

## CONSPIRACY

### **Sufficient Evidence to Support Defendant's Conviction of Conspiracy to Traffic in Marijuana**

*State v. Robledo, \_\_\_ N.C. App. \_\_\_, 668 S.E.2d 91 (4 November 2008).*

The defendant was convicted of (i) trafficking in 50 pounds or more but less than 2,000 pounds of marijuana, and (ii) conspiracy to traffic by possessing 50 pounds or more but less than 2,000 pounds of marijuana. Officers intercepted a box (ox A) at a UPS store that contained 43.8 pounds. They repackaged it and waited for someone to pick it up. The defendant arrived at the store in a Pontiac Grand Am to pick up another box (box B). Box B was not addressed to the defendant, but he had an authorization note from his niece to receive the box. About a half hour later, the defendant returned to the store in the same vehicle with an alleged co-conspirator (not his niece). The coconspirator entered the store and requested box A, produced an authorization note from the defendant's niece, and with the defendant's and a store employee's assistance loaded box A into the Pontiac. Officers stopped the Pontiac as it left the store. Box B as well as box A were in the Pontiac. Box B contained 44.1 pounds of marijuana, for a total of 87.9 pounds of marijuana in both boxes. Both boxes had identical packaging inside containing Styrofoam for padding and laundry detergent to prevent detection of the marijuana. The defendant told an officer that he and his niece had previously lived at the same residence and she had received many packages from UPS. He also acknowledged he knew that he would be collecting two boxes that day. Changing the amounts during the interview, he stated that he was expecting to be paid \$50, \$100, or \$200 just for delivering the boxes. (2) The court ruled that there was sufficient evidence to support the defendant's conviction of conspiracy to traffic in marijuana. The court stated that the state's voluntary dismissal of the conspiracy charge against the coconspirator was irrelevant in determining the sufficiency of evidence to support the defendant's conspiracy conviction.

### **Homicide -- First-Degree Murder -- Conspiracy -- Sufficiency of Evidence**

*State v. Theer, 181 NC App 349 (05-1640) (16 January 2007).*

There was sufficient evidence that defendant was a perpetrator in a prosecution for first-degree murder and conspiracy to murder. Although much of the evidence was circumstantial and did not rule out every hypothesis of innocence presented by the defense, it was ample and sufficient to allow the jury to make reasonable inferences of defendant's guilt.

### **Conspiracy--First-Degree Burglary--Robbery With Dangerous Weapon--Separate Conspiracies**

*State v. Roberts, 176 N.C. App. 159 (2006)*

The trial court did not err by concluding that the evidence was sufficient to permit a reasonable juror to find beyond a reasonable doubt that defendant committed two separate conspiracies to commit first-degree burglary and robbery with a dangerous weapon, because: 1) the State presented evidence showing the first conspiracy was formed on the evening of 15 December 2002 when defendant agreed with two others to rob someone, and there was no evidence that this agreement consisted of more than that of robbing someone on that night; and 2) the mere fact that defendant was involved in a similar crime the next night does not indicate the two crimes were committed as part of the agreement made on 15 December 2002.

### **Conspiracy\_One Conspiracy To Commit Multiple Crimes\_Finding Of Agreement To Commit Each Crime\_Not Required**

*State v. Reid* 175 N.C. App. 613 (2006)

The jury was not required to find that a defendant who was charged with one conspiracy to commit multiple crimes had agreed to commit every unlawful act alleged.

### **Evidence--Hearsay--Coconspirator's Statement Made Before Conspiracy Established--Harmless Error**

*State v. Stephens*, 175 N.C. App. 328 (2006)

Although the trial **court erred** in an armed robbery and second-degree kidnapping case by admitting into evidence a hearsay statement made by defendant's coconspirator that was made before the conspiracy had been established, the error was harmless because there was overwhelming evidence that defendant participated in the armed robbery of a convenience store even excluding the statement made by his coconspirator.

### **(1) Conspiracy -- First-Degree Murder--Sufficiency Of Evidence**

### **(2) Conspiracy -- First-Degree Murder -- Premeditation And Deliberation Inherent In Agreement**

*State v. Brewton*, 173 N.C. App. 323 (2005)

**(1)** There was sufficient circumstantial evidence to deny defendant's motion to dismiss conspiracy to commit first-degree murder even though defendant's alleged co-conspirator testified that they did not expressly agree or plan to kill the victim. A reasonable juror could infer from the evidence an implicit agreement to work together. **(2)** When a jury finds an agreement to commit a murder, it necessarily also finds premeditation and deliberation.

## **Conspiracy -- Felony Murder—Specific Intent**

*State v. Curry, 171 N.C. App. 568 (2005)*

First-degree murder by reason of felony murder is committed when a victim is killed during the perpetration or attempted perpetration of certain enumerated felonies or a felony is committed or attempted with the use of a deadly weapon. In felony murder, the killing may, but need not, be intentional. The key component, however, is the jurors must be instructed that to find a **conspiracy to commit murder, they must first find an agreement to commit first-degree murder.**

## **Criminal Law -- Multiple Conspiracies -- Sufficiency Of Evidence**

*State v. Tirado 358 NC 551 (2004)*

The trial court did not err by entering judgments against defendants based on multiple convictions of conspiracy for first-degree murder, first-degree kidnapping, and robbery with a dangerous weapon even though defendants contend the State's evidence was insufficient to prove the existence of more than a single conspiracy, because: 1) a rational juror, considering the series of meetings, the variety of locations and participants, the different objectives, and the statements of conspirators, could readily find the evidence established multiple separate conspiracies rather than one single conspiracy; and 2) neither defendant objected to the conspiracy charges submitted to the jury.

## **Conspiracy--Number Of Conspiracies--Trafficking In Cocaine--Sufficiency Of Evidence**

*State v. Brunson 165 N.C. App. 667 (2004)*

The trial **court erred** by concluding that there was sufficient evidence to show **three separate conspiracies** to traffic in cocaine, because: 1) the undercover officer's objective was at all times to identify and apprehend a drug dealer's source; 2) each transaction was temporally separated from the preceding transaction by no more than fourteen days and all transactions transpired over a short period of time within a one month period; 3) the undercover officer's statement to the drug dealer indicated the transaction was not a separate or discreet transaction but was to be part of an ongoing agreement for the continued purchase and supply of cocaine; and 4) the transactions were sufficiently similar based on the surrounding circumstances to hold that the transactions were part of a single conspiracy entered

## **Conspiracy -- Armed Robbery -- Evidence Sufficient**

*State v. Kemp 153 N.C. App. 231 (2002)*

There was sufficient evidence to deny defendant's motion to dismiss a charge of conspiracy to commit armed robbery where defendant was present when "everyone agreed" to the conspiracy, rode with the others to and from the victim's house, and received a portion of the money and the drugs taken during the robbery.

### **Double Jeopardy--First-Degree Murder By Acting In Concert--Solicitation To Commit Murder--Conspiracy To Commit Murder--Not A Lesser Included Offense**

*State v. Kemmerlin, 356 NC 446 (2002)*

The trial court did not err in a first-degree capital murder case by failing to vacate the convictions of solicitation to commit murder and conspiracy to commit murder even though defendant asserts that both convictions merge with the conviction for first-degree murder by acting in concert and that punishment for both crimes allegedly violates double jeopardy, because: 1) the crime of solicitation requires counseling, enticing, or inducing another to commit a crime whereas this element is not required for acting in concert; 2) acting in concert requires actual or constructive presence at the crime which is not an element present in the definition of solicitation; 3) regarding defendant's contention that her conspiracy conviction also merged based on her allegation that her presence at the scene of the murder was incidental and unnecessary, defendant was not only present at the scene of the murder but she also let the coparticipant into her home knowing he was going to kill her husband and she also brought her husband into the room where he would be killed; 4) conspiracy is a separate offense from the substantive offense and therefore does not merge into the substantive offense; and 5) the requirement of an agreement which is an element of conspiracy is not a necessary element for murder by acting in concert.

### **Conspiracy -- Attempted Robbery -- One Conspiracy, Two Attempts**

*State v. Tabron, 147 N.C. App. 303 (2001)*

There was no error in defendant's first conviction for conspiracy to commit common law robbery, but the second was vacated, where defendant's long-time friend, Burgoin, suggested that defendant rob Woodall; there were ongoing conversations between Burgoin, defendant and others about robbing Woodall; the identity of those involved in these conversations was not clearly established; the evidence showed many meetings and discussions of plans that took place over several months; an unidentified group of people including defendant were involved in the actual robbery attempts; and the two robbery attempts were separated in time by about five and one-half weeks. Statements that the participants in the first attempt "went about their business" after the attempt failed and that defendant and his friends thought that Woodall would "make a good hit" if they were down on their luck do not constitute substantial evidence of abandonment of the conspiracy.

## **Conspiracy–Criminal–Husband And Wife–Common Law Merger Of Identity–Not Applicable**

*State v. Stroud* 147 N.C. App. 549 (2001)

The trial court did not err in the prosecution of a mother and stepfather for the murder of her child by denying the mother's motion to dismiss an indictment for conspiracy to commit murder on the grounds that a husband and wife are one entity under the common law and therefore cannot enter into a conspiracy with one another. **Antiquated notions of a woman's identity found in the common law do not extend into an interpretation of the present-day crime of criminal conspiracy between husband and wife.**

## **Conspiracy--First-Degree Murder--Number Of Charges**

*State v. Choppy*, 141 N.C. App. 32 (2000)

Although defendant contends he should only have been convicted at most of one charge of conspiracy to commit first-degree murder based on the fact that he entered into only one agreement, there was enough evidence to allow a jury to decide whether defendant engaged in two conspiracies because: 1) there were different objectives of the assaults when the first was for no apparent reason and the second was apparently racially motivated; 2) there was an agreement to go home after the first attack; and 3) a significant amount of time passed between the two attacks.

## **Conspiracy - Conspiracy To Murder - Charge Against Co-Conspirator Dismissed - Not An Acquittal**

*State v. Gibson*, 333 N.C. 29 (1992)

## **Homicide - First Degree Murder - Conspiracy - Sufficiency Of Evidence**

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

**(1) Evidence And Witnesses - Statement By Coconspirator -Fruit Of Illegal Stop – No Standing By Defendant To Challenge**

**(2) Evidence And Witnesses - Unconstitutional Stop - Cocaine In Coconspirator's Luggage – No Expectation Of Privacy By Defendant**

*State v. Smith*, 117 N.C. App. 671 (1995)

(1) A defendant on trial for conspiracy to traffic cocaine had no standing to challenge the admissibility of a coconspirator's statement to the police on the ground that the statement was the fruit of an illegal stop since defendant cannot assert the Fourth Amendment rights of another.

### **Homicide -- Conspiracy To Commit Murder - Accessory Before The Fact – Not Merged**

*State v. Wilson, 338 N.C. 244 (1994)*

### **Conspiracy To Commit Armed Robbery Evidence Sufficient**

*State v. Lamb, 342 N.C. 151 (1995)*

There was sufficient evidence of conspiracy to commit robbery with a dangerous weapon where defendant met with two other men, one of whom was armed; the three men drove to the home of the victim; and the three men then left the vehicle, entered the victim's home, robbed, and shot him.

### **(1) Conspiracy -- acquittal of coconspirators in separate trial conviction of defendant upheld**

### **(2) Evidence and Witnesses -- coconspirator's possession of weapon admissibility of evidence**

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

(1) The conviction of one defendant in a conspiracy prosecution will be upheld where all alleged coconspirators are acquitted in a separate subsequent trial. (2) In a prosecution of defendant for conspiracy to commit murder, the trial court did not err in admitting testimony related to defendant's coconspirator's possession of a pistol of the same caliber and type which killed the victim.

### **Conspiracy -- Conspiracy To Commit Larceny By An Employee -- Defendant Not Employee**

*State v. Saunders, 126 N.C. App. 524 (1997)*

**A person who conspires with another may be convicted of conspiracy to commit a statutory crime even though he could not be convicted of the crime if acting alone;** therefore, defendant could be convicted for conspiracy to commit larceny by an employee although he was not employed by the business from which the larceny occurred.

## **Evidence And Witnesses -- Statements Made By Codefendant -- Sufficient Evidence Of Conspiracy -- Hearsay Exception**

*State v. Bonnett, 348 N.C. 417 (1998)*

The evidence in a first-degree murder and robbery trial was sufficient to meet the State's burden of showing that a conspiracy existed so as to render admissible hearsay statements of a coconspirator during the course and in furtherance of the conspiracy where it tended to show that defendant and his three codefendants went to the victim's store three times to buy beer; the next time they went there, one codefendant stayed in the car while defendant and the other two went inside, shot the victim, took his gun, and stole the money box; and they then drove to a motel, divided up the money, and attempted to take refuge in someone else's house when pursued by the police. Further, the statements of a codefendant in which the codefendants agreed to "hit this store," "stick together whatever happen[s]," and to "smoke the old m\_\_\_\_f\_\_\_\_," along with statements made during the robbery and murder, fall within the hearsay exception for statements made during the course and in furtherance of a conspiracy. N.C.G.S. § 8C-1, Rule 801 (d)(E).

## **Trial - Inconsistent Verdicts - Conspiracy And Attempt**

*State v. Reaves, 132 N.C. App. 615 (1999)*

A jury did not render inconsistent verdicts by finding defendant guilty of conspiracy to murder and not guilty of attempted murder; a conviction for conspiracy is not affected by the degree of the substantive crime or even by the nonoccurrence of the crime.