CONTINUE

Trial Judge Abused Discretion in Failing to Grant Continuance When State Had Failed to Provide Timely Discovery to Defendant—Ruling of Court of Appeals Is Reversed in Part

State v. Cook, 362 N.C. 285, 661 S.E.2d 874 (12 June 2008), reversing in part, 184 N.C. App. 401 (3 July 2007).
The defendant was convicted of second-degree murder and two counts of felonious assault resulting from a vehicle crash in which the defendant was impaired and had also committed other traffic violations. Although the state expert's report on the defendant's blood alcohol retrograde extrapolation was completed five weeks before the trial was scheduled to begin, the state failed to provide notice that it planned to call the expert as a witness until five days before trial. Even then, the state only provided the expert's curriculum vitae, which was insufficient to put the defendant on notice of the state's intent to use extrapolation evidence at trial. The report was provided only three days before trial, giving the defendant just the weekend to find his own expert and to decide whether to call such a witness to counter the state's evidence. The court concluded that the state's last-minute piecemeal disclosures were not "within a reasonable time prior to trial" as required by G.S. 15A-903(a)(2). The court ruled that the trial judge abused his discretion in failing to grant the defendant's motion for a continuance. The court stated, however, that it was not establishing a bright line rule automatically mandating a continuance whenever a party is untimely in providing discovery. The court also ruled that any assumed violation of the defendant's constitutional rights by denial of the continuance was harmless beyond a reasonable doubt.

Constitutional Law - Effective Assistance of Counsel - Time for Preparation

> *State v. Rogers, 352 N.C. 119 (2000)*
> Defendant is entitled to a new trial because the trial court violated his rights to effective assistance of counsel when it denied defendant's repeated motions for a continuance under N.C.G.S. § 15A-952(g) in his capital sentencing proceeding since it is unreasonable to expect that any attorney could be adequately prepared in thirty-four days to conduct a bifurcated capital trial for this complex case involving incidents in multiple locations over a two-day period with numerous witnesses.

Criminal Law--Noncapital First-Degree Murder Psychiatric Evaluation Denied No Error

> *State v. Jones, 342 N.C. 523 (1996)*
> The trial court did not err or abuse its discretion in a noncapital first-degree murder prosecution by denying defendant's request for a continuance so that another psychiatric evaluation could be performed taking into account recent allegations of childhood abuse. A psychiatric

evaluation had found defendant competent to stand trial, defense counsel did not give notice that defendant's mental state at the time of the offense might be a factor in his defense until the first day of trial, and defendant neither requested a court appointed psychiatrist nor indicated the likelihood of an insanity defense.