

JOINDER-SEVERENCE

(1) Joinder of Offenses Was Not Error

State v. Anderson, ___ N.C. App. ___, 669 S.E.2d 793 (16 December 2008).

The defendant surreptitiously placed a camera in his stepdaughter's bedroom. The camera was connected by a cord to the defendant's computer located in another room. After the camera was discovered, the computer was taken to the sheriff's office. Investigation of the computer's hard drive discovered child pornography. The defendant was convicted of misdemeanor peeping and appealed for trial de novo. He was also indicted, based on the child pornography in the computer, for ten counts of third-degree sexual exploitation of a minor and ten counts of second-degree sexual exploitation of a minor. At a conference with the prosecutor and defense counsel before trial, the judge commented that if the two parties were engaged in plea discussions, he would be amenable to a probationary sentence. Defense counsel objected to the judge's comments, stating that it could be inferred that the judge would be less likely to give the defendant probation if he did not plead guilty. The judge stated that he had not meant to make any such implication, but rather to encourage the parties to enter plea negotiations. The defendant at a single trial was convicted of all 21 charges and sentenced to imprisonment. The court ruled: (1) the trial judge did not abuse his discretion in granting the state's motion to join all offenses for a single trial.

Joinder--trials--abuse of discretion standard- _impact of evidence against one defendant-- antagonistic defenses

State v. Castrejon, 179 NCA 685 (2006)

The trial court did not abuse its discretion in a trafficking in cocaine case by allowing the State's motion to join defendants' trials, because: (1) although evidence admitted about one defendant's possession of a concealed weapon at the scene may have been inadmissible against the other defendant in a separate trial, the admission of that evidence alone does not warrant severance or a new trial; (2) neither defendant objected to the admission of testimony concerning the concealed weapon nor did they request a limiting instruction; and (3) the existence of antagonistic defenses alone does not necessarily warrant severance, and one of the defendants simply argued he was in the wrong place at the wrong time instead of directly implicating the guilt of the other defendant.

Criminal Law-Joinder of offenses-Assault and possession of firearm by felon-Not prejudicial

State v. Cromartie, 177 NCA 73 (2006)

The joinder of assault and firearms possession charges for trial did not unjustly or prejudicially hinder defendant's ability to defend himself or to receive a fair hearing. Additionally, the evidence was not complicated and the trial court's instruction to the jury clearly separated the two offenses.

Criminal Law-joinder of cases--motion to sever

State v. Bellamy, 172 NCA 649 (2005)

The trial court did not abuse its discretion in a robbery with a dangerous weapon and first-degree sexual offense case by joining defendant's cases for trial with those of a codefendant and by denying defendant's motion to sever, because: (1) the conflict in defendants' respective positions at trial, to the extent there was any, was minimal; (2) defendants were not each claiming the other was the guilty party; and (3) this defendant failed to show that he was deprived of a fair trial.

Criminal Law--joinder--common scheme to distribute marijuana

State v. Harrington, 171 NCA 17 (2005)

The trial court did not abuse its discretion in a drug case by joining defendants' cases for trial over their objections, because: (1) defendants failed to show that they were deprived of a fair trial when evidence presented by the State including marijuana, large amounts of money, and drug paraphernalia, found at both an apartment and a house was ample evidence to convict both defendants of the marijuana charges individually or jointly; (2) a coparticipant's testimony was relevant to the conspiracy charge and would have been admissible against

defendants individually in separate trials; and (3) the State sought to hold defendants accountable for the same crimes that arose at the same time, and the State's evidence was sufficient to show that defendants were involved in a common scheme to distribute marijuana.

Criminal Law--joinder--trials--motion to sever

State v. Bell, 359 NC 1 (2004)

The trial court did not violate defendant's rights to a fair trial and due process of law in a first-degree murder, first-degree kidnapping, and burning of personal property case by joining the trials of defendant and a codefendant and by denying defendant's motion to sever the trials, because: (1) defendant and a codefendant were each charged with accountability for first-degree murder, first-degree kidnapping, and burning of personal property; (2) the charges arose from the same series of events involving the same victim and witnesses, and the evidence tended to indicate a common scheme; (3) although defendant contends he was prejudiced by the introduction of a cloth found in the victim's car which contained the codefendant's semen, the testimony of the State's main witness and also from a medical examiner that no sexual assault occurred, coupled with the trial court's limiting instruction that the evidence was to be considered only for purposes of identification and corroboration, was sufficient to safeguard against the jury's misuse of the State's evidence against defendant; (4) if elimination of a desirable juror were a reason for severance, joinder would never occur; and (5) although defendant contends that the codefendant's alibi evidence and jury arguments prejudiced defendant, a solid case was presented against both defendant and the codefendant.

Criminal Law--motion for joinder of offenses--first-degree murder--common law robbery

State v. Simmons, 167 NCA 512 (2004)

The trial court did not abuse its discretion in a first-degree murder and common law robbery case by granting the State's motion for joinder even though the two offenses were separated in time by several days and involved different victims,

because: (1) the offenses both involved defendant striking another person during an argument, the offenses involved the same dispute between defendant and the victim's female friends, and the time lapse between the offenses was only 5 days; (2) the fact that the victim was not present at the scene of the 3 April 2001 event is not a crucial factor in the analysis since the nature of the consolidated offenses is only one factor to be considered; (3) the events of 3 April constituted a critical point in the ongoing dispute between the victim and defendant, which resulted in the argument and struggle on 8 April 2001; and (4) defendant did not show that the joinder deprived him of a fair hearing on the murder charge since the evidence of the 3 April incident would have been admissible at the trial of first-degree murder pursuant to N.C.G.S. § 8C-1, Rule 404(b) for the purpose of showing intent and the chain of events explaining the context, motive and set-up of the crime.

Criminal Law--joint trial--motion to sever

State v. Distance, 163 NCA 711 (2004)

The trial court did not abuse its discretion in a robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon case by denying defendant's motion to sever his trial from that of his codefendant based on an alleged prior statement by the codefendant providing exculpatory evidence in favor of defendant, because: (1) a bald assertion of hearsay information from an interested witness coupled with the theoretical possibility that the codefendant might testify on defendant's behalf if the trial was severed was insufficient to show that defendant was deprived of an opportunity to present his defense; and (2) the codefendant's alleged statement is a far cry from the sworn statement made by the codefendant in *State v. Alford, 289 N.C. 372 (1976)*.

Criminal Law--joinder of trials--motion to sever

State v. Johnson, 164 NCA 1 (2004)

The trial court did not abuse its discretion in a robbery with a dangerous weapon, attempted robbery with a dangerous weapon, and conspiracy to commit robbery

with a dangerous weapon case by denying a defendant's motion to sever his trial from his codefendant, because: (1) although the codefendant objected to testimony that it was the codefendant's idea to commit the robbery, a witness was permitted to testify that it was not defendant's idea to commit the robbery; (2) although the codefendant objected to testimony that defendant was cooperative during the interview, a detective was permitted to testify that defendant was upset and crying during the interview and that he was neither combative nor under the influence of alcohol; (3) the defenses presented were not so antagonistic and irreconcilable that defendant was denied a fair trial; (4) although defendant contends joinder likely confused the jury about evidence presented against each defendant, defendant cites no instance in the record where evidence applicable only to the codefendant was admitted and defendant failed to assign error to jury instructions that he contends were confusing; and (5) although a witness was not permitted to testify that defendant asked immediately after the robbery why the codefendant pulled out a gun, the exclusion of the testimony was due to the State's objection and was not caused by defendant being tried jointly with his codefendant.

Criminal Law--joint trial--motion to sever

State v. Tirado, 358 NC 551 (2004)

The trial court did not abuse its discretion in a first-degree murder, first-degree kidnapping, robbery with a dangerous weapon, conspiracy to commit first-degree murder, conspiracy to commit first-degree kidnapping, conspiracy to commit robbery with a dangerous weapon, attempted murder, and assault with a deadly weapon with intent to kill inflicting serious injury case by joining the trial of both defendants, because: (1) in regard to the argument that joinder prevented defendant from offering the portions of his redacted confession that implicated his codefendant, defendant's defense strategy focused on mitigation rather than on denying culpability, the full statement provided no exculpatory relief for defendant, convincing evidence of defendant's guilt was presented at trial including his own admissions and eyewitness testimony, and defendant's only expressed concern was that the jury would not be able to consider his full statement for mitigation purposes but defendant was allowed to present the entire statement to the sentencing jury in order for it to consider the full extent of defendant's cooperation with investigators; (2) even though defendant contends he conducted his defense differently based on his belief that he would not be able

to introduce his statement implicating his codefendant, the record demonstrates that from the outset, all parties were aware that the statement existed and that it might be introduced in redacted form; and (3) even though defendants differed on their view of whether a particular juror should serve on the panel, defendant failed to put the court on notice that the difference was detrimental to him when he did not move to sever the trial at that time, the juror was eventually removed for cause, and a defendant is not entitled to a particular juror even after a jury has been empaneled.

Criminal Law--motion to sever trial--joinder of cases

State v. Escoto, 162 NCA 419 (2004)

The trial court did not err in a first-degree burglary, multiple first-degree kidnapping, and double robbery with a dangerous weapon case by denying a defendant's motion to sever the trial and by joining the cases of the two defendants even though an inmate testified about what the other defendant said about the events in question while incarcerated, because: (1) the Bruton rule and N.C.G.S. §15A-927(c)(1) do not apply when both the inmate and the codefendant testified and were subject to cross-examination by defendant; (2) our state has a strong policy favoring the consolidated trials of defendants accused of collective criminal behavior; (3) N.C.G.S. § 15A-927(c)(2) grants the trial court wide discretion in determining severance, and the trial court did not abuse that discretion; (4) defendants do not present conflicting defenses; and (5) even assuming it was error to deny the motion to sever, such error was not prejudicial in light of the other evidence against defendant.

Criminal Law--joinder--two offenses

State v. Simpson, 159 NCA 435 (2003)

The trial court did not err in an obtaining property by false pretenses case by granting the State's motion to join his two offenses under N.C.G.S. § 15A-926(a), because a transactional connection was evidenced by a common modus operandi, the short time lapse between the criminal activity, and similar circumstances in

victim, location, and motive. *State v. Simpson* 357 NC 652 (2003) *Aff. Ct Appeals* 159 NCA 435

Criminal Law--venue--concurrent--joinable offenses

State v. Perry, 159 NCA 30 (2003)

The trial court did not err in an involuntary manslaughter and practicing medicine without a license case by denying defendant's motion to dismiss based on improper venue, because: (1) N.C.G.S. § 15A-132(b) provides that when acts constituting the offense occur in multiple counties, each county has concurrent venue; (2) N.C.G.S. § 15A-132(b) also provides that if charged offenses which may be joined in a single criminal pleading under N.C.G.S. § 15A-926 occurred in more than one county, each county has concurrent venue as to all charged offenses; and (3) the offenses in this case are joinable offenses under N.C.G.S. § 15A-926(a).

Joinder--charges--transactional connection

State v. Williams, 355 NC 501 (2002)

The trial court did not abuse its discretion by granting the State's motion under N.C.G.S. § 15A-926(a) to join the charges against defendant including two counts of first-degree murder, two counts of first-degree rape, first-degree sexual offense, assault with a deadly weapon, two counts of assault with a deadly weapon with intent to kill inflicting serious injury, attempted first-degree rape, assault with a deadly weapon with intent to kill, and first-degree rape even though the charges involved seven different victims over a fifteen-month span, because a transactional connection was established through numerous factors including a similar modus operandi, similar circumstances with respect to the type of victims, similar location, and a DNA match between defendant and several of the victims.

Criminal Law--joinder--trafficking in drugs--conspiracy to traffic in drugs--possession of controlled substances

State v. Bullin, 150 NCA 631 (2002)

The trial court did not abuse its discretion by joining for trial under N.C.G.S. § 15A-926(a) the three charges against defendant of trafficking in drugs, conspiracy to traffic in drugs, and possession of controlled substances because the charges against defendant stemmed from a series of actions occurring over a short period of time that were part of one general transaction.

Joinder--crimes--motion to sever trial--single scheme or plan

State v. Shipp, 155 NCA 294 (2002)

The trial court did not abuse its discretion in a trafficking in heroin by possession, possession of heroin with intent to sell or deliver, and selling heroin case by denying defendant's motion to sever the trial of the 12 January 2000 offenses, because: (1) defendant was charged with seven drug offenses involving both the possession and sale of heroin, and the offenses occurred on three separate dates over the course of less than two months; (2) the acts or transactions were either connected together or constituted parts of a single scheme or plan to distribute heroin; and (3) a defendant fails to show abuse of discretion on the part of the trial judge in joining two offenses for trial where defendant's only assertion of possible prejudice is that he might have elected to testify in one of the cases and not in the others.

Criminal Law--joinder--purposeful circumvention--no evidence

State v. Tew, 149 NCA 456 (2002)

The prosecution of defendant for assault with a deadly weapon with intent to kill inflicting serious injury did not violate statutory joinder requirements where defendant was originally indicted for attempted murder, defendant requested that the court charge on assault with a deadly weapon inflicting serious injury, the court denied that request and defendant was convicted of attempted second-degree murder, that conviction was vacated pursuant to a ruling that the crime of

attempted second-degree murder did not exist, and defendant was then charged with assault with a deadly weapon with intent to kill inflicting serious injury. There is no evidence that the State withheld the charge to circumvent joinder requirements. N.C.G.S. § 15A-926(c)(2).

Criminal Law--collateral estoppel--attempted murder--assault with a deadly weapon with intent to kill inflicting serious injury--issue of intent

State v. Tew, 149 NCA 456 (2002)

The State was not collaterally estopped from prosecuting defendant for assault with a deadly weapon with intent to kill inflicting serious injury because defendant was originally convicted of attempted second-degree murder in a prosecution for attempted first-degree murder and that conviction was vacated. Although defendant argued that this verdict resolved the issue of intent to kill in his favor, a rational jury could have grounded its verdict on the absence of premeditation and deliberation.

Criminal Law--joinder--common scheme--same transaction

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

The trial court did not abuse its discretion in a capital trial by denying one defendant's pretrial motion to sever the cases and by overruling his objections to improper joinder, because: (1) the presence of antagonistic defenses standing alone does not warrant severance; (2) there was overwhelming evidence from several eyewitnesses concerning defendant's involvement in the crimes; (3) defendant signed a waiver regarding any objections to the redaction and/or admission of the statement of his non-testifying codefendant, and defendant's attorney stated in open court that there was no objection to the introduction of the codefendant's statement as it relates to defendant; (4) defendant was not precluded from offering exculpatory evidence since he could have subpoenaed witnesses to testify for him; and (5) the evidence supports consolidation of defendants' trials since the offenses arose out of a common scheme and were part of the same transaction. N.C.G.S. §§ 15A-926(b) and 15A-927(c).

Sentencing--capital--joinder

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

The trial court did not abuse its discretion in a capital sentencing proceeding by joining defendants' cases for sentencing and by denying a motion to sever because: (1) one defendant did not preserve this issue since he did not object to joinder for sentencing or renew a previous motion to sever, and plain error review does not apply; (2) the codefendant made an unsubstantiated assumption without an offer of proof that his mother would have testified favorably on his behalf if the trials were severed, and the significance of the testimony is not apparent from the record; (3) the codefendant could have subpoenaed his mother to testify; and (4) the codefendant cannot show he was denied individualized consideration.

Criminal Law--joinder--confession of codefendant

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

The trial court did not err by joining the capital trials of two defendants for first-degree murder, arson, and conspiracy where defendant Brewington argued that joinder was improper and severance necessary due to prejudice from the introduction of his codefendant's confession, but, as stated elsewhere in the opinion, the admission of the confession did not prejudice defendant.

Criminal Law--joinder--sex offenses--multiple victims--improper but not prejudicial

State v. Bowen, 139 N.C. App. 18 (2000)

Although the trial court erred by granting the State's motion for joinder of sexual offenses under N.C.G.S. § 15A-926(a) because the length of time between offenses and the differing nature of the individual acts indicated the charged acts did not constitute a single scheme or plan, it was not prejudicial error since: (1)

evidence of each of these offenses would be admissible in the separate trials of the others under N.C.G.S. § 8C-1, Rule 404(b); and (2) there is no evidence that the jury may have come to a different conclusion had the charges not been consolidated.

Criminal Law--severance of narcotics offenses--common pattern

State v. Manning, 139 N.C. App. 454 (2000)

The trial court did not abuse its discretion by denying defendant's motions to sever various cocaine charges where the charges occurred within a six-month period and showed the same pattern of operation between defendant and an informant, indicating a common, continual method of transacting drug sales.

Criminal Law--joinder--sale and delivery of cocaine--transactional connection

State v. Montford, 137 N.C. App. 495 (2000)

The trial court did not err in consolidating for trial the two sale and delivery of cocaine offenses under N.C.G.S. § 15A-926(a) because: (1) the two offenses have a transactional connection since the offenses are identical, both involved selling cocaine to the same person, both involved the same place of sale, both involved the same quantity of cocaine sold, and only three weeks elapsed between the commission of each offense; and (2) joinder of the offenses did not impede defendant's ability to receive a fair trial and to put on his defense since the State used the same witnesses for both offenses, the same evidence would have been introduced had the trials been separate, and the evidence of the other offense would have been admissible at each trial under N.C.G.S. § 8C-1, Rule 404(b) to show intent and/or knowledge.

Criminal Law 314 (NCI4th) - joinder of charges against two defendants - necessity for motion by State

State v. Jeune, 332 N.C. 424 (1992)

N.C.G.S. 15A-296 [15A-926](b)(2)a provides for joinder of charges against two or more defendants only upon motion of the State and thus provides no basis for a motion by defendant to compel joinder of his case for trial with that of his brother.

Criminal Law 338 (NCI4th) - murder - defendants joined for trial - motion to sever – erroneously denied -antagonistic defenses

State v. Pickens, 335 N.C. 717 (1994)

Criminal Law 327 (NCI4th) - different offenses against two defendants - joinder proper

State v. Roddey, 110 N.C. App. 810 (1993)

The trial court did not err in permitting joinder of the trials against defendant and his companion, though defendant was not charged with one of the crimes his companion was charged with, since the offenses of the two defendants were closely related in time and place, and were all part of a single act or transaction.

Criminal Law 305 (NCI4th) - separate offenses - same defendant, victim, and circumstances - joinder proper

State v. Hammond, 112 N.C. App. 454 (1993)

Criminal Law 304 (NCI4th) - marijuana crimes on different dates - consolidation for trial

State v. Styles, 116 N.C. App. 479 (1994)

The trial court did not abuse its discretion in denying defendant's motion to sever and in granting the State's motion to join for trial 11 September 1992 charges against defendant of maintaining a dwelling for keeping and selling marijuana and possession of marijuana with the intent to sell and deliver and a 12 October 1992 charge for selling marijuana to a minor since defendant's scheme to sell and distribute marijuana for a profit was a common thread connecting all of the crimes. In ruling that the charges of taking indecent liberties with a child and first-degree sexual offense could properly be joined for trial, since an adequate transactional connection existed in that the charges involved the same defendant, the same victim, and the same surrounding circumstances.

Criminal Law 301 (NCI4th) murder and failure to appear charges - joinder for trial – harmless error

State v. Weathers, 339 N.C. 441 (1994)

The trial court erred by joining for trial a 1989 murder charge and a 1991 failure to appear for the murder trial charge because those charges do not arise out of the same transaction or occurrence.

Criminal Law 326 (NCI4th) joinder of cases against mother and son defendants not prejudiced

State v. Holmes, 120 N.C. App. 54 (1995) ___ S.E.2d ___

The trial court's joinder for trial of defendant son's substantive trafficking offenses with defendant mother's conspiracy offense did not deprive each of them of a fair trial in light of the structure of the trial and the limiting instructions given during testimony. N.C.G.S. 15A-926(b)(2).

Criminal Law 304 (NCI4th) one defendant two charges involving drug dealing consolidation proper

State v. Holmes, 120 N.C. App. 54 (1995) ___ S.E.2d ___

The trial court did not err in consolidating for trial the charge of conspiracy to traffic in controlled substances and the charge of substantive trafficking against one defendant. N.C.G.S. 15A-926(a).

Criminal Law 300 (NCI4th) first-degree murder joinder of two charges against one defendant no error

State v. Chapman, 342 N.C. 330 (1995) ___ S.E.2d ___

There was no error in the joinder of two first-degree murder charges where the facts incident to the two murders reveal a common modus operandi and a temporal proximity sufficient to establish a transactional connection.

Criminal Law § 348 (NCI4th Rev.) multiple defendants severance denied no error

State v. Barnes, 345 N.C. 184 (1997) ___ S.E.2d ___

The trial court did not abuse its discretion by denying defendant Chambers' motion for severance in a capital prosecution for first-degree murder, burglary, and robbery given the strong policy favoring the consolidated trials of defendants accused of collective criminal behavior, the limited evidence at issue here, the North Carolina Supreme Court's trust in the common sense of the jury, and the limiting instructions of the trial court.

Criminal Law § 325 (NCI4th Rev.) - noncapital first-degree murder - multiple defendants - severance of trial denied - no error

State v. Evans, 346 N.C. 221 (1997)

The trial court did not err in a noncapital first-degree murder prosecution by

denying defendant Evans' motion to sever his trial from that of codefendant Gillis. There was no Bruton violation because Gillis took the stand, testified, and was subject to cross-examination. The principles set out in Bruton apply only to the extrajudicial statements has not been deprived of his right to confrontation. Neither was there a violation of due process and N.C.G.S. § 15A-927 because there was plenary evidence, irrespective of Gillis' statements, that Evans was involved in the shooting. Additionally, any error in the admission of these statements was cured by a limiting instruction.

Criminal Law §§ 202, 299 (NCI4th Rev.) - consolidation of calendared and noncalendared charges

State v. Thompson, 129 N.C. App. 13 (1998)

The trial court did not err by allowing the State's motion to consolidate for trial calendared charges against defendant for kidnapping and armed robbery and noncalendared charges for armed robbery and robbery from a person where all charges were based on the same transaction. Defendant's mere assertion that the consolidation of the charges required an altered trial strategy was insufficient to show prejudice, and the requirement of N.C.G.S. § 15A-952(b) that a motion for joinder of charges be made prior to arraignment applies only to motions made by a defendant. N.C.G.S. §§ 7A-49.3, 15A-926(a).

Criminal Law - joinder of offenses - assault and attempted murder based on HIV status – joined with first-degree statutory rape and indecent liberties

State v. Monk, 132 N.C. App. 248 (1999)

The trial court did not abuse its discretion in joining for trial charges of assault with a deadly weapon and attempted murder based on defendant's HIV status with charges of first-degree statutory rape and taking indecent liberties with a minor. The cases at issue were based on the same act, were connected, and constituted parts of a single plan, as required for joinder by N.C.G.S. § 15A-926(a).

Criminal Law - joinder - first-degree murders - transactional connection

State v. Moses, 350 N.C. 741 (1999)

The trial court did not abuse its discretion by allowing two first-degree murder charges against defendant to be joined for trial, although the murders occurred two months apart, where a transactional connection was established by the following substantial similarities between the two murders: both were murders of young men whom defendant knew and with whom he was associated in the drug trade; both murders occurred after the victims had paged defendant; both victims were shot in the head with the same gun at a range of approximately two feet or less; both murders occurred in Winston-Salem on the premises of the victims; and both murders occurred after defendant argued with the victims.

Criminal Law - motion to join granted - no error

State v. Lundy, 135 N.C. App. 13 (1999)

The trial court did not abuse its discretion in a second-degree murder case by allowing the State's motion to join the two defendants for trial because the State came forward with the evidence necessary to establish the guilt of both defendants, neither defendant put on a defense, and there is nothing in the record to suggest this course of action was forced on either defendant as a result of a position or strategy taken by the other defendant.

Criminal Law - joinder - sex offenses - multiple victims - improper but not prejudicial

State v. Owens, 135 N.C. App. 456 (1999)

Although the trial court erred in permitting joinder of all offenses in a case involving defendant's numerous sex offenses against his girlfriend's three minor daughters because of the length of time between offenses and the differing nature of most of the individual acts indicating the charged acts did not constitute a single scheme or plan under N.C.G.S. § 15A-926(a), defendant was not

prejudiced since: (1) evidence of the other molestations at the trial of any one offense would have been admissible pursuant to N.C.G.S. § 8C-1, Rule 404(b); and (2) there is no evidence defendant was hindered or deprived of his ability to defend one or more of the charges.