

PRISONS AND PRISONERS

(1) Sufficient Evidence to Support Conviction of Malicious Conduct by Prisoner When Officer Testified That Handcuffed Defendant Spit on His Leg

(2) Indictments Alleging Malicious Conduct by Prisoner and Assault on Governmental Official Need Not Allege Duty Officer Was Performing

State v. Noel, ___ N.C. App. ___, 690 S.E.2d 10 (2 March 2010).

The defendant was convicted of malicious conduct by a prisoner and assault on a governmental official. After stopping a vehicle that had attempted to evade law enforcement and from which plastic bags had been thrown, officers removed the defendant-passenger, placed him on the curb, and handcuffed him. As an officer approached the defendant to question him, the defendant yelled at the officer and spit on the officer's right leg. (1) The court ruled that the state presented sufficient evidence to support the defendant's conviction of malicious conduct by prisoner, G.S. 14-258.4(a). (2) The court ruled, distinguishing *State v. Ellis*, 168 N.C. App. 651 (2005) (charge of resisting an officer under G.S. 14-223 must allege duty officer was discharging), that indictments alleging malicious conduct by a prisoner and assault on a governmental official need not allege the duty the officer was performing. Thus, the indictments' allegations of the duty the officer was performing were surplusage, and there was not a fatal variance between the allegations and the proof of the duty at trial.

(1) When Prisoner Serving Sentence Asserts Right to Counsel At Custodial Interrogation, Officer May Reinitiate Custodial Interrogation After There Has Been Break in Custody for 14 Days or More

(2) Prisoner's Return to General Prison Population After Officer's Custodial Interrogation at Prison Began Running of 14-Day Break in Custody

Maryland v. Shatzer, 130 S. Ct. 1213, ___ L. Ed. 2d ___ (24 February 2010).

In 2003 a detective went to a Maryland prison to question the defendant about his alleged sexual abuse of his son, for which he then was not charged. The defendant was serving a prison sentence for a conviction of a different offense. The defendant asserted his right to counsel under *Miranda*, and the detective terminated the custodial interrogation. The defendant was released back to the general prison population to continue serving his sentence, and the child abuse investigation was closed. Another detective reopened the investigation in 2006 and went to another prison where the defendant was still serving his sentence. The detective gave *Miranda* warnings to the defendant, he waived his *Miranda* rights, and then he gave a statement that was introduced at his child sexual abuse trial. The United States Supreme Court in *Edwards v. Arizona*, 451 U.S. 477 (1981), had ruled that once a defendant has asserted his or her right to counsel at a custodial interrogation, an officer may not conduct custodial interrogation of the defendant until a lawyer is made available for the interrogation or the defendant initiates further communication with the officer. The Court in *Shatzer* ruled that when a break in custody lasting 14 days or more has occurred after a defendant had previously asserted his right to counsel at a custodial interrogation, an officer may reinitiate custodial interrogation after giving *Miranda* warnings and obtaining a waiver of *Miranda* rights. The Court also ruled that although the

defendant remained in prison after asserting his right to counsel, there was a break in custody under its ruling. The Court reasoned that when a prisoner is released after an officer's interrogation to return to the general prison population, the prisoner returns to his or her accustomed routine and regains the degree of control over his or her life that existed before the interrogation. Sentenced prisoners, in contrast to defendants being subjected to custodial interrogation under *Miranda*, are not isolated with their accusers (law enforcement officers). They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone. The "inherently compelling pressures" of custodial interrogation ended when this defendant returned to his normal life in prison.

Court Rules That Federal District Court Erred in Dismissing Prisoner's Excessive Force Civil Claim Against Correction Officer Based Entirely on Its Determination That Prisoner's Injuries Were "De Minimis"

Wilkins v. Gaddy, 130 S. Ct. 1175, ___ L. Ed. 2d ___ (22 February 2010).

The Court ruled that a North Carolina federal district court erred in dismissing a prisoner's excessive force civil claim against a correction officer based entirely on its determination that prisoner's injuries were "de minimis." The Court noted, however, that the absence of serious injury is not irrelevant to the Eighth Amendment inquiry whether there is a valid excessive force claim (see the Court's discussion of this issue.)

Correctional Officer's Statements to Prisoner During Transport from One Correctional Facility to Another Constituted "Interrogation" Under Rhode Island v. Innis and Thus Prisoner's Response Was Inadmissible Because Miranda Warnings Had Not Been Given

State v. Rollins, 189 N.C. App. 248, 658 S.E.2d 43 (18 March 2008),
reversed on other grounds, ___ N.C. ___, 675 S.E.2d 334 (1 May 2009).

The court ruled that a correctional officer's statements to a prisoner during transport from one correctional to another constituted "interrogation" under *Rhode Island v. Innis*, 446 U.S. 291 (1980), and thus the prisoner's response was inadmissible because *Miranda* warnings had not been given. The officer initiated questioning related to a murder. By doing so, the officer steered the conversation to a topic which, if discussed by the defendant, was likely to elicit an incriminating statement.

Defendant, Who Was Employed By Company Under Contract with Mecklenburg County Jail to Provide Mental Health Care for Inmates, Was Agent of Sheriff to Support Conviction Under G.S. 14-27.7(a)—Ruling of Court of Appeals Is Modified and Affirmed

State v. Wilson, 362 N.C. 162, 655 S.E.2d 359 (25 January 2008),
modifying and affirming, 183 N.C. App. 100, 643 S.E.2d 620 (1 May

2007).

The court ruled that the defendant, who was employed by company under contract with the Mecklenburg County jail to provide mental health care for inmates, was an agent of the sheriff to support his conviction under G.S. 14-27.7(a) (sexual acts committed by agent of person or institution having custody of victim). The defendant engaged during treatment in several sex acts with an inmate.

(2) Sufficient Evidence Supported Defendant's Conviction of Possession of Controlled Substance on Premises of Local Confinement Facility

State v. Moncree, 188 N.C. App. 221, 655 S.E.2d 464 (15 January 2008).

The defendant was convicted of two misdemeanor counts of possession of marijuana and one count of possession of a controlled substance (marijuana) on the premises of a local confinement facility. After a vehicle stop in which an officer discovered a marijuana joint and a chunk of marijuana in the front passenger seat, the defendant was arrested and transported to the sheriff's department where the jail was also located. He was required to take off his shoes and socks, and marijuana was found in his left shoe. The marijuana found in the defendant's shoe was not sent to the SBI for testing. Instead, an SBI agent with education and experience in forensic analysis was allowed to offer his opinion that the substance was marijuana. (2) The court ruled that sufficient evidence supported the defendant's conviction of possession of a controlled substance (marijuana) on the premises of a local confinement facility. "Premises" of a local confinement facility include secured areas in which arrestees are temporarily detained for search, booking, and other purposes. After appearing before a magistrate, he had been taken before a deputy sheriff to be processed because he was under a secured bond.

1) Prisons and Prisoners--Malicious conduct by prisoner--Failure to allege defendant in custody-- Notice

State v Artis, 174 N.C. App. 668 (2005)

The trial court had jurisdiction to proceed with the trial of a charge of malicious conduct by a prisoner even though the indictment did not allege that defendant was in custody, because: 1) the purpose behind alleging that defendant was in custody is to give him proper notice of the charges against him; 2) the evidence tended to show that defendant was an inmate at the Pitt County Detention Center, he was incarcerated when he received notice of the charges, and he raised no objection that he was unaware of the facts giving rise to the charges;

and 3) no conclusion could be reached other than that defendant was in custody.

2) Constitutional Law--Double jeopardy--Malicious conduct by prisoner--Misdemeanor assault of government employee

State v Artis, 174 N.C. App. 668 (2005)

The trial court did not violate defendant's right against double jeopardy by entering judgment for both malicious conduct by a prisoner and habitual misdemeanor assault even though identical conduct was alleged to establish both malicious conduct by a prisoner and the current misdemeanor assault of a government employee, because: 1) when it is clear that defendant's conduct is violative of two separate and distinct social norms, the fact that both convictions arise out of the same conduct does not violate the double jeopardy clause; 2) malicious conduct by a prisoner requires only that a bodily fluid or excrement be thrown at a government official whereas misdemeanor assault on a governmental official requires that the official either be touched by the instrument of assault or reasonably fear such a touching; and 3) the legislature intended to punish two different types of behavior even though defendant's conduct was the same for both offenses.

Beard v. Banks, (28 June 2006) US Sup. Ct.

The Court ruled that Pennsylvania prison officials set forth adequate legal support for a policy restricting access to newspapers, magazines, and photographs by inmates in the most restricted level of the prison's long-term segregation unit.

Court Rules That State Prison Inmate Could Bring Federal Habeas Corpus Petition Challenging Conviction Under Actual Innocence Exception to Procedural Bar Rule

House v. Bell (12 June 2006). US Sup Ct.

The Court ruled that a state prison inmate could bring a federal habeas corpus petition challenging his conviction under the actual innocence exception to the procedural bar rule. (See the Court's opinion for a detailed discussion of the facts that supported its ruling.)

1) Prisons and Prisoners--Malicious conduct by prisoner--Failure to instruct on misdemeanor assault on law enforcement officer as lesser-included offense

State v. Crouse, 169 N.C. App. 382 (2005)

The trial court did not err by denying defendant's request to submit misdemeanor assault on a law enforcement officer as a lesser-included offense of malicious conduct by a prisoner, because: 1) misdemeanor assault on a law enforcement officer is not a lesser-included offense of malicious conduct by a prisoner; 2) although an assault may be included in the commission of malicious conduct by a

prisoner, it need not be; and 3) the legislature intended to address a different problem with each offense when assaults on government officials have been criminalized to punish and prevent attacks against government officials trying to perform public duties whereas the criminalization of malicious conduct by a prisoner is directed at deterring and punishing the projecting of bodily fluids or excrement at governmental employees by those in custody whether or not such conduct amounts to an assault.

2) Prisons and Prisoners--Malicious conduct by prisoner--Motion to dismiss-- Sufficiency of evidence--Custody

State v. Ellis, 168 N.C. App. 651 (2005)

The trial court did not err by denying defendant's motion to dismiss the charge of malicious conduct by a prisoner based on alleged insufficient evidence of defendant being in custody, because: 1) the Fourth Amendment "free to leave" test is to be applied to determine whether an individual was in custody under N.C.G.S. § 14-258.4; and 2) substantial evidence shows that at the moment defendant smeared fecal matter on an officer, a reasonable person would have believed that he was not free to leave.

3) Prisons and Prisoners--Malicious conduct by prisoner--Instruction--Custody

State v. Ellis, 168 N.C. App. 651 (2005)

The trial court did not err by instructing the jury on the custodial element of malicious conduct by a prisoner, because: 1) the test is whether a reasonable person would have felt free to leave under the circumstances; and 2) in light of the "free to leave" test concerning the custody element of N.C.G.S. § 14- 258.4, defendant has failed to show, and a review of the record and transcript do not indicate, that the instructions to the jury were misleading.

1) Prisons and Prisoners--Injury to prisoner by jailer--Sufficiency of evidence-- Keeper of the jail--Bailiff

State v. Shepherd, 156 N.C. App. 603 (2003)

The trial court did not err by denying defendant's motion to dismiss the charge of injury to prisoner by jailer even though defendant contends he was not the keeper of the jail within the meaning of N.C.G.S. § 162-55, because defendant, acting as a courtroom bailiff, would be considered the keeper of a jail when: 1) bailiffs have the same custody, care, and keeping obligation as the jailers do who work in the actual jail; and 2) defendant was certified by the State as a detention officer which is synonymous with a jailer.

2) Prisons and Prisoners--Injury to prisoner by jailer--Jury instruction--Keeper of

the jail

State v. Shepherd, 156 N.C. App. 603 (2003)

The trial court did not abuse its discretion in an injury to prisoner by jailer case by instructing the jury concerning the definition of the keeper of a jail, because: 1) the trial court properly denied defendant's request for a specific instruction since the requested instruction erroneously indicated that, in order to be found guilty of injury to prisoner by jailer, defendant must be either the sheriff or the person appointed by the sheriff to be the keeper of the jail; 2) the keeper of a jail includes those persons charged with the care, custody, and maintenance of prisoners, and the trial court's initial instructions correctly informed the jury of the applicable law; and 3) the trial court's responses to jury inquiries provided