

## KIDNAPPING

- (1) Scar Resulting from Deep Cut Over Left Eye Was Permanent Disfigurement to Support Conviction of Assault Inflicting Serious Bodily Injury**
- (2) No Fatal Variance Between Allegations in Assault by Strangulation Indictment Concerning Method of Strangulation and Evidence at Trial**
- (3) Sufficient Evidence to Support Conviction of Assault by Strangulation**
- (4) Punishment Was Not Permitted for Convictions of Both Assault Inflicting Serious Bodily Injury and Assault by Strangulation for Same Conduct**
- (5) Punishment Was Permitted for Convictions of Assault Inflicting Serious Bodily Injury and First-Degree Kidnapping**
- (6) Punishment Was Not Permitted for Convictions of Both Assault With A Deadly Weapon Inflicting Serious Injury and Assault Inflicting Serious Bodily Injury Based on Single Assault**
- (7) Insufficient Evidence of Serious Bodily Injury to Support Conviction of Assault Inflicting Serious Bodily Injury**
- (8) Convictions of Two Counts of First-Degree Sexual Offense Were Permitted Based on Defendant's Insertion of Fingers into Victim's Vagina and Rectum at Same Time**
- (9) Convictions of Both First-Degree Kidnapping and First-Degree Sexual Offense Were Permitted Based on Jury Instruction**
- (10) Sufficient Evidence of Serious Bodily Injury to Support Conviction of Assault Inflicting Serious Bodily Injury**

*State v. Williams, \_\_\_ N.C. App. \_\_\_, 689 S.E.2d 412 (8 December 2009).*

The defendant was convicted in a single trial of multiple offenses involving five different victims over a time period from 2004 to 2006. The offenses included sexual assault, robbery, assault, and kidnapping. The court ruled: (1) There was sufficient evidence to support a conviction of assault inflicting serious bodily injury when the injury to the victim, L.T., included a scar resulting from a deep cut over her left eye, which was a permanent disfigurement (she had other injuries as well). (2) An indictment alleging assault by strangulation alleged the defendant strangled the victim, L.T., by placing his hands around her throat. The court ruled that even if there was a variance between the allegation concerning the method of strangulation and evidence introduced at trial, the variance was immaterial and not fatal. The method of strangulation alleged in the indictment was surplusage and should be disregarded. (3) There was sufficient evidence to support the defendant's conviction of assault by strangulation of L.T. She stated that she felt that the defendant was trying to crush her throat, he pushed down with his weight on her neck with his foot, she thought he was trying to "chok(e) her out" or make her go

unconscious, and she thought she was going to die. The court rejected the defendant's argument that the state must prove that the victim had difficulty breathing. (4) G.S. 14-32.4(b) (unless conduct is covered under some other provision of law providing greater punishment) shows a legislative intent to prohibit a court from sentencing a defendant for the same conduct under both G.S. 14-32.4(b) (assault inflicting serious bodily injury, Class F felony) and G.S. 14-32.4(a) (assault by strangulation, Class H felony). Punishment can only be imposed for the assault inflicting serious bodily injury, which provides for greater punishment than assault by strangulation. (5) Punishment was permitted for convictions of both assault inflicting serious bodily injury and first-degree kidnapping, which was elevated from second-degree to first-degree based on a finding that the victim was seriously injured. Assault inflicting serious bodily injury requires the additional proof of "serious bodily injury" beyond the element of "serious injury" to prove first-degree kidnapping. Also, proof in the kidnapping case that the victim was abducted "for the purpose of doing serious bodily injury" and the act of committing serious bodily injury are two different elements, the latter being more serious than the former. (6) Punishment was not permitted for convictions of both assault with a deadly weapon inflicting serious injury and assault inflicting serious bodily injury based on a single assault. Punishment was only permitted for the more serious offense of assault with a deadly weapon inflicting serious injury. (7) There was insufficient evidence of serious bodily injury of victim M.L.W. to support the defendant's conviction of assault inflicting serious bodily injury. Although the victim received a vicious beating, the evidence did not show that her injuries placed her at a substantial risk of death. Though her ribs were still sore five months after the assault, to satisfy the statutory definition the victim must experience "extreme pain" in addition to the "protracted condition." The state did not present evidence of extreme pain. (8) Convictions of two counts of first-degree sexual offense were permitted based on the defendant's insertion of his fingers into the victim's vagina and rectum at the same time. The court relied on *State v. Gopal*, 186 N.C. App. 308 (2008). (9) Convictions of both first-degree kidnapping and first-degree sexual offense were permitted based on the jury instruction for first-degree kidnapping that required proof of serious injury or not released in a safe place, with no reference to the sexual assault. (10) There was sufficient evidence of serious bodily injury to victim K.L.A. to support the defendant's conviction of assault inflicting serious bodily injury. She suffered a puncture wound to the back of her scalp and a parietal scalp hematoma. She also went into premature labor as a result of the assault. This was sufficient evidence of a bodily injury that created a substantial risk of death, which is included in the definition of serious bodily injury.

### **Trial Court Erred In Denying Defendant's Motion to Dismiss Kidnapping Charges Where The Removal And Restraint of the Victims Was Inherent In A Charged Robbery**

*State v. Payton*, \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (July 21, 2009).

The trial court erred in denying the defendant's motion to dismiss kidnapping charges where the removal and restraint of the victims was inherent in a charged robbery. Distinguishing cases where the victims were bound and physically harmed, the court noted that in this case, the victims only were moved from a bathroom area to the bathroom (a movement deemed merely a technical asportation), and were asked to lie on the bathroom floor until the robbery was complete. The removal and restraint did not expose the victims to greater danger than the robbery itself and thus were inherent in the robbery.

**(1) Defendant Cannot Be Convicted of Kidnapping for Purpose of Facilitating Commission of Felony Murder**

**(2) Although State Need Not Allege Felony That Was Purpose of Kidnapping, It Must Prove That Felony If It Does**

**(3) Defendant Was Not Entitled to Jury Instruction on Defense of Accident When Shotgun Discharged After Defendant Broke Into Home With Intent to Commit Robbery and Struggled With Victim Over Shotgun**

*State v. Yarborough*, \_\_\_ N.C. App. \_\_\_, 679 S.E.2d 397 (7 July 2009).

The defendant was convicted of first-degree murder, first-degree burglary, first-degree kidnapping, and three counts of second-degree kidnapping. (1) The defendant was charged with kidnapping to facilitate the commission of murder. The court ruled, relying on *State v. Lea*, 126 N.C. App. 440 (1997), and *State v. Coble*, 351 N.C. 448 (2000), that a defendant cannot be convicted of kidnapping for the purpose of facilitating felony murder. Thus, because the indictment alleged murder as the kidnapping's purpose, the state had to prove the defendant's purpose was to facilitate the commission of murder committed with premeditation and deliberation. The court examined the evidence in this case and found insufficient evidence to support that theory. (2) The court ruled, relying on *State v. White*, 307 N.C. 42 (1982), and distinguishing *State v. Freeman*, 314 N.C. 432 (1985), that although the state is not required to allege the felony that was the purpose of a kidnapping, the state must prove the particular felony if it does. Under these circumstances, there may be a fatal variance between the indictment's allegations and proof at trial. (3) The court ruled that the defendant was not entitled to a jury instruction on the defense of accident when a shotgun discharged after the defendant had broken into a home with the intent to commit a robbery and within a few minutes of the entry struggled with the victim over the shotgun. The court stated that the defense of accident is unavailable if the defendant has engaged in misconduct when a killing occurs. The court also stated that even assuming that the killing occurred after the defendant had decided to abandon the intended robbery and attempted to leave, this would not constitute a "break" in the events resulting in the shooting because it was undisputed that the victim was shot without a few minutes of the break-in.

**(1) Sufficient Evidence to Support Kidnapping Conviction Arising During Assaults of Victim**

*State v. Gayton-Barbosa*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (19 May 2009).

The defendant was convicted of two counts of felonious assault, first-degree kidnapping, felonious larceny, and other offenses. (1) The court ruled that there was sufficient evidence to support the defendant's conviction of kidnapping that occurred during the commission of the assaults of the victim. The defendant kept the victim from leaving her house by repeatedly striking her with a bat. When she was able to escape, he chased, grabbed, and shot her. Detaining the victim in her home and then again outside was not necessary to effectuate the assaults.

## **(2) Sufficient Evidence to Support Second-Degree Kidnapping Conviction Occurring During Commission of Rape**

*State v. Thomas*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (5 May 2009).

The defendant was convicted of first-degree rape under a short-form indictment under G.S. 15-144.1. He was also convicted of second-degree kidnapping. (2) The court ruled that there was sufficient evidence to support the defendant's conviction of second-degree kidnapping. The defendant threatened the victim with a gun while she was in his car. When she tried to escape, he pulled her back into the car and sprayed her with mace. He drove her away from her car and children. When she jumped out, he forced her back into the car at gunpoint. He then drove her to a secluded wooded area, where he raped her.

## **Double Jeopardy Prohibits Convictions of Both Accessory After Fact of First-Degree Murder and Accessory After Fact of First-Degree Kidnapping When Jury Could Have Found That Accessory After Fact of First-Degree Murder Was Based Solely on Kidnapping Under Felony Murder Rule**

*State v. Best*, \_\_\_ N.C. App. \_\_\_, 674 S.E.2d 467 (3 February 2009).

The defendant was convicted of three counts of accessory after the fact to first-degree murder and three counts of accessory after the fact to first-degree kidnapping, based on assistance to others who had killed three people. The court ruled, relying on *State v. Gardner*, 315 N.C. 444 (1986), that double jeopardy prohibited convictions of both accessory after fact of first-degree murder and accessory after fact of first-degree kidnapping when the jury could have found that accessory after fact of first-degree murder was based solely on kidnapping under felony murder rule. The jury's verdict did not indicate whether it found the first-degree murder element based on premeditation and deliberation or felony murder based on first-degree kidnapping, or both. The court arrested judgment on

the defendant's convictions of accessory after the fact to first-degree kidnapping.

**In First-Degree Kidnapping Trial, Fact that Accomplice on His Own Initiative Arguably Released Victim in Safe Place Did Not Inure to Benefit of Defendant Who Had Not Undertaken to Release Victim in Safe Place**

*State v. Smith, \_\_\_ N.C. App. \_\_\_, 669 S.E.2d 8 (2 December 2008).*

The defendant was convicted of first-degree kidnapping based on not releasing the victim in a safe place. The court ruled that when an accomplice of the defendant on his own initiative arguably released the victim in a safe place, that event did not inure to the benefit of the defendant who had not undertaken to release the victim in a safe place.

**Insufficient Evidence to Support Second-Degree Kidnapping When Defendant During Armed Robbery Ordered Victims to Lie on Floor, But They Were Not Bound**

*State v. Taylor, \_\_\_ N.C. App. \_\_\_, 664 S.E.2d 375 (5 August 2008).*

The court ruled, relying on *State v. Ripley*, 360 N.C. 333 (2006), *State v. Beatty*, 347 N.C. 555 (1998), and other cases, that there was insufficient evidence to support the defendant's second-degree kidnapping convictions when the defendant during an armed robbery ordered the victims to lie on the floor, but they were not bound.

**Constitutional Law -- Double Jeopardy -- Punishment for both First-Degree Kidnapping and Underlying Sexual Assault**

*State v. Daniels, 189 NC App 705 (07-1202) (15 April 2008)*

The trial court erred by sentencing defendant for both first-degree kidnapping and first-degree rape where the same sexual assault served as the basis for both convictions, and at the resentencing hearing the trial court may arrest judgment on the first-degree kidnapping conviction and resentence defendant for second-degree kidnapping, or arrest judgment on the first-degree rape conviction and resentence defendant on the first-degree kidnapping conviction, because: (1) a defendant may not be punished for both the first-degree kidnapping and the underlying sexual assault; (2) where the jury is presented with more than one theory upon which to convict a defendant and does not specify which one it relied upon to reach its verdict, such a verdict is ambiguous and should be construed in favor of defendant; (3) the jury returned a verdict of guilty of first-degree kidnapping but did not specify on which theory it relied in reaching its verdict, and the Court of Appeals was required to assume that the jury relied on defendant's commission of the sexual assault in finding him guilty of first-degree kidnapping; and (4) the State acknowledged the defect.

**(1) Trial Judge Did Not Err in Defining “Serious Injury” for First-Degree Kidnapping**

**(2) Sufficient Evidence to Support Conviction of First-Degree Kidnapping**

*State v. Simpson, 187 N.C. App. 424, 653 S.E.2d 249 (4 December 2007).*

The defendant was convicted of first-degree kidnapping and attempted second-degree rape. The defendant was in the victim's home when he suddenly got on top of the victim and straddled her. The victim struggled with the defendant, who hit the victim in her face, tried to put a piece of duct tape over her mouth, and pinned her down, trying to lift up her shirt. He dragged her from a couch and toward the kitchen. The victim noticed that the defendant's pants were unzipped. The defendant then tried to drag her outside the house, but she successfully prevented him from doing so and he left. (1) The court ruled that the trial judge did not err in defining “serious injury” for first-degree kidnapping as causing great pain and

suffering and may also include serious mental injury that extends for some appreciable time beyond the crime. The court, distinguishing *State v. Baker*, 336 N.C. 58 (1994), and relying on *State v. Finney*, 358 N.C. 79 (2004), rejected the defendant's argument that the trial judge was also required to instruct the jury that serious mental injury must be a mental injury beyond that normally experienced by other sexual assault victims. (2) The court ruled that there was sufficient evidence to support the defendant's conviction of first-degree kidnapping. The defendant's restraint of the victim was more than that inherent in the crime of attempted second-degree rape.

**Defendant's Act of Restraint and Removal in Preventing Victim's Escape from Her Residence, When Defendant's Later Armed Robbery Had Not Yet Begun, Was Sufficient Evidence to Support Second-Degree Kidnapping—Ruling of Court of Appeals Is Affirmed**

*State v. Boyce*, 361 N.C. 670, 651 S.E.2d 879 (9 November 2007), affirming, 175 N.C. App. 663 (7 February 2006).

After the defendant forced his way into the victim's house, the victim fled to the back door, but the defendant dragged her back into the house. He then pointed a handgun at her and obtained money from her. The court ruled that the defendant's act of restraint and removal in preventing the victim's escape from her residence, when the defendant's later armed robbery had not yet begun, was sufficient evidence to support the defendant's conviction of second-degree kidnapping. The defendant's kidnapping of the victim was a separate criminal transaction, complete before the armed robbery began, and facilitated the later armed robbery.

**New Trial Ordered When Trial Judge Instructed on Several Theories of Kidnapping, Jury Returned General Verdict of Guilty of Kidnapping, and Evidence Did Not Support One of the Theories of Kidnapping**

*State v. Johnson*, 183 N.C. App. 576, 646 S.E.2d 123 (5 June 2007).

The court ruled, relying on *State v. Pakulski*, 319 N.C. 562, 356 S.E.2d 319 (1987), and other cases, the trial judge committed error requiring a new trial when he instructed on several theories of kidnapping, the jury returned a general verdict of guilty of kidnapping, and the evidence did not support one of the theories of kidnapping.

**(1) Confinement, Removal, and Restraint of Bound Kidnapping Victims Were Separate and Independent of Commission of Armed Robberies**

**(2) Sufficient Evidence Existed to Support Element of First-Degree Kidnapping That Defendant Did Not Release Victims in Safe Place**

*State v. Morgan*, 183 N.C. App. 160, 645 S.E.2d 93 (15 May 2007).

The defendants broke into a motel room carrying a gun, restrained two victims with duct tape, stole property, and left. (1) The court ruled, relying on *State v. Beatty*, 347 N.C. 555, 495 S.E.2d 367 (1998), that the confinement, removal, and restraint of the kidnapping victims were separate and independent of the commission of armed robberies. The bound victims were placed in greater danger than the restraint and removal inherent in the armed robberies. (2) The court ruled, relying on *State v. Love*, 177 N.C. App. 614, 630 S.E.2d 234 (6 June 2006), that there was sufficient evidence to support the element of first-degree kidnapping that defendant did not release the victims in a safe place. The defendants did not affirmatively or willfully act to release the victims.

**(2) Sufficient Evidence of Restraint to Support Kidnapping Conviction**

**(3) Sufficient Evidence to Support Kidnapping Conviction Because Restraint Was Separate and Independent From Assault by Strangulation**

*State v. Braxton, 183 N.C. App. 36, 643 S.E.2d 637 (1 May 2007).*

The defendant was convicted of one count of second-degree kidnapping, two counts of assault by strangulation, two counts of assault on a female, and eleven counts of intimidating a witness. (2) The court ruled that there was sufficient evidence of restraint to support the kidnapping conviction because the defendant restrained the victim by pinning her on the bed by pushing his knee into her chest, grabbing her hair, and preventing her from escaping from him. (3) The court ruled that there was sufficient evidence to support the kidnapping conviction because the restraint of the victim was separate and independent from the assault by strangulation: pinning the victim on the bed by pushing his knee into her chest, grabbing her hair, and preventing her from leaving the motel room.

**(1) Sufficient Evidence Existed to Support Element of First-Degree Kidnapping That Defendant Did Not Release Victims in Safe Place**

**(2) Confinement, Removal, and Restraint of Kidnapping Victims Were Separate and Independent of Commission of Armed Robberies**

*State v. Anderson, 181 N.C. App. 655, 640 S.E.2d 797 (20 February 2007).*

The defendant was convicted of six counts of first-degree kidnapping, three counts of armed robbery, one count of first-degree burglary, and one count of a felonious assault. The defendant and an accomplice forced their way into a residence, committed robberies there, and eventually left. Three of the kidnapping victims were children who had been awoken and placed in another bedroom in the residence. Two adult female victims were eventually taken by the defendant by gunpoint to the garage and one of them was then taken to the front of the house, where the defendant left when he realized the adult male victim was calling the police. (See other pertinent facts set out in the opinion). (1) The court ruled, relying on *State v. Love, 177 N.C. App. 614, 630 S.E.2d 234 (6 June 2006)*, that the defendant never released the six kidnapping victims and thus found it unnecessary to decide whether the residence was a safe place. The court upheld

all six first degree kidnapping convictions. (2) The court also rejected the defendant's argument that the confinement, removal, and restraint of the kidnapping victims were not separate and independent of the commission of the armed robberies. The defendant bound the two adult female victims after he had forced one of them to load valuables into trash bags. The defendant subjected the three child victims to danger and abuse that were manifestly unnecessary to the completion of the burglary. Also, the adult female victims and the children were held as hostages, and the adult female victims were used as human shields as well. The adult male victim was forcibly moved at gunpoint to another place in the house after he had been robbed.

**(2) Evidence Supported Conviction of Kidnapping in Addition to Rape Convictions When Defendant's Removal of Victim from Bedroom to Kitchen and Then to Family Room and His Commission of Other Acts Were Not Necessary to Accomplish Rapes and Placed Her in Greater Danger Than That Inherent in the Rapes**

**(3) When Kidnapping Indictment Alleged "Confined, Restrained, and Removed," Jury Instruction Permitting Conviction on Finding That Defendant "Restrained or Removed" Victim Was Not Error**

*State v. Key, 180 N.C. App. 286, 636 S.E.2d 816 (21 November 2006).*

The defendant was convicted of two counts of first-degree rape, one count of second-degree kidnapping, one count of attempted second-degree burglary, and one count of first-degree burglary. The defendant broke into the victim's home and threatened her with a knife in the bedroom. He forced her at knife point to go into the kitchen where he taped her eyes shut, took the phone off the hook, and told her to go into the family room and remove her clothing. The defendant vaginally penetrated the victim on a couch while she faced the defendant, withdrew his penis, turned her on her side, and then vaginally penetrated her from behind. (2) The court ruled, distinguishing *State v. Cartwright, 177 N.C. App. 531, 629 S.E.2d 318 (16 May 2006)*, that the evidence supported the conviction of kidnapping in addition to the rape convictions when the defendant's removal of the victim from the bedroom to the kitchen and then to the family room and his commission of other acts were not necessary to accomplish the rapes and placed

her in greater danger than that inherent in the rapes. (3) The court ruled, relying on *State v. Lancaster*, 137 N.C. App. 37, 527 S.E.2d 61 (2000), that when the kidnapping indictment alleged “confined, restrained, and removed,” the jury instruction permitting a conviction on the jury’s finding that the defendant “restrained or removed” the victim was not error.

### **Kidnapping-Not inherently part of a rape-Separate restraint and asportation not required for rape**

*State v. Key, 180 NCA 286 (2006)*

A kidnapping was not an inherent part of a rape, and defendant's motion to dismiss the kidnapping charge was properly denied, where the rape did not require that the victim be separately restrained and moved from one room to another.

### **Kidnapping-Indictment and instruction-Elements**

*State v. Key, 180 NCA 286 (2006)*

There was no plain error where defendant was indicted for kidnapping by confining, restraining, and removing his victim, and convicted on an instruction on restraining or removing.

### **Kidnapping-Second-degree-Failure to submit instruction-Not released in a safe place**

*State v. Love, 177 NCA 614 (2006)*

There was no evidence in a first-degree kidnapping case that the victim were released in a safe place so as to require the trial court to submit the charge of second-degree kidnapping to the jury, because: (1) defendants bound and gagged all four victims, defendants subsequently bound all four victims together,

defendants checked the bindings of the victims before departure, and defendants placed further bindings on the victims and stated they would return; (2) there was no affirmative or willful action on the part of defendants to release the victims, and although defendants may have physically left the premises, they left the victims with a constructive presence through their active intimidation; and (3) an instruction on this lesser-included offense requires an affirmative action other than the mere departing of the premises.

### **Kidnapping--Second-degree--Sufficiency of evidence**

*State v. Roberts, 176 NCA 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 counts of second-degree kidnapping, because although the trial court failed to give an instruction permitting the jury to rest a verdict of guilt on either acting in concert or aiding and abetting, the evidence at trial was sufficient to establish that: (1) the removal of one of the victims to the bathroom and the binding of his hands were not acts necessarily inherent in the commission of the other felonies of robbery, sexual offense, and burglary; and (2) after defendant sexually assaulted another victim, her hands were bound and she was left tied up.

### **Kidnapping\_restraint\_not a part of robbery**

*State v. Boyce, 175 NCA 663 (2006)*

There was sufficient evidence that the restraint in a kidnapping was separate from that in a robbery where the victim attempted to flee through her back door when defendant forced his way through the front door; she was partially outside when defendant grabbed her shirt, pulled her inside, and then closed the door; and defendant then told her for the first time that he wanted money. The robbery occurred only after the restraint and removal were complete.

### **Kidnapping--second-degree--motion to dismiss--sufficiency of evidence--restraint**

*State v. Stephens, 175 NCA 328 (2006)*

The trial court erred by denying defendant's motion to dismiss the charge of second-degree kidnapping, because: (1) the pushing of the victim and her walking to the cash register at gunpoint was an inherent and integral part of an armed robbery; (2) defendant did not do substantially more than force the victim to the cash register; (3) defendant's restraint of the victim did not expose her to a greater danger than that inherent in armed robbery; and (4) the victim's removal was a mere technical asportation and insufficient to support conviction for a separate kidnapping offense.

### **Kidnapping--second-degree--motion to dismiss--sufficiency of evidence--restraint**

*State v. McKoy, 174 NCA 105 (2005)*

The trial court did not err by denying defendant's motion to dismiss the second-degree kidnapping charges arising from the events of 18 November and 25 December 2002 even though defendant contends there was insufficient evidence of restraint, because: (1) hospital staff testified that defendant restrained the victim by refusing to allow her to seek medical treatment for a broken arm on or around 18 November 2002; and (2) an officer also testified that on 26 December 2002 the victim told him that defendant had been holding her against her will for days and would not let her contact her family.

### **Kidnapping--second-degree--asportation of robbery victims from an entranceway into a motel lobby--inherent part of robbery with dangerous weapon**

*State v. Ripley, 360 NC 333 (2006) Affirmed Ct Appeals, State v. Ripley, NCA 16 August (2005)*

The Court of Appeals did not err by vacating defendant's four convictions of second-degree kidnapping arising from the asportation of robbery victims from an entranceway into a motel lobby during the commission of a robbery with a dangerous weapon, because defendant's actions constituted a mere technical

asportation of the victims which was an inherent part of the commission of robbery with a dangerous weapon.

### **Kidnapping--to terrorize victim--evidence sufficient**

*State v. Jacobs, 172 NCA 220 (2005)*

The test for sufficiency of the evidence of kidnapping to terrorize the victim is whether defendant's purpose was to terrorize, not whether the victim was in fact terrorized. Here, there was sufficient evidence that defendant kidnapped the victim to terrorize her even though he apologized to her during the incident, and the trial court did not err by failing to instruct on false imprisonment.

### **Constitutional Law\_double jeopardy\_robbery and kidnapping\_standard**

*State v. Ripley, 172 NCA 453 (2005)*

In determining whether a movement or restraint during an armed robbery can support an independent charge of kidnapping, so that convictions for both do not violate double jeopardy, the question is whether the defendant's actions exposed the victim to a danger greater than that inherent in the armed robbery and to the kind of danger and abuse the kidnapping statute was designed to prevent.

### **Constitutional Law\_double jeopardy\_robbery and kidnapping\_movement during robbery**

*State v. Ripley, 172 NCA 453 (2005)*

Defendant was subjected to double jeopardy by being convicted of armed robbery and kidnapping arising from a string of hotel robberies, and his second-degree kidnapping convictions were reversed. The victims were moved from hotel parking lots to lobbies, were instructed not to move while others were robbed, or were moved from the front desk to a manager's office or a break room while

defendant and his accomplices sought surveillance tapes or access to a safe. The victims were not exposed to harm beyond the threatened use of a firearm inherent in the armed robbery or to the kind of danger the kidnapping statute was designed to represent.

### **Kidnapping--second-degree--failure to instruct on false imprisonment as lesser-included offense**

*State v. Petro, 167 NCA 749 (2005)*

The trial court did not err by denying defendant's request to instruct the jury on the charge of false imprisonment as a lesser-included offense of second-degree kidnapping, because: (1) defendant's theory of the case is that a letter written by the victim accurately portrayed the events of 20 August 2001 and negates a purpose to terrorize the victim at any point during that time; (2) defendant's theory, if believed, eliminates not only the purpose element required for second-degree kidnapping, but also the unlawful restraint element of both second-degree kidnapping and false imprisonment; and (3) the jury would therefore have to find defendant guilty of second-degree kidnapping if the victim's testimony was believed or not guilty of any offense if the victim's letter was believed.

### **Kidnapping--first-degree--requested instruction--safe place**

*State v. Corbett, 168 NCA 117 (2005) Affirmed State v. Corbett, 360 NC 287 (2006)*

The trial court did not err in a first-degree kidnapping case by granting the State's request for a jury instruction relating to whether the victim was released in a safe place, because: (1) the testimony was sufficient to support a jury's determination that the victim's release was involuntary and into the focal point of at least one officer's weapon; (2) the instruction did not conclude that the victim was released in an unsafe place, but at all times ensured that it was still upon the jury to find the facts surrounding the release beyond a reasonable doubt; and (3) being in the line of fire of one weapon falls within the legislature's intent of what is not a safe place under N.C.G.S. § 14-39(b).

## **Kidnapping--second-degree--instruction--false imprisonment**

*State v. Harrison, 169 NCA 257 (2005)*

The trial court did not err in a second-degree kidnapping case by denying defendant's motion to instruct the jury on the lesser-included offense of false imprisonment, because: (1) the record tends to show that defendant restrained the victim for the purpose of terrorizing her; and (2) even though defendant contends the evidence also tends to show that he intended to sexually assault the victim, the superseding indictment charged defendant with kidnapping the victim for the purpose of terrorizing her and the State is only required to prove the alleged purpose in order to sustain a conviction of kidnapping.

## **Kidnapping--first-degree--disjunctive instructions**

*State v. Bell, 359 NC 1 (2004)*

The trial court did not err by giving a disjunctive first-degree kidnapping instruction to the jury and by submitting a verdict form which did not require the jury to be unanimous as to the purpose for which the victim was kidnapped, because: (1) N.C.G.S. § 14-39(a) provides numerous routes by which a defendant may be convicted of first-degree kidnapping, but ultimately, a defendant can only be found guilty and punished once; (2) if the trial court merely instructs the jury disjunctively as to various alternative acts which will establish an element of the offense, the requirement of unanimity is satisfied; and (3) it is not necessary for the State to prove, nor for the jury to find, that a defendant committed a particular act other than that of confining, restraining, or removing the victim.

## **Constitutional Law--double jeopardy--kidnapping and assault**

*State v. Romero, 164 NCA 169 (2004)*

The trial court did not err by refusing to arrest judgment on double jeopardy grounds on an assault with a deadly weapon conviction where defendant was also convicted of first-degree kidnapping on the same facts. Although defendant argues that the same conduct was used to prove serious bodily harm for kidnapping and serious injury for assault, there was sufficient evidence that defendant dragged his wife inside their home for the purpose of assaulting her and that the crime of kidnapping was complete once he dragged her inside, whether or not the contemplated assault was completed.

### **Kidnapping--separate offenses--sufficiency of evidence**

*State v. Burrell, 165 NCA 134 (2004)*

The trial court correctly denied defendants' motion to dismiss first-degree kidnapping charges where defendants abducted the victim in his car, drove him to a deserted mall where they stole money, traveler's checks, bank cards, and credit cards, and then drove around with a gun at defendant's head trying to obtain more money from ATM machines. Although defendants argued that the kidnapping was an inherent part of the armed robbery, the robbery for which defendant was indicted was complete with the theft of the money, checks, and cards, and the victim's restraint was more than the technical asportation necessary to complete the armed robbery.

### **Kidnapping--release in unsafe place--sufficiency of evidence**

*State v. Burrell, 165 NCA 134 (2004)*

There was sufficient evidence that a first-degree kidnapping defendant did not release his victim in a safe place where the victim was released on the side of an interstate at about 1:30 a.m., the victim was not given money for a telephone call, the area was wooded, and the victim had to walk for about two miles to find an exit ramp and an open business to obtain help.

### **Kidnapping--second-degree--motion to dismiss--sufficiency of evidence--restraint**

*State v. Hall, 165 NCA 658 (2004)*

The trial court did not err by denying defendant's motion to dismiss the charges of second-degree kidnapping even though defendant alleges there was insufficient evidence of restraint separate and apart from that inherent in the robberies, because: (1) defendant restrained two store employees at gunpoint in order to coerce fellow employees to hand defendant the money, and such restraint was unnecessary to the armed robberies when defendant could have accomplished the robberies by directly approaching the other employees; (2) one of the restrained employees was actually outside the store when defendant approached him and forced him to move inside the store; and (3) the other restrained employee was occupied at the rear of the store, while another employee was in the store office at the computer register.

### **Kidnapping--first-degree--minor--sex offender registration**

*State v. Sakobie, 165 NCA 447 (2004)*

The trial court did not err in a first-degree kidnapping of a minor case by entering an amended judgment mandating that defendant be required upon release from the Department of Correction to register pursuant to the Sex Offender and Public Protection Registration Program under Article 27A, because: (1) registration pursuant to Article 27A is not a form of punishment unauthorized by Article XI, Section 1 of the North Carolina Constitution when Article 27A is a civil rather than a criminal remedy; (2) even though defendant contends the kidnapping was in furtherance of larceny of a vehicle, N.C.G.S. § 14-208.6(li) provides that an offense against a minor includes kidnapping pursuant to N.C.G.S. § 14-39; (3) defendant's separate asportation or movement of the child was unnecessary to complete the offense of larceny of the vehicle as defendant already had possession of the vehicle; and (4) based on the language of the indictment and the fact that defendant was found guilty of the crime for which she was indicted, it is unnecessary to remand the case for a specific finding concerning whether the kidnapping involved a minor.

### **Kidnapping--first-degree--instruction--safe place**

*State v. Roache, 358 NC 243 (2004)*

The trial court did not err in a multiple murder prosecution by its instruction to the jury on the “not released in a safe place” element of first-degree kidnapping that a person who is killed during the course of a kidnapping is not released in a safe place, because: (1) the instruction was proper and did not impermissibly unburden the jury’s fact-finding role; (2) even assuming *arguendo* that the instruction was improper, defendant would not be prejudiced in this case when the “not released in a safe place” element applies to first-degree kidnapping, but not to second-degree kidnapping, but either crime would have served as an underlying felony for felony murder; and (3) even had the jury not been instructed that murder was the equivalent of not being released in a safe place, defendant would have been convicted of felony murder.

### **Kidnapping–indictment–unlawful removal–instruction too broad–plain error**

*State v. Smith, 162 NCA 46 (2004)*

There was plain error where a kidnapping indictment alleged unlawful removal but the court’s instructions were that the jury could find defendant guilty if he unlawfully confined, restrained, or removed the victim. The error likely tilted the scale in light of the jury’s request for more instructions on kidnapping, the conflicting evidence on unlawful removal, and the stronger evidence of confinement or restraint.

### **Kidnapping–indictment and instruction–began in one county, ended in another**

*State v. Smith, 162 NCA 46 (2004)*

There was no error in the denial of a kidnapping victim’s request for an instruction that the State was required to prove that the kidnapping occurred in Wilson County, as alleged in the indictment. Kidnapping is an ongoing offense; while the State’s evidence may have suggested that the offense began in Wake County, it ended in Wilson County when the victim regained her freedom. There

was no risk that the jury could convict defendant of a different kidnapping.

### **Kidnapping--instructions--purpose not alleged in indictment--absence of prejudice**

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

Although the trial court erred by instructing the jury as to particular purposes for the kidnapping of two victims that had not been specified in the indictments and by instructing on the purpose set out in the indictment for the kidnapping of a third victim along with an additional purpose that had not been alleged in the indictment, this error was not prejudicial because (1) the indictments for the first two victims charged the purpose of “facilitating the commission of a felony,” and the trial court’s instructions placed a higher burden on the State by limiting the underlying felonies that the jury could find to support the kidnapping charge; and (2) the evidence as to the third victim supported both the purpose set out in the indictment and the additional purpose set out in the trial court’s instructions so that a different result would not have been reached had the trial court instructed only on the purpose charged in the indictment.

### **Constitutional Law--double jeopardy--kidnapping--armed robbery--restraint**

*State v. Escoto, 162 NCA 419 (2004)*

The trial court did not violate a defendant’s double jeopardy rights by failing to dismiss the kidnapping charges related to two of the victims even though defendant was charged with armed robbery for those two victims as well, because there was sufficient restraint of both victims beyond that inherent in the armed robbery to submit both charges to the jury.

### **Kidnapping--second-degree--sufficiency of evidence**

*State v. Shue, 163 NCA 58 (2004)*

There was sufficient evidence of second-degree kidnapping where defendant restricted a child's ability to leave a restroom stall and removed the child from the view of others who might hinder defendant's taking of indecent liberties.

### **Kidnapping - release in a safe place - sufficiency of evidence**

*State v. Sakobie, 157 N.C. App. 275 (2003)*

There was sufficient evidence that a child who had been kidnapped was not released in a safe place where the five-year old boy was released on a cold night in an isolated, rural, wooded area unfamiliar to him with a dog barking at the him. Although defendant told the child that his mother would be inside, all reasonable inferences are that defendant knew she would not be; although defendant claimed that she knew the occupants of the trailer, they denied knowing her; and it is not clear the defendant waited to identify the occupants of the trailer before pulling away.

### **Kidnapping - second-degree - motion to dismiss - sufficiency of evidence - restraint - terrorizing – serious bodily harm**

*State v. Washington, 157 N.C. App. 535 (2003)*

The trial court did not err by denying defendant's motion to dismiss the charge of second-degree kidnapping under N.C.G.S. §14-39(a) arising out of a road rage incident occurring after defendant and the victim's cars were involved in an accident, because: (1) defendant concedes and substantial evidence in the record shows the victim was restrained by defendant; (2) under the facts of this case, the restraint was separate and distinct from defendant's assault of the victim; and (3) substantial evidence exists to show that defendant acted with the purpose of terrorizing, doing serious bodily harm upon the victim, or both.

### **Kidnapping—first-degree—removal—fraudulent representations**

*State v. Davis, 158 NCA 1 (2003)*

The trial court properly denied defendant's motion to dismiss a first-degree kidnapping charge, and consequently a felony murder charge, where the State presented evidence that defendant obtained consent from the victim by falsely telling the victim that he was stranded and needed a ride; defendant confessed that he had tricked the victim into giving him a ride; the victim had been following his routine, which would have taken him to his home; and the shooting did not occur on the way to the victim's home. The jury could infer that the scene of the shooting was not a place to which the victim would normally have gone willingly absent defendant's fraudulent representations, and the State is not required to exclude all other possible inferences to defeat a motion to dismiss.

### **Kidnapping--second-degree--motion to dismiss--sufficiency of evidence--restraint and removal**

*State v. McCree, 160 NCA 19 (2003)*

The trial court did not err by denying defendant's motion to dismiss the charge of second-degree kidnapping that was based on the restraint and removal of one of the victims from one room to another inside an apartment to facilitate the robberies committed therein, because a jury could reasonably find that defendant's restraint and removal of the victim for the purpose of assisting in the robberies of the apartments' other occupants exposed the victim to a greater danger than that inherent in the armed robbery itself.

### **Kidnapping--lack of consent--failure to release in safe place--sufficiency of evidence**

*State v. Pratt, 152 NCA 694 (2002)*

The trial court did not err by denying defendant's motion to dismiss or reduce a first-degree kidnapping charge based on insufficient evidence that the victims did not consent and on release in a safe place where defendant ordered the victims into the woods at gunpoint, bound their hands and wrapped their faces with duct tape, repeatedly threatened to kill them and left them bound and gagged in the

woods at night.

**Kidnapping--unlawful removal to facilitate commission of rape--motion to dismiss--sufficiency of evidence**

*State v. Rogers, 153 NCA 203 (2002)*

The trial court did not err by denying defendant's motion to dismiss the charge of kidnapping based on defendant's unlawful removal of the victim from one place to another for the purpose of facilitating the commission or attempted commission of first-degree rape, because: (1) there was substantial evidence that defendant's removal of the victim through the house was for the purpose of facilitating the attempted rape; and (2) the removal of the victim was not a separate complete act independent and apart from the acts necessary to constitute the attempted rape.

**Kidnapping--elements--restraint not inherent in robbery**

*State v. McNeil, 155 NCA 540 (2002)*

In a kidnapping and robbery prosecution, the State presented evidence of a restraint not inherent in the robbery where defendant moved the victim to the back of the store at gunpoint after completing the robbery.

**Kidnapping - first-degree - restraint to facilitate robbery - not inherent in robbery**

*State v. Mann, 355 N.C. 294 (2002)*

The trial court did not err by denying defendant's motion to dismiss the charge of first-degree kidnapping under N.C.G.S. § 14-39 based on the theory of defendant unlawfully restraining his victim coworker for the purpose of facilitating the commission of a robbery because the evidence, viewed in the light most favorable to the State, reveals that the restraint to which defendant subjected the victim far

exceeded that necessary to and inherent in the armed robbery when: (1) defendant lured the victim to a store near defendant's home under the guise of discussing over lunch his unemployment benefits; (2) defendant then removed his victim to his apartment, where he repeatedly struck her in the face, breaking her nose and severely bruising both eyes; (3) defendant transported the victim to various ATM locations and coerced her into withdrawing money from her accounts; and (4) at some point during the course of these events, defendant forced the victim into the trunk of her car, where defendant eventually shot and killed the victim.

### **Kidnapping - confinement not inherent in murder - sufficiency of evidence**

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

The trial court did not err by refusing to dismiss a first-degree kidnapping charge for insufficient evidence that the kidnapping was separate from the killing where the victim was lured to a meeting; defendant put a gun to the victim's head and forced him to drive his own car to another location, where he was taken into the woods; he was shot when he tried to get away; the victim was alive when he was placed in the trunk of the car; and he cried out for help before defendant fired the fatal shots. There was ample evidence of confinement not inherent in the first-degree murder.

### **Kidnapping - bases of charge - "and" or "or"**

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

There was no plain error in a first-degree kidnapping prosecution where the indictment alleged failure to release in a safe place "and" serious injury while the court's instructions joined the phrases with "or." There is no evidence that the jury erroneously considered the charge and, in reality, only one of the two bases was necessary for the State to convict defendant of first-degree kidnapping.

### **Kidnapping - first-degree - restraint or removal in instruction - confinement in indictment**

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

There was no plain error in a first-degree kidnapping prosecution where the jurors were instructed on "restraint or removal" of the victim, while the indictment asserted confinement. The evidence and defendant's own admission make it clear that the victim was confined, restrained, and removed and there was no reasonable basis for concluding that any different combination of the terms in the instruction would have altered the result.

### **Kidnapping—second degree—variance between charge and proof**

*State v. Morris, 147 NC App 247 (2002)*

A defendant's motion to dismiss a second degree kidnapping charge should have been granted where the indictment stated that defendant kidnapped the victim for the purpose of facilitating a felony but did not mention facilitating flight following the commission of a felony, and the State asserted only kidnapping to facilitate second degree rape at trial. The evidence showed that the victim was confined in an apartment living room, knocked unconscious, awoke to find her clothes removed and defendant on top of her, was knocked unconscious again, and awoke locked in a storage closet outside. All of the elements of rape were completed before defendant removed the victim to the storage closet and there was no evidence that defendant removed the victim to the storage closet for the purpose of raping her there. The continuous transaction doctrine does not apply because the two acts were not inseparable or concurrent. While defendant's actions made his flight easier and may have supported a conviction of second degree kidnapping for the purpose of facilitating flight, the State failed to carry its burden of proving that defendant's action facilitated defendant's commission of the rape. Charge everything the evidence might prove! Aff by Supreme Ct. 355 NC 488 (2002).

### **Kidnapping—confinement—exceeding that required for attempted rape**

*State v. Robertson, 149 NCA 563 (2002)*

The trial court did not err by denying defendant's motion to dismiss a kidnapping charge where the evidence supports an inference that defendant fraudulently induced the victim to return to his apartment, fraudulently induced her to enter his bedroom, restrained her, brandished a knife, and threatened either to have sex with her or to kill her. Although defendant contended that the only restraint was an inherent and inevitable part of an attempted rape, the evidence of restraint or confinement exceeded that needed to establish attempted rape.

### **Sentencing–kidnapping and attempted rape–aggravating factor–masturbation**

*State v. Robertson, 149 NCA 563 (2002)*

The trial court erred when sentencing defendant for kidnapping and attempted rape by aggravating the sentence for “performing the loathsome act of masturbation.” Observing this act may have been unpleasant for the victim, but there was no showing that it increased her risk of harm.

### **Kidnapping--restraint and removal--integral part of robbery**

*State v. Featherson, 145 NCA 134 (2001)*

The trial court erred by denying a motion to dismiss a second-degree kidnapping charge in an action arising from an armed robbery prosecution where the restraint and removal of the victim were an inherent and integral part of the robbery.

### **Kidnapping - first-degree - sufficiency of evidence of purpose - drive-through bank withdrawal**

*State v. Parker, 354 N.C. 268 (2001)*

There was sufficient evidence to prove first-degree kidnapping based upon the purpose of obtaining property by false pretenses where defendant forced the victim to accompany her through a drive-in teller window while defendant withdrew \$2500 from the victim's account. Although defendant argues that she made no false representation which deceived the bank, defendant clearly misrepresented to the bank that the victim was voluntarily present and consented to the transaction and could not have obtained the money had the bank known the truth.

### **Kidnapping--first-degree and second-degree--proper resentencing based on erroneous maximum term**

*State v. Parker, 143 N.C. App. 680 (2001)*

A defendant was not improperly resentenced by the trial court for the consolidated offenses of first-degree kidnapping and second-degree kidnapping, because: (1) the maximum term established by N.C.G.S. § 15A-1340.17(e) should have been 129 months instead of 120 months; (2) N.C.G.S. § 15A-1340.17 does not provide for judicial discretion in the determination of maximum sentences; and (3) defendant's sentence was properly corrected by the trial court to reflect the maximum sentence required by statute.

### **Kidnapping--first-degree--failure to instruct on lesser included offense of second-degree kidnapping**

*State v. Parker, 143 N.C. App. 680 (2001)*

The trial court did not err by failing to instruct the jury on the charge of second-degree kidnapping as a lesser included offense of the first-degree kidnapping instruction, because: (1) the evidence reveals that defendants fled after shooting one victim and chased another victim as she escaped, leaving the shot victim in the backyard and a third victim inside the house; and (2) there was no evidence defendants consciously and willfully left the victims in a safe place.

## **Kidnapping--instructions--theory not alleged in indictment--not prejudicial or plain error**

*State v. Lucas, 353 N.C. 568 (2001)*

The trial court erred in a kidnapping prosecution by instructing the jury on removal when the indictment alleged only confinement. However, the erroneous instructions did not constitute prejudicial or plain error where the court's instructions on purpose did not differ from that listed in the indictment, the evidence of confinement, restraint and removal was compelling, and a different result would not have been reached by the jury had the trial court instructed on confinement rather than removal.

## **Kidnapping--first-degree--motion to dismiss**

*State v. Ackerman, 144 N.C. App. 452 (2001)*

The trial court erred by denying defendant's motion to dismiss the charge of first-degree kidnapping under N.C.G.S. § 14-39(a)(2), because: (1) the evidence failed to show confinement or restraint in the victim's vehicle beyond that required to establish the crime of first-degree sexual offense; and (2) there was no asportation of the victim.

## **Kidnapping--indictment and instruction--use of conjunctive and disjunctive**

*State v. Lancaster, 137 N.C. App. 37 (2000)*

The trial court did not err in its instructions on kidnapping where the indictment charged defendant with kidnapping by confining, restraining, and removing, and the instruction allowed a conviction upon a showing of either confining, restraining, or removing. There was substantial evidence to support any of the three methods set out in the indictment and an indictment alleging all three theories is sufficient and puts defendant on notice that the State intends to show that defendant committed kidnapping in any one of the three theories.

### **Kidnapping--indictment--facilitating commission of a felony**

*State v. Brooks, 138 N.C. App. 185 (2000)*

The trial court committed plain error in allowing defendant to be convicted of first-degree kidnapping under the theory that defendant unlawfully restrained the victim and removed her from one place to another without her consent and for the purpose of facilitating the commission of a felony, because: (1) the victim willingly got into the van with defendant to run errands during her lunch hour and never tried to get away from defendant until after he shot her; (2) the indictment alleged only that defendant kidnapped the victim to facilitate the commission of a felony, N.C.G.S. § 14-39(a)(2); and (3) the evidence failed to reveal that defendant kidnapped the victim before he shot her, or that the victim was with defendant against her will before she was shot.

### **Kidnapping--purpose of terrorizing victim--sufficiency of evidence**

*State v. Baldwin, 141 N.C. App. 596 (2000)*

The trial court did not err by denying defendant's motion to dismiss for insufficient evidence a charge of second-degree kidnapping for the purpose of terrorizing the victim where defendant, the victim's estranged husband, brandished a gun and confined the victim in her apartment against her will for almost twenty hours; the victim did not have an opportunity to leave the apartment without going past defendant, who held a loaded weapon; despite the victim's repeated requests, defendant did not permit her to leave the apartment at any time; defendant repeatedly threatened to kill himself, pointing the gun at his head and saying that he wanted to kill himself in front of the victim; and the victim testified that she was petrified.

### **Kidnapping--second-degree--restraint--separate from assault**

*State v. Harris, 140 NC App 208 (2000)*

The trial court did not err in a kidnapping prosecution by submitting second-degree kidnapping even though defendant argued insufficient evidence of restraint where the evidence permits a reasonable inference that defendant fraudulently coerced the victim into remaining with him in a car so that he could drive to a secluded place (a cemetery) and sexually assault her. The requisite restraint was the initial act of coercing her to go to the cemetery, not the subsequent assault.

**Kidnapping and Felonious Restraint 21 (NCI4th) - kidnapping - for the purpose of terrorizing victim - evidence sufficient**

*State v. Surrent, 109 N.C. App. 344 (1993) 427 S.E.2d 124*

*State v. Smith, 110 N.C. App. 119 (1993) 429 S.E.2d 45*

*State v. Barnes, 110 N.C. App. 473 (1993) 429 S.E.2d 765*

**Kidnapping and Felonious Restraint 20 (NCI4th) - second-degree kidnapping of infant – unlawful confinement for purpose of facilitating felony - sufficiency of evidence**

*State v. Pendergrass, 111 N.C. App. 310 (1993) 432 S.E.2d 403*

**Kidnapping and Felonious Restraint 20 (NCI4th) - first-degree kidnapping - intent to commit sexual assault - sufficiency of evidence**

*State v. Pendergrass, 111 N.C. App. 310 (1993) 432 S.E.2d 403*

**Kidnapping 2 (NCI3d) - first degree kidnapping verdict - arrest of judgment - sentence for second degree kidnapping**

*State v. Jeune, 332 N.C. 424 (1992) 420 S.E.2d 406*

**Kidnapping 16 (NCI4th) - restraint - sufficiency of evidence**

*State v. Carrillo, 115 N.C. App. 674 (1994) \_\_\_ S.E.2d \_\_\_*

**Kidnapping 21 (NCI4th) - restraint or confinement - intent to terrorize - sufficiency of evidence**

*State v. Carrillo, 115 N.C. App. 674 (1994) \_\_\_ S.E.2d \_\_\_*

**Kidnapping and Felonious Restraint 18 (NCI4th) rape and kidnapping charged -restraint of kidnapping not inherent part of rape - instruction on both crimes proper**

*State v. Hill, 116 N.C. App. 573 (1994) \_\_\_ S.E.2d \_\_\_*

**Kidnapping and Felonious Restraint 21 (NCI4th) - kidnapping for terrorizing or committing sexual assault upon victim - sufficiency of evidence**

*State v. Claypoole, 118 N.C. App. 714 (5-16-1995)*

The State's evidence was sufficient to be submitted to the jury in a prosecution of defendant for kidnapping for the purpose of terrorizing the victim and to facilitate the commission of a sexual assault where it tended to show that defendant forced the victim to drive to a secluded area and threatened to kill her twice along the way; at the secluded area defendant instructed the victim to get out of the car, stood in front of her, touched her face, and told her she looked "pretty good"; the

victim was so scared that she did not get a look at defendant until she got out of the car; and as the victim ran to safety, defendant tried to stop her by grabbing her arm.

**Kidnapping and Felonious Restraint 26 (NCI4th) - lesser-included offense of false imprisonment - insufficiency of evidence**

*State v. Claypoole, 118 N.C. App. 714 (5-16-1995)*

Where the evidence indicated that defendant confined, restrained, and removed the victim in order to terrorize and sexually assault her and there was no evidence indicating that he acted for any other purpose, the trial court did not err in failing to instruct on the lesser-included offense of misdemeanor false imprisonment.

**Kidnapping and Felonious Restraint 21 (NCI4th) second-degree kidnapping - purpose of terrorizing victim - sufficiency of evidence**

*State v. Davis, 340 N.C. 1 (1995) \_\_\_ S.E.2d \_\_\_*

**Kidnapping § 16 (NCI4th) second degree kidnapping asportation not part of rape sufficiency of evidence**

*State v. McKenzie, 122 N.C. App. 37 (1996) 468 S.E.2d 817*

The evidence was sufficient to support defendant's conviction of second degree kidnapping where it tended to show that the victim was in the hallway of an apartment when she first discovered defendant who immediately grabbed her, carried her to the bedroom, bound her hands, and covered her head with a pillowcase; when asked if he was going to rape her, defendant replied "no"; thereafter the victim heard defendant shut the blinds, open the cabinets, and rummage through the apartment before he returned to the bedroom; and it was apparent then that the asportation of the victim from the hallway to the bedroom

and her confinement prior to the rape was an effort on the part of defendant to conceal his identity and facilitate the commission of the independent acts of larceny and robbery.

**Kidnapping and Felonious Restraint § 18 (NCI4th) victim moved as part of another felony no removal or restraint sufficient to constitute kidnapping**

*State v. Weaver, 123 N.C. App. 276 (1996) 473 S.E.2d 362*

The trial court erred in failing to dismiss the charge of kidnapping against both defendants where it was necessary for defendants to move the victim from a parking lot to her hotel room in order to effectuate their robbery because the victim's car keys and money were in the hotel room; defendants moved the victim only as far as necessary to complete the robbery and promptly released her.

**Kidnapping and Felonious Restraint § 18 (NCI4th) restraint or removal of victims separate from robbery sufficiency of evidence of first- and second-degree kidnapping**

*State v. Warren, 122 N.C. App. 738 (1996) 471 S.E.2d 667*

The removal of the victims of a convenience store armed robbery to a storage area and hallway at the rear of the store was not an inherent part of the robbery and supported defendant's convictions of first-degree and second-degree kidnapping where the areas to which the victims were removed did not contain safes, cash registers or lock boxes which held property to be taken in the robbery, and the victims were exposed to greater danger than that inherent in the armed robbery itself and were subjected to the kind of danger and abuse the kidnapping statute was designed to prevent.

**Kidnapping and Felonious Restraint § 31 (NCI4th); Rape and Allied Sexual Offenses § 90 (NCI4th) firstdegree kidnapping to commit rape prostitute withdrawal of consent**

*State v. Penland, 343 N.C. 634 (1996) 472 S.E.2d 734*

There was sufficient evidence to permit the jury to find beyond a reasonable doubt that defendant committed first-degree kidnapping where defendant argued that the evidence was insufficient to prove that he formed an intent to rape the victim prior to or during the removal because all of the evidence tended to show that the victim got into the truck for the purpose of engaging in prostitution. The evidence indicates that defendant never intended to pay her for sexual services and, given the circumstances, the jury could reasonably infer (1) that defendant would have known the victim's prior consent to sexual activity had been withdrawn, and (2) that his threats and actions compelled her submission and overcame her will, thereby negating her earlier consent.

**Constitutional Law § 202 (NCI4th) kidnapping and murder blows to restrain separate from blows causing death convictions of both crimes**

*State v. Stroud, 345 N.C. 106 (1996) 478 S.E.2d 476*

**Kidnapping and Felonious Restraint § 18 (NCI4th) - robbery and kidnapping - restraint of victim unnecessary to robbery**

*State v. Brice, 126 N.C. App. 788 (1997)*

In a prosecution for robbery and kidnapping, the trial court did not err in submitting the charge of kidnapping to the jury where the evidence showed that restraint of the victim was not necessary to carry out the robbery of two other victims and there was no evidence that anything was stolen from the kidnapping victim

**Kidnapping and Felonious Restraint § 16 (NCI4th) - kidnapping - confinement, restraint, removal of victim - insufficiency of evidence**

*State v. Skeels, 346 N.C. 147 (1997)*

The trial court erred in a prosecution for armed robbery, kidnapping, and first-degree murder by not dismissing the kidnapping charge where the evidence was not sufficient to show that defendant unlawfully confined, restrained, or removed the victim from one place to another without his consent. There was no evidence regarding the circumstances under which the defendant entered the victim's truck or under what circumstances the victim drove to the area where he was killed. N.C.G.S. § 14-39.

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

The defendant used a handgun to rob the victim of money he had just withdrawn from an ATM machine. He then required him to withdraw more money from the ATM and give it to the defendant. He then forced the victim to move more than 200 feet across a parking lot, onto a street, and into the victim car. The court ruled that the movement of the victim was unnecessary to obtain the money from the victim and thus was sufficient evidence to support the defendant kidnapping conviction.

**Kidnapping § 24 (NCI4th) - first-degree kidnapping, rape, indecent liberties - instructions - reliance on same sexual act - judgment arrested**

*State v. Stinson, 127 N.C. App. 252 (1997)*

Judgment was arrested on a first-degree kidnapping conviction and the case remanded for resentencing on second-degree kidnapping where defendant was convicted of first-degree kidnapping, second-degree rape, and indecent liberties and an ambiguity in the trial judge's instructions made it impossible to determine whether the jury relied on the same sexual act to convict defendant of first-degree kidnapping, and/or second-degree rape and indecent liberties.

**Kidnapping § 26 (NCI4th) - first-degree kidnapping - instruction on felonious restraint - denied - insufficient evidence**

*State v. Stinson, 127 N.C. App. 252 (1997)*

The trial court did not err by instructing the jury on first-and second-degree kidnapping but refusing to instruct the jury on felonious restraint as a lesser included offense where there was no evidence presented by either party that the victim was restrained for any purpose other than a sexual assault.

### **Kidnapping and Felonious Restraint § 2 (NCI4th) - continuing offense**

*State v. White, 127 N.C. App. 565 (1997)*

The offense of kidnapping under N.C.G.S. § 14-39 is a single continuing offense lasting from the time of the initial unlawful confinement, restraint or removal until the victim regains his or her own free will. Therefore, each place of confinement or each act of asportation occurring during a kidnapping does not constitute a separate unit of prosecution.

### **Kidnapping and Felonious Restraint § 14 (NCI4th) - release in safe place**

*State v. White, 127 N.C. App. 565 (1997)*

A kidnapping victim was released in a "safe place" at the end of her confinement so that the place of her release could not elevate the crime to first-degree kidnapping where the victim was voluntarily dropped off in a motel parking lot in the middle of the afternoon, was given change to make a phone call, and was able to go the motel office to seek assistance.

### **Kidnapping § 16 (NCI4th) - second-degree kidnapping - sufficiency of evidence - removal - threats - intimidation**

*State v. Williams, 127 N.C. App. 464 (1997)*

The State's evidence in a prosecution for second-degree kidnapping was sufficient to support the element of removal where the defendant forced the victim into and out of a car through threats and intimidation with what appeared to be a gun.

**Kidnapping § 21 (NCI4th) - second-degree kidnapping - sufficiency of evidence - intent to terrorize - gun - threats**

*State v. Williams, 127 N.C. App. 464 (1997)*

In a prosecution for second-degree kidnaping, the victim's testimony that defendant pointed what appeared to be a gun in her direction and threatened to kill her and that she was crying and hysterical was adequate to support the conclusion that defendant's intent was to terrorize the victim.

**Kidnapping and Felonious Restraint § 28 (NCI4th) - indictment alleging restraint - instruction on restraint or confinement - no error**

*State v. Raynor, 128 N.C. App. 244 (1998)*

There was no error in the trial court's instruction that defendant could be found guilty of first-degree kidnapping based upon "restraint or removal" when the indictment alleged only a theory of kidnapping based upon restraint of the victim since unlawful removal from one place to another must involve unlawful restraint, and the evidence at trial supported conviction under both the removal and restraint theories.

**Kidnapping and Felonious Restraint § 14 (NCI4th) - perpetrators fleeing scene - no release in safe place**

*State v. Raynor, 128 N.C. App. 244 (1998)*

A kidnapping victim was not released in a safe place so that the charge was raised

to first-degree kidnapping where defendant and his accomplice fled the scene when they were overpowered by the victim as they attempted to tie him up with electrical cords.

**Indictment, Information, and Criminal Pleadings § 18 (NCI4th) - first-degree kidnapping indictment – felonious restraint conviction - lesser offense - required allegations**

*State v. Wilson, 128 N.C. App. 688 (1998)*

A first-degree kidnapping indictment which did not allege that defendant transported the victim by motor vehicle or other conveyance was insufficient to support a charge of felonious restraint and the court erred by submitting that charge to the jury as a possible verdict. The legislature has not adopted a short form indictment for kidnapping and, although the legislature has expressly declared that felonious restraint is a lesser included offense of kidnapping, a statute which simply authorizes a verdict to a lesser offense upon trial on a greater offense does not eliminate the requirement that every essential element of the lesser charge be alleged in the indictment. N.C.G.S. § 14-43.3.

**Kidnapping and Felonious Restraint § 3 (NCI4th) - confinement not element of robbery – separate kidnapping conviction**

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

The evidence was sufficient to support defendant's conviction for kidnapping two victims separate and apart from her conviction for armed robbery where defendant acted in concert with another to force the victims to walk at gunpoint to the meat room in the back of a store; personal property was taken from the two victims and merchandise was taken from the store; and none of the property taken from the victims was kept in the meat room.

**Kidnapping and Felonious Restraint § 18 (NCI4th) - armed robbery - binding of victim's wrists – kicking victim in back - additional restraint supporting kidnapping**

*State v. Beatty, 347 N.C. 555 (1998)*

There was sufficient evidence of restraint of one victim separate and apart from that inherent in an armed robbery of a restaurant to support defendant's conviction of second-degree kidnapping of this victim where the evidence tended to show that the robbers, including defendant, put duct tape around the victim's wrists, forced him to lie on the floor, and kicked him in the back twice. When defendant bound this victim's wrists and kicked him in the back, he increased the victim's helplessness and vulnerability beyond what was necessary for him and his comrades to rob the restaurant, and such actions constituted sufficient additional restraint to satisfy the restraint element of kidnapping under N.C.G.S. § 14-39.

**Kidnapping and Felonious Restraint § 18 (NCI4th) - armed robbery - threatened use of firearm - no additional restraint supporting kidnapping**

*State v. Beatty, 347 N.C. 555 (1998)*

There was insufficient evidence of restraint of a second victim separate and apart from that inherent in an armed robbery of a restaurant to support defendant's conviction of second-degree kidnapping of this victim where the evidence showed only that one of the robbers approached the victim, pointed a gun at him, and stood guarding him during the robbery, the victim did not move during the robbery, and the robbers did not injure him in any way. The only evidence of restraint of this victim was the threatened use of a firearm, which was an inherent, inevitable feature of the robbery and insufficient to support a conviction for kidnapping under N.C.G.S. § 14-39.

**Criminal Law § 1096 (NCI4th Rev.) - second-degree kidnapping and rape - use of firearm – kidnapping sentence enhanced**

*State v. Ruff, 349 N.C. 213 (1998)*

The trial court did not err by enhancing defendant's second-degree kidnapping conviction for the use of a firearm pursuant to N.C.G.S. § 15A-1340.16A where

the jury found defendant guilty of first-degree rape and first-degree kidnapping, but the trial court arrested judgment on the first-degree kidnapping conviction and entered judgment sentencing defendant for second-degree kidnapping. The use or display of a firearm is not an essential element of second-degree kidnapping and the trial court was not precluded from relying on evidence of defendant's use of the firearm and enhancing his term of imprisonment pursuant to the firearm enhancement section. It is irrelevant whether the use of a firearm was the gravamen of the first-degree rape; so long as the use of a firearm is not an essential element of the underlying felony, defendant's term of imprisonment must be enhanced by sixty months. The cases upon which the Court of Appeals relied in vacating the enhanced sentence were decided under the former Fair Sentencing Act.

### **Kidnapping and Felonious Restraint § 16 (NCI4th) - removal element - fraudulent means**

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

Evidence tending to show that defendant lured a murder victim away from his home under the false pretense of earning money by moving furniture constituted sufficient evidence of a removal to sustain defendant's kidnapping conviction.

### **Kidnapping and Felonious Restraint § 20 (NCI4th) - first-degree kidnapping - unlawful removal – purpose of rape - sufficiency of evidence**

*State v. Trull, 349 N.C. 428 (1998)*

The State's evidence was sufficient for the jury to find that defendant unlawfully removed the victim from one place to another without her consent for the purpose of committing first-degree rape so as to support his conviction of first-degree kidnapping where it tended to show that the victim was a responsible, dedicated employee who was scheduled to teach a computer class at 9:00 a.m. but did not show up for work; when the victim's mother and a friend went to the victim's apartment, the victim's car was where it had been parked earlier in the day; the door casing around a closet behind the front door to the apartment was damaged as though the door had been banged against the casing; when the victim's body

was thereafter found in the woods, the victim's clothing was not the type she would wear to work and she was not wearing any undergarments; and in his statements to officers, defendant said he did not know the victim, he had seen her leaving and entering her apartment, and he had spoken to her in passing one or two times, but defendant's semen was found in the victim's vagina. This evidence supports the inference that defendant forced his way into the victim's apartment, forced her to dress hurriedly, forced her out of the apartment and into his truck, and then drove to the woods where he raped and murdered her.

### **Kidnapping - restraint separate from armed robbery**

*State v. Thomas, 350 N.C. 315 (1999)*

There was sufficient evidence of restraint not inherent in the armed robbery of the victim to support defendant's conviction of kidnapping where the evidence showed that the victim was found lying on the floor of his home with his hands tied behind his back; the victim also had an apron tied around his neck and several towels and a stuffed toy around his mouth and face; and the victim was repeatedly stabbed and cut while he was restrained. The elements of armed robbery do not require that defendant bind and gag the victim in such a manner, and the victim was subjected to the kind of danger and abuse the kidnapping statute was designed to prevent.

### **Kidnapping - first-degree kidnapping - restraint of victim - failure to release in safe place**

*State v. Thomas, 350 N.C. 315 (1999)*

The first-degree kidnapping element of failure to release the victim in a safe place applies to a kidnapping by restraint and confinement and not just to kidnapping by removal. Therefore, the element of failure to release the victim in a safe place was supported by evidence that the kidnapping was accomplished by restraint of the victim in his own house, and that the victim was found in his house stabbed to death with his hands tied behind his back.

**Constitutional Law, Federal - double jeopardy - first-degree kidnapping - felony murder - failure to release in safe place - not murder element**

*State v. Thomas, 350 N.C. 315 (1999)*

Defendant's convictions and sentencing for both first-degree kidnapping and felony murder did not subject him to double jeopardy where his first-degree kidnapping conviction was based on the element that he did not "release the victim in a safe place" and not on the element of "serious injury." Furthermore, since defendant's first-degree murder conviction was based not only on the felony murder rule but also on premeditation and deliberation, proof of the underlying felony was not an essential element of the State's homicide case, and defendant could be sentenced for both the murder and the felony.

**Kidnapping - second degree - restraint - insufficient**

*State v. Allred, 131 N.C. App. 11 (1998)*

The trial court erred in a kidnapping and robbery prosecution by denying defendant's motion to dismiss the kidnapping charges for insufficient evidence as to Hampton and McBee where they were not moved or injured in any way and the restraint used against them was an inherent part of the robbery and did not expose them to any greater danger than that required to complete the robbery.

**Kidnapping - second degree - restraint and removal - insufficient**

*State v. Allred, 131 N.C. App. 11 (1998)*

The trial court erred in a robbery and kidnapping prosecution by denying defendant's motion to dismiss the kidnapping charges for insufficient evidence as to Alexander where defendant held him at gunpoint during the robbery, took him to his bedroom to get his "stash," and Alexander was made to sit on the bed while defendant searched for the stash, but at no time did defendant or his accomplice injure Alexander in any way. This restraint and removal were necessary to

complete the armed robbery, as it was defendant's objective to obtain the money Alexander was believed to have kept hidden in his bedroom. Alexander's removal was a mere technical asportation and insufficient to support a conviction for a separate kidnapping offense.

### **Kidnapping - second degree - restraint and removal - sufficiency of evidence**

*State v. Allred, 131 N.C. App. 11 (1998)*

The trial court did not err in a kidnapping and robbery prosecution by denying defendant's motion to dismiss the kidnapping charges as to Graves where defendant's accomplice entered Graves' bedroom, grabbed him by the collar, dragged him into the living room, and ordered him to sit on the couch. Nothing was taken from him and no attempt was made to rob him of anything. The removal was not an integral part of any robbery committed against him, but a separate course of conduct designed to prevent him from hindering the robbery of the other occupants.

### **Kidnapping - second-degree - removal in connection with another felony**

*State v. Ross, 133 N.C. App. 310 (1999)*

The trial court erred by denying defendant's motion to dismiss a charge of second-degree kidnapping in a prosecution for armed robbery, conspiracy, and second-degree kidnapping. The evidence falls short of showing that the victim's movement was a removal separate and apart from the armed robbery and defendant was not exposed to greater danger than that inherent in the armed robbery.

### **Kidnapping - sufficiency of evidence - asportation**

*State v. Little, 133 N.C. App. 601 (1999)*

The trial court did not err by denying defendant's motion to dismiss a kidnapping charge where, after taking the victim's money and forcing the victim to withdraw more from a teller machine, the victim was moved more than 200 feet across a parking lot, onto a street, and down a hill into a cul-de-sac. The asportation was obviously unnecessary to extract more money from the victim.

### **Kidnapping - indictment**

*State v. Dominie, 134 N.C. App. 445 (1999)*

The trial court erred in instructing the jury on first-degree kidnapping where the indictment alleged only seconddegree kidnapping.

### **Kidnapping - indictment - disjunctive instruction improper**

*State v. Dominie, 134 N.C. App. 445 (1999)*

In a kidnapping case where the indictment alleged only that the victims were unlawfully removed, the trial court erred by instructing the jury in the disjunctive that it could find defendant guilty if it found he unlawfully confined, restrained, or removed a person from one place to another. Even if the evidence amply supports the trial court's instruction, it is improper to convict a defendant upon a theory not supported by the bill of indictment.