a defendant was in custody when a statement was given. (2) The trial court did not err in a prosecution for murder, robbery, and kidnapping by denying defendant's motion to suppress his statements to a law enforcement officer where defendant asserted that the first statement occurred during an in-custody interrogation without Miranda warnings and that the second statement was tainted by the first. The evidence tended to show that defendant was twenty-two years old and had prior experience with the criminal justice system; the first interview with defendant began at approximately 10:25 a.m.; the officer testified that defendant acted normal, "knew everything that was going on," appeared calm, and exhibited no signs of alcohol or drug use; defendant was told that he was not under arrest and that he was free to leave and was not subjected to physical threats or shows of violence; defendant testified that he was not mistreated in any way; the initial interview concluded at approximately 12:47 p.m.; defendant was not given his Miranda warnings before or during this first interview; the second conversation with defendant began at approximately 11:15 p.m. and concluded at approximately 11:20 p.m.; the officer testified that during this interview defendant appeared "much as he was before," "knew what was going on," and communicated effectively; the officer testified that defendant was not threatened, coerced, or intimidated and that at the beginning of this conversation he gave defendant his Miranda warnings; defendant signed the waiver of rights form; and the judge specifically found that defendant was not in custody during the first interview and that he chose "knowingly and voluntarily to make a statement to the police." As to the second interview, Judge Bowen found that defendant "knowingly and voluntarily chose to waive [his] rights and make a statement to and provide assistance to the police."

## **Capital Murder Right To Counsel Attorney's Demand To Be Present During Questioning**

*State v. Peterson, 344 N.C. 172 (1996)*

A first-degree murder defendant's Fifth Amendment right to counsel was not invoked when his attorney demanded that he be present during any interrogation of the defendant and no finding of fact on this issue was necessary. A defendant's right to counsel is personal to him and he may waive this right even though his attorney has instructed the investigating officers not to talk to him. In light of the court's findings that support the conclusion that defendant's waiver of his rights was voluntarily, knowingly, and intelligently made, the statement would not have been inadmissible if the court had found that the attorney had advised officers not to talk to defendant.

## **First-Degree Murder Confession By Another Who Committed Suicide Not Admissible As Dying Declaration**

*State v. Sharpe, 344 N.C. 190 (1996)*

The trial court did not err in a noncapital first-degree murder prosecution by not allowing testimony concerning statements from another man who told his girlfriend that he had killed the victim and that he would kill himself before he went to jail for killing a white man where the man later committed suicide. Although defendant contended that the testimony was admissible as the dying declaration of an unavailable declarant, nothing in the circumstances surrounding the making of these statements suggests that he was in immediate danger of being arrested, so that it was not established that the declarant believed his death was imminent when he made these statements,

## **Confession Right To Counsel**

*State v. Davis, 124 N.C. App. 93 (1996)*

The trial court did not err in a prosecution for rape, burglary, and assault by denying defendant's motion to suppress his confession where, before being questioned, defendant was apprised of his Miranda rights, including his right to have counsel present during questioning; defendant clearly understood his rights and indicated that he did not wish to have counsel present; after making a telephone call, defendant asked if he needed a lawyer and was told that it was his decision to make; and defendant voluntarily continued answering questions, ultimately confessing to the crime. After defendant was advised that the decision to have an attorney present was his to make, nothing in his words or actions indicated his unwillingness to answer further questions in the absence of counsel, nor could be interpreted as a request for counsel.

## **Defendant's Statements During And After Polygraph Not An Interrogation Right To Counsel Not Denied**

*State v. Coffey, 345 N.C. 389 (1997)*

The trial court did not err in a noncapital first-degree murder prosecution by not suppressing statements made during and after a polygraph exam where defendant contended that the statements were obtained in violation of his Fifth and Sixth Amendment rights to counsel. Although there is no question that defendant was in custody at the time the statements were made, he was not being interrogated at that time. Since there was no interrogation, his rights to counsel were not violated. Even assuming that defendant was being interrogated, there is competent evidence in the record to support the trial court's finding of fact that defendant initiated the conversation with the SBI agent and the detective, and that finding is binding on appeal.

## **Inculpatory Statements - Pat-Down Search – Traffic Violation - Miranda Warnings Not Given**

*State v. Benjamin, 124 N.C. App. 734 (1996)*

The trial court did not err in denying defendant's motion to suppress defendant's inculpatory statement which was made subsequent to defendant being stopped for a traffic violation and after he was asked, "What is that?" during a pat-down search. Defendant's motion was made on the ground that his Miranda warnings were not given as soon as defendant was not free to leave. The fact that a defendant is not free to leave does not necessarily constitute custody for purposes of Miranda.

## **Cross-Examination - Police Officer - Prior Case – Deceit Used To Obtain Confession**

*State v. Baldwin, 125 N.C. App. 530 (1997)*

The trial court erred in a first-degree murder prosecution (life sentence) of a sixteen-year-old defendant by denying defendant the opportunity to cross-examine a police detective as to specific acts in a prior investigation where defendant sought to reveal that the detective had deceived at least one other person in an effort to obtain a confession for committing a crime. The probative value of this evidence was important in light of the very weak case the State had if the confession was rejected. N.C.G.S. 8C-1, Rule 608(b).

## **(1) Drugs On Person When Arrested - In-Custody Statement - Not Under Influence Of Drugs**

## **(2) Interrogation - Attorney Instructions - Not Invocation Of Right To Attorney**

*State v. Marion, 126 N.C. App. 58 (1997)*

(1) Although defendant had drugs on his person at the time he was arrested for an unrelated incident, competent evidence supported the trial court's finding that defendant did not appear to be under the influence of drugs at the time he was interrogated by the police about a rape, which in turn supported the court's conclusions that defendant's waiver of his rights and statement were made voluntarily and understandingly, where the interrogating officer testified that he had no trouble understanding defendant, that defendant did not appear to be intoxicated, and that defendant walked and talked without difficulty, had no trouble following instructions or keeping his balance, and did not appear to be under the influence. (2) In a prosecution for first-degree rape and kidnapping, the trial court properly denied defendant's motion to suppress his statement that was made during a police interrogation where defendant stated that a specific attorney had instructed him not to turn himself in but defendant did not make an affirmative indication that the attorney was representing him, since this statement was not a request to have such attorney present during interrogation.

**(1) Inculpatory Statement - Not Verbatim Transcript - Suppression Not Required**

**(2) Notes Of Defendant's Inculpatory Statements - Admissions Of Party Opponent - Past Recorded Recollection**

*State v. Moody, 345 N.C. 563 (1997)*

(1) An S.B.I. agent's notes of inculpatory statements made by defendant were not required to be suppressed because they were not a verbatim transcript which included the agent's questions where the agent merely read the notes and there was no attempt to introduce the notes as defendant's written statement. (2) An S.B.I. agent could properly read from a narrative report prepared from his notes of inculpatory statements made by defendant even though the notes were not acknowledged or adopted by defendant since defendant's statements were admissible as admissions of a party opponent. Moreover, the S.B.I. agent's reading from the narrative report prepared from his notes was admissible under the doctrine of past recorded recollection set forth in Rule of Evidence 803(5) where the agent testified that the report refreshed his recollection of the interview with defendant. N.C.G.S. § 8C-1, Rule 803(5).

**(1) Inculpatory Statements To Police - Noncustodial**

**(2) Inculpatory Statement - Defendant's Presence At Police Station - Not An Unconstitutional Seizure**

**(3) Murder - Prearrest Silence - Use To Impeach Defendant - No Plain Error**

*State v. Gaines, 345 N.C. 647 (1997)*

(1) The trial court did not err in a capital prosecution for first-degree murder which resulted in a life sentence by denying defendants' motion to suppress statements and physical evidence allegedly obtained as a result of custodial interrogation where the trial court based its conclusions as to defendant Harris on findings that Harris was repeatedly told that he was not under arrest and that he was free to leave at any time, that he signed a written statement that he was not under arrest and was giving a statement voluntarily, and that he had previous experience with the criminal justice system. The trial court's conclusions as to defendant Gaines were based in part on findings that Gaines was told several times that he was not under arrest, that he was repeatedly told that he was free to leave at any time, that he was told that any statement he made would be voluntary, and that he had previous experience with the criminal justice system. The findings were supported by competent evidence and the conclusions that defendants did not undergo custodial interrogation for Miranda purposes were correct. (2) Defendant Harris was not improperly seized in a first-degree murder case (and motions to suppress statements and physical evidence obtained as a result were not erroneously denied) where Harris was repeatedly told that he was not under arrest and that he was free to leave at any time, he signed a written statement that he was not under arrest and was giving a statement voluntarily, and he had had previous experience with the criminal justice system. (3) There was no plain error in a prosecution for the murder of a police officer where defendant Gaines contended that his rights were violated by the use of his prearrest silence for impeachment purposes during his cross-examination, but did not object at trial. The record reveals that defendant never invoked or relied upon his right to remain silent and the use of his prearrest silence did not violate his Fifth Amendment rights. The fact that the Fifth Amendment is not violated by the use of prearrest silence to impeach defendant's credibility does not mean that admission was proper under common law rules, but, assuming error, defendant has not shown that the error was so fundamental as to constitute a miscarriage of justice.

### **Criminal Child Abuse - Inculpatory Statement - Attorney Appointed Only For Civil Abuse Petition - No Sixth Amendment Violation**

*State v. Adams, 345 N.C. 745 (1997)*

The trial court erred in a prosecution for first-degree statutory sexual offense and two counts of felonious child abuse by suppressing defendant's statement to officers as being in violation of the Sixth Amendment to the Constitution of the United States where medical personnel reported possible child abuse to the Department of Social Services; DSS filed a petition alleging abuse and neglect; an attorney was appointed to represent defendant in regard to the abuse and neglect petition; defendant did not have counsel for any criminal charges; a detective interviewed defendant with her attorney present; the detective asked to talk with defendant again; the attorney advised defendant that she was not required to speak to the detective and defendant told the detective that she did not want to talk to the

attorney; and defendant eventually went to the Law Enforcement Center without her attorney and made an incriminating statement. The filing of a petition alleging abuse and neglect commences a civil proceeding and, by its terms, the Sixth Amendment applies only to criminal cases. The Supreme Court could not say, as did the Court of Appeals, that the civil and criminal proceedings were so intertwined that the commencement of a civil proceeding triggers the protection involved in a criminal case. In re Maynard, 116 N.C. App. 616, dealt with a person's right to have her attorney appointed pursuant to N.C.G.S. § 7A- 587 present when DSS discussed relinquishing the child for adoption and did not deal with a criminal action.

### **Custodial Interrogation - Invocation Of Right To Counsel - Further Interrogation - Initiation Of Conversation By Defendant**

*State v. Fernandez, 346 N.C. 1 (1997)*

Once an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing merely that he responded willingly to further police initiated custodial interrogation, even if he had been again advised of his rights. In such case, the accused may not be further interrogated until counsel has been made available to him unless the accused himself initiates further communication with the police.

### **Confession - Delay Of Four Hours In Appearance Before A Magistrate - Confession Admissible**

*State v. Dickens, 346 N.C. 26 (1997)*

The trial court did not err by not suppressing a first-degree murder defendant's statement where he was arrested at 9:50 p.m. and interrogated from 11:00 p.m. until 12:30 p.m.; warrants for his arrest were served between 1:30 and 2:00 a.m.; he was brought before a magistrate at 2:00 a.m.; and defendant contended that his statement should have been suppressed in its entirety because of the delay in taking him before a magistrate. The delay was four hours; a delay of four and one-half hours has been found not unreasonable or prejudicial. More importantly, defendant has failed to show that he would not have made an inculpatory statement absent the delay.

### **Capital Murder - Miranda Warning - Appointment Of Counsel - Statement That Defendant Might Have To Reimburse State - Subsequent Confession Admissible**

*State v. Cummings, 346 N.C. 291 (1997)*

The trial court did not err in a capital prosecution for first-degree murder by not suppressing defendant's confessions because they were obtained after a law enforcement officer chilled defendant's exercise of his right to counsel by

statements that defendant might have to pay the State for his lawyer. While advising defendant of his rights, the detective marked out the words "at no cost" in the sentence on the Miranda form regarding the provision of a lawyer and explained that it would be at no cost if defendant was found innocent, but that there was a chance the State would require reimbursement if he was found guilty. The detective effectively informed defendant that an attorney would be appointed for him before questioning, if he so desired; Miranda does not require that the officer inform an indigent defendant that an attorney would be appointed for him at no cost. The additional information supplied by the detective was accurate in that, while legal assistance is unconditional once indigency is established, the State reserves a general lien against defendant's future earnings if defendant is convicted and should later become able to pay. N.C.G.S. § 7A-451.

**(1) First-Degree Murder - Defendant's Letter To Prosecutor - Mention Of Possibility Of Plea Bargain - Not Barred**

**(2) First-Degree Murder - Initial Exercise Of Right To \*\*\*\* Remain Silent - Subsequent Letter To Prosecutor - Interview By Sbi Agent And Statement - Admissible**

*State v. Flowers, 347 N.C. 1 (1997)*

(1) The trial court did not err in a capital prosecution for first-degree murder by admitting a letter from defendant to the district attorney which contained statements concerning defendant's desire to plea bargain. The letter is essentially an admission of defendant's guilt, a statement of defendant's desire that the codefendants not be tried for the murder, a request to have counsel removed, and a mention of the possibility of a plea bargain. The letter does not state what plea defendant may have had in mind or any other specifics and the prosecutor did not respond to the letter, did not engage in plea discussions, and did not enter into a plea arrangement. Admission of the letter was not barred by N.C.G.S. § 15A-1025. (2) The trial court did not err in a capital prosecution for first-degree murder by not suppressing defendant's confession to an SBI agent where defendant initially exercised his right to remain silent, wrote a letter to the district attorney admitting that he committed the murder and requesting removal of his attorneys, the agent met with defendant at the request of the district attorney, defendant was advised of and waived his rights, and defendant then confessed. There is no dispute that defendant voluntarily sent the letter, the letter stated that defendant was accepting responsibility for the murder and did not express a desire to begin plea discussions, the record indicates that defendant knowingly and voluntarily waived his rights and that he wanted to talk to the agent, and defendant in no way indicated that the discussion was limited to plea negotiations. The trial court properly found that defendant initiated the request for contact in his letter to the district attorney and that his confession was made voluntarily and after a knowing waiver of his constitutional rights to silence and counsel.

## **Capital Murder - Right To Counsel Invoked – Subsequent Question By Jailer - Not Designed To Elicit Incriminating Testimony**

*State v. Gray, 347 N.C. 143 (1997)*

The trial court did not err in a capital prosecution for first-degree murder by not excluding testimony from a jailer that he had asked defendant if there was anything else he could do for defendant as he was putting him in his cell and that defendant had replied, "No. At least now I can get a good night's sleep." Although defendant argues that this colloquy should have been excluded because it came after he had invoked his right to counsel, the question by the jailer was not designed to elicit incriminating evidence and the testimony was properly admitted.

## **First-Degree Murder - Defendant's Statements – Warnings Given In Prior Interrogation On Another Charge - Findings That Rights Not Invoked Or Waived - Evidence Sufficient**

*State v. Peterson, 347 N.C. 253 (1997)*

*State v. Little, (15 June 1999).*

The defendant asserted his right to counsel after his arrest. A detective, who did not know of this assertion, approached the defendant and began to read Miranda rights to the defendant. Note: Generally, a defendant's assertion of Miranda rights is imputed to all officers. See *Arizona v. Roberson*, 486 U.S. 675, 108 S. Ct. 2093, 100 L.Ed. 2d 704 (1988). The defendant interrupted the detective and informed him that although he had told another officer that he wanted an attorney, he had changed his mind and now wanted to talk about the criminal charges. The detective properly gave Miranda warnings and obtained a waiver of rights, and then the defendant gave a statement to the detective. The court ruled, relying on *State v. Underwood*, 84 N.C. App. 408, 352 S.E.2d 898 (1987) and other cases, that the defendant reinitiated conversation with the detective after asserting his right to counsel. Thus, the defendant's statement was admissible at trial

*Lilly v. Virginia, (10 June 1999).*

In the trial of the defendant, the **state introduced a police-obtained confession of a nontestifying accomplice** (he had asserted his Fifth Amendment privilege when the state called him as a witness) under Virginia's hearsay exception for a statement made against one's penal interest. The confession inculcated both the accomplice and the defendant. The Court (in a four-Justice plurality opinion) ruled that the admission of the confession violated the Confrontation Clause of the Sixth Amendment: (1) the hearsay exception for a statement made against one's penal interest, as used in this case, is not a firmly-rooted hearsay exception under

White v. Illinois, 502 U.S. 346, 112 S. Ct. 736, 116 L. Ed. 2d 848 (1992); and (2) the hearsay statement (the confession) did not contain particularized guarantees of trustworthiness, based on the facts in this case.

### **Juvenile - Theft Of Money At School - Assistant Principal Not An Agent Of Law Enforcement - Statement Not Suppressed**

*In Re Phillips, 128 N.C. App. 732 (1998)*

The trial court did not err by denying a juvenile's motion to suppress inculpatory statements and the fruits thereof obtained during questioning by an assistant principal about money stolen from the school. The assistant principal was not a sworn law enforcement officer, had no arrest power, was not affiliated with a law enforcement agency, did not act as an agent of law enforcement but as an official of the school, and did not question the juvenile to obtain information for criminal proceedings but for school disciplinary purposes.

#### **(1) Juvenile Confession - Warnings Before Confession - Evidence Sufficient**

#### **(2) Juvenile Confession - Miranda And Statutory Rights - Express Waiver Not Required**

#### **(3) Juvenile Defendant - Waiver Of Rights - Capacity To Understand**

*State v. Flowers, 128 N.C. App. 697 (1998)*

(1) The trial court did not err in the prosecution of a juvenile as an adult for armed robbery and assault by denying defendant's motion to suppress his confession where the court's finding that a warning which fully satisfied Miranda and N.C.G.S. § 7A-595 (a) was read to defendant before he was questioned is supported by competent evidence and is therefore conclusive. (2) The trial court did not err in the prosecution of a juvenile as an adult for armed robbery and assault by denying defendant's motion to suppress his confession where defendant argues that he never expressly waived his rights. The rule in North Carolina that a person could waive his Miranda rights only by an express statement has long since been repudiated and no statute requires an express waiver of juvenile rights. (3) The trial court correctly concluded that a juvenile defendant being tried as an adult for armed robbery and assault understood his Miranda rights and knowingly, intelligently, and voluntarily waived those rights before making a statement. There was no evidence of coercion and, although defendant argues that he lacked the capacity to understand his rights because of his youth and low mental ability, he invoked his right to remain silent when asked about an unrelated matter, indicating that he had the capacity to understand and exercise his rights. Moreover, he denied his participation in this robbery until his mother told him to tell the truth, suggesting that he was aware that speaking to the police could have negative consequences.

## **Interrogation - Defendant Not In Custody – Miranda Warnings Not Required**

*State v. Green, 129 N.C. App. 539 (1998)*

Defendant was not in custody during seven hours of interrogation at the sheriff's department prior to his arrest, and his statements made during that time were admissible in his murder trial even though Miranda warnings had not been given to him, where defendant willingly accompanied officers to the sheriff's department; officers told defendant at the outset and again later that he was not under arrest; defendant was not handcuffed or restrained in any way; officers showed defendant the location of the restroom and lounge and offered him food and beverages; defendant had a calm and cooperative demeanor and did not appear to be under the influence of an intoxicating substance; officers asked defendant at the conclusion of his initial remarks if he was "doing all right" and he responded that he was "all right"; defendant was given breaks and coffee; defendant was not guarded or accompanied by any officer when he used the restroom during one break; and officers did not attempt to perform invasive procedures during defendant's interrogation.

### **(1) Inculpatory Statements - Defendant In Custody**

### **(2) Custodial Interrogation - Invocation Of Right To Counsel - Subsequent Inculpatory Statements – Inadmissibility**

*State v. Jackson, 348 N.C. 52 (1998)*

(1) Defendant was in custody when he stated that he thought he needed a lawyer present and when he made incriminating statements where the evidence showed that, at the request of two deputy sheriffs, defendant accompanied them to the sheriff's office; defendant was in the interrogation room for three hours, during which time he was questioned about a murder, was fingerprinted, and had hair and blood samples taken; defendant told the officers that he was eager to return to work; he was never told that he was free to leave or that he would be given a ride to his home or place of work if he decided to leave; and defendant made the statement about the need for a lawyer after the sheriff asked him what he had done with the rifle he had used to kill the victim, which informed defendant that the sheriff thought he had committed murder. A reasonable man in defendant's position who had been interrogated for approximately three hours and thought the sheriff believed he had committed a murder would not have thought he was free to leave. (2) Defendant invoked his right to counsel during custodial interrogation when he stated, "I think I need a lawyer present," and an officer made a note that at "2:02 P.M. on 12-20-94, wants a lawyer present." Inculpatory statements made to officers after defendant invoked his right to counsel should have been excluded where defendant did not initiate the communication that led to his statements and his attorney was not present.

**(1) First-Degree Murder - Request For Counsel For Prior Offense - Sixth Amendment - Offense Specific**

**(2) First-Degree Murders - Fifth Amendment Right To Counsel Invoked - Break In Custody - Further Interrogation - Confession Admissible**

*State v. Warren, 348 N.C. 80 (1998)*

(1) A first-degree murder defendant's Sixth Amendment right to counsel was not violated where he was arrested in High Point on a South Carolina warrant for first-degree murder, taken to Asheville and questioned about a murder there as well as murders in South Carolina and New York, and he first confessed to those murders, then confessed to the murder in High Point of Katherine Johnson which was the subject of this trial. Although defendant had been questioned about the disappearance of the Asheville victim, had requested counsel, and had been represented by counsel at a bond hearing for misdemeanor larceny of the Asheville victim's pocketbook and failure to produce title to a motor vehicle, the Sixth Amendment is offense-specific and had not attached to any of the homicides when defendant was arrested because no adversarial judicial proceedings had been instituted in the murder cases. (2) A capital first-degree murder defendant's motion to suppress his statement to officers under the Fifth Amendment right to counsel was properly denied where defendant invoked his Fifth Amendment right to counsel on 29 May 1990 during custodial interrogation for a murder in Asheville, he was released from custody on 7 June, the murder in this case occurred in High Point on 15 July 1990, defendant was arrested on 20 July, and he waived his rights and confessed to this murder. The break in custody renders inapplicable the rule in *Edwards v. Arizona, 451 U.S. 477*, regarding police initiated custodial interrogation after a request for counsel.

**Custodial Interrogation - Statement Not Invocation Of Right To Silence**

*State v. Fletcher, 348 N.C. 292 (1998)*

Defendant's statement to officers during custodial interrogation that he would be willing to take them to where he had discarded stolen property after he had gotten some sleep was not an invocation of his Fifth Amendment rights to silence and to have interrogation cease; thus, it was not error for the trial court to admit into evidence defendant's subsequent incriminating statement or the fruits of that statement.

**First-Degree Murder - Officers Called To Disturbance - Statements By Defendant About Prior Murder - Not Custodial**

*State v. Hipps, 348 N.C. 377 (1998)*

The trial court did not err in a capital first-degree murder prosecution by admitting defendant's statements to the police where an officer responded to a call about a disturbance at a store possibly involving defendant; the officer saw defendant standing outside the store and asked what was going on; before he got the words out, defendant put his hands on the police car and said, "Go ahead and take me. I did it"; the officer backed defendant off the vehicle and asked what he was talking about; defendant said, "I did it. Me and Rock"; the officer heard defendant mumble something about Shelia; the officer had been searching for Shelia Wall all morning pursuant to a missing person report; the officer testified that at this point he thought the victim was going to walk out and that everything would be cleared up; the officer asked defendant where Shelia was; and defendant responded that they had killed her and that she was under the bridge. A reasonable person in defendant's position would not have thought he was in custody at the time he made the statement and the questions put to defendant at the store do not constitute interrogation for Miranda purposes. What happened after the statement was made does not affect the noncustodial and voluntary nature of the encounter prior to and while the statement was being made. Since no Miranda violation occurred, there was no error on this basis in the admission of subsequent statements at the detention center.

### **Capital Sentencing - Prosecutor's Closing Argument – Absence Of Confession And Lack Of Remorse - Violation Of Right To Silence**

*State v. Call, 349 N.C. 382 (1998)*

The trial court erred in a capital sentencing proceeding by allowing the prosecution to argue that defendant should be sentenced to death based upon improperly elicited testimony from four of defendant's jailers that he had not confessed or expressed remorse. The testimony by the jailers violated the rule in *Doyle v. Ohio, 426 U.S. 610*, and should have been excluded because it resulted in an unconstitutional use of defendant's exercise of his right to silence where the judge at defendant's first appearance informed him of his right to remain silent; defendant never waived that right; defendant made no statement of any kind to any officer who arrested him or investigated his case; defendant did not testify at either the guilt phase or the capital sentence proceeding; and defendant did not present any evidence or argument regarding statements made by defendant relating to the crimes or his feelings or attitude toward the victim.

### **Statements To Police - Absence Of Miranda Warnings - Defendant Not In Custody**

*State v. Mcneill, 349 N.C. 634 (1998)*

The trial court did not err by denying defendant's motion to suppress his first and second statements to the police because he had not been advised of his Miranda rights where defendant voluntarily drove to the police department for questioning as a potential witness; the first interview lasted approximately thirty minutes, was

not confrontational, and did not produce any incriminating statements by defendant; the second interview occurred a short time later after defendant voluntarily agreed to answer a few more questions, and defendant was not restrained in any way and did not ask to leave; and the trial court correctly determined that defendant was not in custody at the time his first two statements were given to the police.

### **Signed Transcription - Not A Second Statement**

*State v. Hall, 131 N.C. App. 427 (1998)*

A written statement was not a second "un-Mirandized" statement where a detective transcribed defendant's words and defendant signed the statement. The act of signing the statement merely finalized the confession.

### **Effect Of Cocaine Binge - Prior To Arrest – Statement Admissible**

*State v. Morganherring, 350 N.C. 701 (1999)*

The trial court did not err in a first-degree murder prosecution by admitting defendant's confession where defendant contended that he did not knowingly waive his Fifth and Sixth Amendment rights as a result of a cocaine binge prior to his arrest. There is no evidence in the record that defendant's confession was not voluntary and no evidence to indicate that he was intoxicated or otherwise impaired at the time he made the statements.

### **Defendant Not In Custody - Miranda Warnings Not Required**

*State v. Campbell, 133 N.C. App. 531 (1999)*

A defendant in a burglary and statutory rape prosecution was not in custody and Miranda warnings were not required where defendant took affirmative steps to contact the police after they contacted him and made an appointment to meet at the police station at a time convenient to him; defendant arrived at the station under his own volition and agreed to speak with the officers; at no time was he searched, handcuffed, or restricted in his movement; officers told him he was free to leave before questioning began; he was told on at least four occasions during questioning that he was free to leave and asked whether he understood; he replied in the affirmative each time; these exchanges occurred before defendant spoke with the officers, before he incriminated himself, and before he wrote the confession

### **Confessions And Other Incriminating Statements - Fruit Of Poisonous Tree - Applicable Portions Of Statement Unclear**

*State v. Graves, 135 N.C. App. 216 (1999)*

In a narcotics prosecution which involved an illegal search, only that portion of the information obtained after an unlawful search need be excluded as being the result of that search.

### **Defendant's Statement That Shooting Was Self-Defense - Exclusion As Hearsay**

*State v. Price, 301 N.C. 437 (1980)*

Defendant's statement to officers at the time of his arrest that the shooting had been in self-defense was properly excluded from the jury's consideration because of the statement's hearsay character.

### **Introduction Of In-Custody Statement - Cross-Examination As To Subsequent Self-Serving Statements**

*State v. Davis, 289 N.C. 500 (1976)*

Where the State introduced evidence of in-custody statements made by defendant on 6 October, but introduced no evidence of in-custody statements made by defendant on 7 October which constituted self-serving declarations, and defendant did not testify or offer evidence, the trial court properly refused to allow defense counsel to elicit the self-serving 7 October statements on cross-examination, the State not having opened the door by presenting testimony on voir dire concerning the 7 October statements and testimony before the jury concerning the 6 October statements.