

## ROBBERY

### **Trial Court Committed Error by Consolidating for Judgment the Convictions of First Degree Murder and Robbery with a Dangerous Weapon When Jury did not Specify Whether Defendant was Guilty of First Degree Murder Based on Premeditation and Deliberation or Felony Murder.**

*State v. Blymer* \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_, (July 6, 2010).

Defendant robbed victim of money and prescription pain pills then beat victim with baseball bat, killing him. Judgment for convictions of first degree murder and robbery with a dangerous weapon were consolidated. Defendant argues that the trial court committed error by consolidating for judgment the convictions where the jury did not specify whether it found defendant guilty of first-degree murder based on premeditation and deliberation or on felony murder. The jury found defendant guilty of first-degree murder and robbery with a dangerous weapon but did not specify upon which theory the murder conviction was premised. Court held that the crime of robbery with a dangerous weapon merged with that of the murder.

### **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.

### **Use Of Violence Is Inseparable From Theft Of Property From A Store Where the Manager Confronts Defendant In Parking Lot And Tries To Retrieve Stolen Property**

*State v. Porter*, \_\_ N.C. App. \_\_, 679 S.E.2d 167 (July 7, 2009).

The defendant's use of violence was concomitant with and inseparable from the theft of the property from a store where the store manager confronted the defendant in the parking lot and attempted to retrieve the stolen property, at which point the defendant struck the store manager. This constituted a continuous transaction.

### **Defendant Was Properly Convicted of Armed Robbery Even Though Object Taken in Robbery Was Also Firearm Used to Commit Robbery**

*State v. Maness*, 363 N.C. 261, 677 S.E.2d 796 (18 June 2009).

The court ruled, relying on *State v. Black*, 286 N.C. 191 (1974), the defendant was properly convicted of armed robbery even though the object taken in the robbery was also the firearm used to commit the robbery. The defendant fought the officer-victim, took his gun, and then shot and killed him. The court stated

that a firearm stolen from a victim can also be a part of the continuing transaction of the armed robbery.

**(1) Sufficient Evidence to Support Defendant’s Conviction of Armed Robbery When Instrument Used in Robbery Appeared to Be Firearm and There Was No Evidence Introduced at Trial That Instrument Was Not a Firearm**

**(2) Trial Judge Did Not Err in Not Instructing on Common Law Robbery**

*State v. Ford*, \_\_\_ N.C. App. \_\_\_, 669 S.E.2d 832 (16 December 2008).

The defendant was convicted of armed robbery. The defendant and an accomplice committed a robbery at a convenience store. One of them pointed what appeared to be a silver handgun at the store clerk. When later arresting the accomplice at a residence, an officer saw what appeared to be a silver gun laying on the ground. However, the “gun” was not a firearm but rather some type of lighter that appeared to be a gun. Neither the state nor the defendant presented evidence at trial that the “gun” was the same one used during the robbery. The judge instructed the jury on armed robbery, but not on the lesser offense of common law robbery. (1) The court ruled, relying on *State v. Thompson*, 297 N.C. 285 (1979) (when person commits robbery with instrument that appears to be firearm or other dangerous weapon, in absence of contrary evidence, law presumes instrument to be what person’s conduct represent it to be—a firearm or other dangerous weapon), that there was sufficient evidence to support the defendant’s conviction of armed robbery. The court noted that no evidence was introduced that the “gun” found by the officer was used in the robbery. (2) The court ruled that the trial judge did not err in not instructing on common law robbery, based on the evidence set out above. (Author’s note: One judge of the three-judge panel dissented in part on this issue because the judge stated that the defendant failed to preserve this issue for appellate review so the court should not have considered it.)

**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.

**Trial Judge Did Not Err in Not Submitting Second-Degree Murder as Lesser Offense of First-Degree Felony Murder When Evidence of Armed Robbery Was Not in Conflict—Ruling of Court of Appeals Is Reversed**

*State v. Gwynn*, 362 N.C. 334, 661 S.E.2d 706 (12 June 2008), reversing, 182 N.C. App. 343 (6 March 2007).

The court ruled that the trial judge did not err in not submitting second-degree murder as a lesser offense of first-degree felony (armed robbery) murder when evidence of the armed robbery was not in conflict. The robbery involved the defendant as a buyer of marijuana from the murder victim. The victim gave the defendant limited and temporary access to the marijuana by tossing it in the backseat of a vehicle, where the defendant was seated, shortly before entering the vehicle himself. The victim did so only because he was expecting payment from the defendant. The victim in no way granted the defendant permission to depart with the property. The defendant's shooting of the victim and then departing with the marijuana constituted armed robbery, and the evidence of that offense was not in conflict.

**(1) Armed Robbery Indictment Was Deficient Because It Failed to Allege That Implement Was Dangerous**

**(2) Evidence Was Sufficient to Support Armed Robbery Conviction When Defendant Demanded Money While Keeping His Right Hand in His Coat and Hand Grip Was Visible to Victim, and Victim Believed Defendant Had a Weapon**

*State v. Marshall*, 188 N.C. App. 744, 656 S.E.2d 709 (19 February 2008).

The defendant was convicted of two counts of armed robbery involving separate robberies. (1) The court ruled that one of the armed robbery indictments was deficient because it failed to allege that the implement used in the robbery was dangerous. The pertinent part of the indictment alleged "having in possession and threatening the use of an implement, to wit, keeping his hand in his coat demanding money." (2) The court ruled, relying on *State v. Joyner*, 312 N.C. 779 (1985), that the evidence was sufficient to support the other armed robbery conviction. The defendant demanded money while he kept his right arm inside his coat to simulate a weapon, and video surveillance depicted a bulge inside the defendant's jacket. The victim saw the defendant keep his right hand on an object with a black texture or grip inside his coat, and she testified that there was no doubt that the defendant possessed a gun.

**State Was Properly Permitted to Amend Robbery Indictments to Delete Amount of**

### **Money Alleged to Have Been Taken**

*State v. McCallum, 187 N.C. App. 628, 653 S.E.2d 915 (18 December 2007).*

The court ruled that state was properly permitted to amend armed robbery indictments to delete the amount of money alleged to have been taken. The amendments left the allegations as the defendant took an unspecified amount of “U.S. Currency.” The court relied on cases that have ruled that the kind and value of the property taken is not material for the offense of armed robbery. Thus, the amendments did not constitute substantial alterations of the indictments.

### **Sufficient Evidence to Support Common Law Robbery Conviction When Defendant Snatched Necklace from Victim’s Neck**

*State v. Harris, 186 N.C. App. 437, 650 S.E.2d 845 (16 October 2007).*

The court ruled, relying on cases from other jurisdictions and distinguishing *State v. Robertson, 138 N.C. App. 506 (2000)*, that there was sufficient evidence of the element of force to support the defendant’s common law robbery conviction when the defendant came from behind the victim and snatched a necklace from the victim’s neck.

### **Insufficient Evidence to Support Conviction of Common Law Robbery Because Commission of Battery to Victim Did Not Induce Victim to Part With Money**

*State v. Carter, \_\_\_ N.C. App. \_\_\_, 650 S.E.2d 650 (2 October 2007).*

The victim was delivering cash to replenish an ATM. He placed the cash in a grocery cart, entered the store, approached the ATM, and began replenishment, placing the grocery cart to his left. He then felt spray hit the back of his head, which he believed to be pepper spray or mace. He then saw that the money in the grocery cart was gone. The court ruled that this evidence was insufficient to support the a conviction of common law robbery because the commission of the battery to the victim did not induce the victim to part with the money. The court remanded the case to the trial court for resentencing for the lesser-included offense of larceny from the person.

### **Using Hands to Beat Robbery Victim Was Not “Dangerous Weapon, Implement or Means” to Support Conviction of Armed Robbery**

*State v. Hinton*, 361 N.C. 207, 639 S.E.2d 437 (26 January 2007), affirming, 176 N.C. App. 191, 625 S.E.2d 918 (21 February 2006) (unpublished opinion).

The defendant was convicted of armed robbery based on using his fists to beat the robbery victim. The court ruled that the use of hands to beat a robbery victim is not a “dangerous weapon, implement or means” to support a conviction of armed robbery under G.S. 14-87. The court determined that the North Carolina General Assembly intended to require the state to prove that a defendant used an external dangerous weapon or means to convict a defendant of armed robbery. Thus, the use of hands, fists, or feet is insufficient. [Author’s note: This ruling does not affect prior rulings that the element of “deadly weapon” in various assault offenses may be satisfied by the use of hands or feet.]

### **Sufficient Evidence of Armed Robbery When Defendant Pushed Victim and Took Victim’s Wallet That Was Lying on Ground, Victim Chased Defendant, and Defendant Threatened Victim With Knife**

*State v. Blair*, 181 N.C. App. 236, 638 S.E.2d 914 (2 January 2007).

The court ruled, relying on *State v. Bellamy*, 159 N.C. App. 143, 582 S.E.2d 663 (2003), and other cases, that there was sufficient evidence of armed robbery when the defendant pushed the victim and then took the victim’s wallet that was lying on the ground, the victim chased the defendant, and the defendant threatened the victim with a knife.

### **Sufficient Evidence to Support Conviction of Armed Robbery When Defendant Brandished Knife and Threatened to Cut Victim, a Store Employee, Who Had Followed Defendant After He Had Stolen Chainsaw and Left Store**

*State v. Hurley*, 180 N.C. App. 680, 637 S.E.2d 919 (19 December 2006).

The defendant was convicted of armed robbery. The court ruled that there was sufficient evidence to support the conviction when the defendant brandished a knife and threatened to cut the victim, a store employee, who had followed the defendant after he had stolen a chainsaw and left the store. A continuous transaction occurred from the taking of the chainsaw to the defendant’s brandishing the knife.

### **Robbery -- Dangerous Weapon – Instructions -- Acting in Concert**

*State v. Johnson*, 164 N.C. App. 1 (2004).

The trial court did not err in a robbery with a dangerous weapon, attempted robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon case by failing to instruct the jury in accordance with defendant's request concerning the theory of acting in concert, because: (1) **the jurors were instructed that they need not find that defendant had intent to use a dangerous weapon in order to be convicted of robbery with a dangerous weapon, but that they need only find that defendant acted in concert to commit robbery and that his codefendant used the dangerous weapon in pursuance of that common purpose to commit robbery;** and (2) the instruction was a correct statement of law.

### **Robbery -- Dangerous Weapon -- Motion to Dismiss -- Sufficiency of Evidence -- Acting in Concert**

*State v. Jones, 157 N.C. App. 110 (2003).*

The trial court did not err by denying defendant's motion to dismiss the charge of robbery with a dangerous weapon, because: (1) defendant was convicted under the theory of acting in concert to commit the armed robbery; (2) a co-participant testified that he, defendant, and another person all participated in the planning and execution of the robbery; (3) the co-participant testified that he told defendant and another person that he had a gun before the robbery; (4) the co-participant testified that defendant entered the store first to assess conditions within the store, returned to report to the other two men, and defendant waited in the vehicle as the designated getaway driver; and (5) although defendant's evidence tended to contradict the co-participant's testimony, contradictions and discrepancies must be resolved by the jury and do not warrant dismissal.

### **1. Robbery-Brandishing knife after shoplifting confrontation-Continuous transaction**

*State v Hurley 180 N. C. APP. 680 (2006)*

Upon a motion to dismiss, the trial court must view the evidence in the light most favorable to the State rather than in a tortured, technical sense that totally favors defendant. The trial court here did not err by denying defendant's motion to dismiss a charge of robbery with a dangerous weapon where defendant contended that he abandoned his intent to take a chainsaw he had shoplifted by pushing away a shopping cart containing the chainsaw before drawing a knife, threatening a store employee, and escaping. Defendant was confronted by the store employee; the evidence does not permit the inference that he voluntarily abandoned the

merchandise.

### **Robbery Threat to victim--Evidence sufficient**

*State v. Corum, 176 N. C. APP. 150 (2006).*

There was sufficient evidence to support a conviction for the armed robbery of a store where an accomplice entered separately and began talking to the clerk, and defendant entered and threatened the accomplice with a knife to get the victim to open the cash drawer. The defendant was just across a counter when he brandished the knife, and the jury could have inferred that defendant posed a danger to the life of the victim.

### **Robbery--Sufficiency of evidence--Victim's awareness of defendant's intent**

*State v Tuck, 173 N. C. APP. 61 (2005)*

A conviction under N.C.G.S. § 14-87 (armed robbery) does not depend upon the defendant's pronouncement of his intentions or his directions to the victim. There was no error here surrounding the failure to dismiss the charge and the verdict where defendant never spoke to the victim because she ran screaming from the store, but the evidence clearly established defendant's intentions on entering the store.

### **1) Constitutional Law--Double jeopardy--Robbery and kidnapping--Standard**

*State v Ripley, 172 N. C. APP. 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.

### **2) Constitutional Law--Double jeopardy--Robbery and kidnapping--Movement during robbery**

*State v Ripley, 172 N. C. APP. 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.

**1) Robbery—Armed--Heart attack--Use of hands--Lesser-included offense of common law robbery**

*State v Staten, 172 N. C. APP. 673 (2005)*

The evidence was insufficient to support defendant's conviction of armed robbery and the case is remanded for entry of conviction on the lesser-included offense of common law robbery, because: 1) autopsy reports indicated the victim died of a heart attack; 2) a forensic pathologist testified that the victim sustained minor cuts and abrasions prior to his death that were not life threatening, and that the victim's death was caused by a combination of the victim's weak heart and the stress caused by defendant stealing his car; and 3) defendant used only his hands to overtake the elderly victim and remove him from his car.

**2) Robbery--Dangerous weapon--Taking property of individual and employer--One offense**

*State v Bellamy, 172 N. C. APP. 649 (2005)*

The trial court erred by failing to dismiss one of the charges of robbery with a dangerous weapon against each defendant and the cases are remanded for resentencing, because the robbery of an individual of her own property and the property of her employer, occurring at the same time, constitutes only one offense of robbery with a dangerous weapon.

**3) Robbery--Dangerous weapon--Motion to dismiss**

*State v. Duff, 171 NC App 662 (2005)*

Court erred by denying defendant's motion to dismiss RWDW. NCGS 14-87 did not create a new offense. Instead, the statute provides that when firearms or other dangerous weapons are used, a more severe punishment may be imposed than that allowed for common law robbery. This is because the gist of the offense of robbery with firearms is the accomplishment of robbery by the use or threatened use of firearms or other dangerous weapons. The gist of the offense of robbery with firearms is the accomplishment of robbery by the use or threatened use of firearms or other dangerous weapons. A victim of common law robbery is necessarily put in fear by the violence or threat of the defendant. However,

when there is an actual danger or threat to the victim's life, by the possession, use, or threatened use of a dangerous weapon, the defendant may be charged and convicted of armed robbery rather than common law robbery. In N.C. Gen. Stat. § 14-87, entitled "Robbery with firearms or other dangerous weapons," the term "means" follows the terms "firearm," "other dangerous weapon," and "implement." Therefore, the North Carolina Court of Appeals concludes that the legislature intended the "means" employed by an armed robber to consist of some extraneous instrument similar to a "firearm," "implement," or "other dangerous weapon." Since a dangerous weapon is synonymous with a deadly one, cases resolving whether a particular weapon was deadly per se are relevant to the determination of whether a weapon is dangerous under N.C. Gen. Stat. § 14-87. However, despite the North Carolina Court of Appeals' prior holdings that, under certain circumstances, a defendant's hands, fists, and feet can be considered deadly weapons for the purposes of an assault conviction, the court has never held that hands, fists, and feet can be considered dangerous weapons for the purposes of N.C. Gen. Stat. § 14-87. Common sense and the clear intent of N.C. Gen. Stat. § 14-87 lead the North Carolina Court of Appeals to conclude that an individual cannot possess, use, or threaten to use a dangerous weapon during a robbery where that individual is not possessing, using, or threatening to use some external weapon or instrument during the robbery. The "critical difference" between armed and common law robbery is that the former is accomplished by the use or threatened use of a dangerous weapon whereby the life of a person is endangered or threatened. Were an individual's bare hands, fists, and feet considered dangerous weapons for the purposes of N.C. Gen. Stat. § 14-87, that "critical difference" would be erased, and the crime of common law robbery would in effect merge with the crime of robbery with a dangerous weapon. The North Carolina Court of Appeals concludes that an individual's bare hands, fists, and feet are not considered dangerous weapons for the purposes of N.C. Gen. Stat. § 14-87.

**Indictment and Information--Amendment--No substantial alteration of charge--Attempted robbery with dangerous weapon to robbery with dangerous weapon**

*State v. Trusell 170 N. C. APP. 33 (2005)*

The trial court did not err by amending an indictment for attempted robbery with a dangerous weapon (ARDW) to robbery with a dangerous weapon (RDW), because: 1) both crimes are governed by N.C.G.S. § 14-87(a); 2) our Court of Appeals and Supreme Court have found the elements of ARDW to be the same as RDW; 3) the indictment sufficiently apprised defendant of the charge against him with enough

certainty to enable him to prepare his defense and to protect him from subsequent prosecution for the same offense since a showing of a taking is not a necessary element of the crime of RDW; 4) an amendment to the indictment did not deprive the court of knowledge as to the judgment to pronounce in the event of conviction since the classifications and punishments of the crimes of ARDW and RDW are identical; and (5) the indictment did not substantially alter the charge.

### **1) Robbery--Threatened use of gun--Evidence sufficient**

*State v. Jarrett 167 N. C. APP. 336 (2004)*

There was sufficient evidence of armed robbery where the victims of two robberies testified that defendant stated that he had a gun while demanding money and that they each complied with defendant's command and gave him money believing that he had a gun.

### **2) Robbery--Instructions--Threatened use of gun**

*State v. Jarrett, 167 N. C. APP. 336 (2004)*

The trial court did not err by instructing the jury that an armed robbery defendant could be found guilty without finding that he actually possessed a firearm. The clear language of N.C.G.S. § 14-87 makes clear that the threatened use of a firearm is sufficient, and the court's instruction here was substantially similar to the pattern jury instruction.

### **3) Robbery--Common law--Motion to dismiss--Sufficiency of evidence**

*State v. Simmons, 167 N. C. APP. 512 (2004)*

The trial court did not err by denying defendant's motion to dismiss the charge of common law robbery even though defendant contends there was insufficient evidence that he took the victim's phone with the intent to permanently deprive her of it, because: 1) viewed in the light most favorable to the State, the evidence showed that defendant slapped the phone out of the victim's hand, declared that it was his new phone, and began dialing on it immediately after he stepped outside the house; 2) although evidence that defendant returned the phone within a few days tends to contradict the circumstantial evidence of defendant's intent at the time of the taking, evidence supporting a contradictory inference is not determinative on a motion to dismiss since defendant's intent at the time of the taking is an issue for the jury to resolve; and 3) a jury could reasonably find that defendant had the intent to permanently deprive the victim of the phone at the time of the taking, and the trial court explained that an intent to temporarily deprive the victim of the property was not

sufficient under the law.

### **Evidence--BB gun--Plain error analysis**

*State v. Spellman, 167 N. C. APP. 374 (2004)*

The trial court did not commit plain error by allowing the State to refer to and present a BB gun in connection with the charges of armed robbery and second-degree kidnapping, because: 1) cast in the light most favorable to the State, the testimony and evidence concerning the BB gun establishes only that, while holding this particular BB gun, the officer could fit his own hand inside the pocket of the jacket worn by defendant and he was unable to fit the entire BB gun inside the pocket of the jacket; 2) there was no indication at trial that a reliable chain of custody existed to link defendant to this particular BB gun; and 3) no fundamental right of defendant was violated nor would a different result have been reached had the BB gun not been marked by the State and referred to by both parties.

### **1) Robbery--Armed--Failure to instruct on lesser-included offense of common law robbery--Invited error**

*State v. Walker 167 N. C. APP. 110 (2004)*

The trial court did not commit plain error by failing to instruct the jury on the charge of common law robbery as a lesser-included offense of armed robbery, because: 1) a defendant may not decline an opportunity for instructions on a lesser-included offense and then claim on appeal that failure to instruct on the lesser included offense was error; and 2) in the instant case two of the defendants foreclosed appeal of this issue when neither of their attorneys objected to the trial court's instructions nor requested additional instructions even after the trial court specifically stated it would not instruct on any lesser-included offense for robbery with a dangerous weapon, and a third defendant waived his right to appeal this issue since he did not object during the jury charge conference and did not cite error or plain error as to this issue.

### **2) Robbery—Indictment--Victim capable of owning property--Not a required element--Larceny distinguished**

*State v. Thompson 359 NC 77 (2004)*

The trial court did not err by not dismissing an indictment for robbery with a dangerous weapon because the indictment did not include the element that the victim, Domino's Pizza, was a legal entity capable of owning property. While an indictment for larceny must allege that an entity listed as the victim be capable of owning property, armed robbery is a separate

and distinct crime and an armed robbery indictment is not fatally defective simply because it does not correctly identify the owner of the property taken. The property description here was sufficient to demonstrate that the property did not belong to defendant.

### **3) Robbery--Dangerous weapon--BB gun**

*State v. Hall 165 N. C. APP. 658 (2004)*

The trial court did not err by denying defendant's motion to dismiss the charges of robbery with a dangerous weapon even though defendant contends that the BB gun used in the robberies could not be considered a dangerous weapon, because: 1) where the instrument according to the manner of its use or the part of the body at which the blow is aimed may be likely to endanger the lives of the victims, its alleged deadly character is one of fact to be determined by the jury; and 2) the evidence showed that defendant committed the robberies by placing a BB gun directly into the backs of the store clerks, defendant pointed the BB gun directly at another person's face at a distance of only six to eight inches, and a detective testified that based on his testing that the gun was capable of denting a quarter-inch piece of cedar plywood at distances up to two feet.

### **4) Robbery--Sufficiency of evidence--Use of a weapon**

*State v. Hines, 166 N. C. APP. 202 (2004)*

A motion to dismiss an armed robbery charge for insufficient evidence was correctly denied where defendant argued that the State had not presented substantial evidence that a weapon was used, but a doctor testified that the victim's head injury was caused by blunt force from an object such as a crowbar or baton and was not consistent with a fall.

### **5) Robbery--Sufficiency of evidence--Use of dangerous weapon**

*State v. Singletary, 163 N. C. APP. 449 (2004)*

There was sufficient evidence that defendant used a dangerous weapon in a robbery where the victim did not see the weapon, no weapon was produced at trial, but medical testimony indicated that the victim's injuries were consistent with the use of a foreign instrument against the back of her head and the doctor's opinion was that her injuries had occurred before she fell to the curb.

### **6) Robbery--Armed--Bank--Money obtained from two tellers**

*State v. Becton 163 N. C. APP. 592 (2004)*

The trial court erred by denying defendant's motion for appropriate relief from convictions and consecutive sentences on two bills of indictment charging defendant with the armed robbery of two bank tellers at the same bank arising out of the same wrongful act, because: 1) defendant committed one armed robbery during which the property of the bank was taken; and 2) the fact that the employer's money was obtained from two tellers does not allow the State to indict defendant for two separate armed robberies.

### **7) Robbery--Dangerous weapon--Instructions--Acting in concert**

*State v. Johnson 164 N. C. APP. 1 (2004)*

The trial court did not err in a robbery with a dangerous weapon, attempted robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon case by failing to instruct the jury in accordance with defendant's request concerning the theory of acting in concert, because: 1) the jurors were instructed that they need not find that defendant had intent to use a dangerous weapon in order to be convicted of robbery with a dangerous weapon, but that they need only find that defendant acted in concert to commit robbery and that his codefendant used the dangerous weapon in pursuance of that common purpose to commit robbery; and 2) the instruction was a correct statement of law.

### **8) Robbery--Dangerous weapon--Sufficiency of evidence--Danger or threat to life of victim**

*State v. Johnson 164 N. C. APP. 1 (2004)*

The trial court did not commit plain error when it submitted to the jury the issue of defendant's guilt of robbery with a firearm or other dangerous weapon instead of the lesser-included offense of common law robbery as to one of the victims even though defendant contends there was insufficient evidence to prove danger or threat to the life of the victim by the possession, use, or threatened use of a dangerous weapon based on the fact that the victim did not see or know about a gun during the robbery, because: 1) the question is whether a person's life was in fact endangered or threatened by defendant's possession, use or threatened use of a dangerous weapon, and not whether the victim was scared or in fear of his life; and 2) evidence was presented showing that a gun was pointed toward the victim during the robbery, thus putting his life in danger.

## **Constitutional Law–Effective assistance of counsel–Failure to move to dismiss**

*State v. Pratt 161 N. C. APP. 161 (2003)*

The failure to request dismissal of an armed robbery charge was not ineffective assistance of counsel where defendant was unable to show that the request would have brought a different result. There was sufficient evidence to support a finding that defendant used a boxcutter, even though he denied it, and he admitted committing common law robbery. Although the victim testified that he did not feel that his life was threatened, that testimony merely rebuts the presumption that his life was threatened (which rose from the use of a dangerous weapon) and leaves the dangerous character of the weapon to the jury. See Farb p. 13 Armed Robbery

### **1) Robbery--Armed--Motion to dismiss--Sufficiency of evidence--Lesser-included offense of common law robbery**

*State v. Gaither 161 N. C. APP. 96 (2003)*

The trial court did not err by denying defendant's motion to dismiss the charge of armed robbery, or in the alternative, refusing to instruct the jury on the lesser-included offense of common law robbery, because: 1) there was an unlawful taking of shirts from store premises, defendant showed the security officers that he possessed a gun, and the security officers testified that they believed defendant might use the gun; 2) while defendant's use of intimidation occurred after the taking of property, defendant's effort to avoid apprehension by store and mall security officers is an action continuous with the taking and therefore constitutes a part of the robbery attempt; 3) the fact that only one witness to the incident actually observed the gun in defendant's possession goes to the weight of the evidence; and 4) there was no evidence presented to support an instruction on the lesser-included offense of common law robbery. See Farb p13. Put in Larceny also

### **2) Robbery--Dangerous weapon--Motion to dismiss--Sufficiency of evidence--Pocketknife**

*State v. Bellamy 159 N. C. APP. 143 (2003)*

The trial court did not err by failing to grant defendant's motion to dismiss the charge of robbery with a dangerous weapon at the close of the evidence, because: 1) there was substantial evidence that defendant threatened to use a pocketknife in a manner making it a dangerous weapon

and that the victim perceived the knife as a dangerous weapon; 2) the evidence was sufficient for the jury to determine whether defendant's brandishing of the pocketknife constituted a threat to the victim's life; and 3) the taking and threatened use of force was so joined by time and circumstances as to constitute a single transaction.

**3) Robbery--Dangerous weapon--Failure to instruct on lesser-included offense of misdemeanor larceny**

*State v. Bellamy* 159 N. C. APP. 143 (2003)

The trial court did not err in a robbery with a dangerous weapon case by failing to submit the lesser included offense of misdemeanor larceny given the overwhelming evidence of defendant's guilt of robbery with a dangerous weapon.

**4) Robbery--Sufficiency of evidence--Robbery by another--Defendant's knowledge**

*State v. Clark*, 159 N. C. APP. 520 (2003)

The evidence was sufficient to submit robbery with a dangerous weapon to the jury where another person (Terry) got into defendant's Jeep immediately after the robbery; Terry had a ski cap and gloves, although it was a hot day in May, as well as a loaded gun and a paper bag with the stolen money; defendant drove off with a loaded gun under his seat; and defendant took the back way home with Terry lying down in the back seat of the car. These facts permit a reasonable inference of defendant's knowledge.

**1) Robbery--Dangerous weapon--Challenge to sufficiency of evidence--Failure to move for motion to dismiss**

*State v. Bartley*, 156 N. C. APP. 490 (2003)

The trial court did not err by failing to dismiss the charge of felonious robbery with a dangerous weapon, because: 1) N.C. R. App. P. 10(b)(3) provides that a defendant in a criminal case may not assign as error the insufficiency of the evidence to prove the crime charged when he did not move to dismiss the charge against him, and defendant in this case did not move to dismiss the charge against him; 2) defendant's attempt to invoke plain error review is inappropriate when the assignment of error concerns the sufficiency of the evidence and not an instructional error or an error concerning the admissibility of evidence; and 3) there was sufficient evidence that defendant was armed even though defendant contends he never made a verbal statement that he had a gun or that

he would shoot the victim.

**2) Robbery--Dangerous weapon--Failure to instruct on lesser-included offense of common law robbery**

*State v. Bartley, 156 N. C. APP. 490 (2003)*

The trial court did not commit plain error in a robbery with a dangerous weapon case by failing to instruct the jury on the lesser-included offense of common law robbery, because common law robbery involves the use of violence or fear generally whereas robbery with a dangerous weapon involves the use of a dangerous weapon to create this violence or fear, and the only evidence of the use of violence or fear in this case was through defendant's alleged brandishing of a firearm.

**3) Robbery--Dangerous weapon—Indictment--Ownership of stolen property**

*State v. Bartley, 156 N. C. APP. 490 (2003)*

An indictment which alleged that defendant took and carried away "personal property of Crown Fast Fare #729, U.S. Currency, from the person and presence of James Burke" by threatening use of a dangerous weapon sufficiently identified the owner of the property allegedly stolen by defendant because: 1) the key is whether the indictment is sufficient to negate the idea that defendant was taking his own property; and 2) the language in the indictment sufficiently does so.

**4) Robbery--Dangerous weapon--Motion to dismiss--Sufficiency of evidence--Acting in concert**

*State v. Jones 157 N. C. APP. 110 (2003)*

The trial court did not err by denying defendant's motion to dismiss the charge of robbery with a dangerous weapon, because: 1) defendant was convicted under the theory of acting in concert to commit the armed robbery; 2) a coparticipant testified that he, defendant, and another person all participated in the planning and execution of the robbery; 3) the coparticipant testified that he told defendant and another person that he had a gun before the robbery; 4) the coparticipant testified that defendant entered the store first to assess conditions within the store, returned to report to the other two men, and defendant waited in the vehicle as the designated getaway driver; and 5) although defendant's evidence tended to contradict the coparticipant's testimony, contradictions and discrepancies must be resolved by the jury and do not warrant dismissal.

**5) Robbery--Dangerous weapon--Motion to dismiss--Sufficiency of evidence--**

## **Intent to deprive**

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

The trial court did not err in a first-degree capital murder case by denying defendant's motion to dismiss the charge of robbery with a dangerous weapon based on alleged insufficient evidence of the element of intent to deprive, because viewed in the light most favorable to the State the evidence showed that: 1) defendant and a coparticipant conspired to make the crime scene look like a robbery, and the coparticipant drove off in the victim's truck after killing defendant's husband and abandoned the vehicle three miles from defendant's residence; 2) abandonment of a vehicle, regardless of how near the abandonment is to the scene of the crime, places it beyond a defendant's power to return the property and shows a total indifference as to whether the owner ever recovers it; and 3) the evidence that the coparticipant took the vehicle and subsequently abandoned it near the crime scene was sufficient to show an intent to permanently deprive the victim of his property.

## **6) Robbery--Dangerous weapon--Glass bottle across victim's head**

*State v. Moses, 154 N. C. APP. 332 (2002)*

The trial court did not err by denying a motion to dismiss a prosecution for an armed robbery in which a bottle was used as the weapon where the evidence was sufficient to support a jury finding that the victim's life was endangered or threatened by use of the bottle. Although the evidence showed that an accomplice hit the victim with the bottle, the trial court properly instructed on acting in concert.

## **Robbery--Dangerous weapon--Failure to submit lesser included offense of common law robbery**

*State v. Frazier 150 N. C. APP. 416 (2002)*

The trial court erred in a robbery with a dangerous weapon case by failing to submit the lesser included offense of common law robbery to the jury and the case is remanded for a new trial, because: 1) where a defendant presents evidence that the weapon used during a robbery was unloaded or otherwise incapable of firing, such evidence tends to prove the absence of an element of the offense of armed robbery and requires the submission of the case to the jury on the lesser included offense of common law robbery as well as the greater offense; and 2) there was some evidence tending to show that the firearm used by defendant was not loaded.

## **1) Robbery--Dangerous weapon--Motion to dismiss--Sufficiency of evidence**

*State v. Gay, 151 N. C. APP. 530 (2002)*

The trial court did not err by failing to dismiss the charge of robbery with a dangerous weapon even though defendant contends that use of a stun gun was not a dangerous weapon that threatened or endangered the victim's life, because defendant's actions constituted the use of a dangerous weapon which threatened the victim's life when defendant wrapped his arm around the victim's neck, attempted to shock her with his stun gun, and ripped her backpack from her shoulder.

## **2) Robbery--Dangerous weapon--Motion to dismiss--Sufficiency of evidence**

*State v. Reid, 151 N. C. APP. 379 (2002)*

The trial court did not err by denying defendant's motion to dismiss the charge of robbery with a dangerous weapon, because: 1) the State presented sufficient evidence that defendant perpetrated the robbery under the doctrine of recent possession; and 2) although the State failed to present evidence of the exact weapon used to hit the victim during the robbery, the evidence was sufficient to establish that the object was a dangerous weapon where the object exerted such force that it drove the victim's top teeth through her lower lip requiring twenty-five stitches and caused several other teeth to loosen, and the victim's knees buckled and she fell to the ground where she lay dazed for an unknown amount of time.

## **3) Robbery--Intent to deprive owner of property--Sufficiency of evidence**

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

The trial court did not err by denying defendant's motion to dismiss the charge of robbery with a dangerous weapon based on defendant's taking of his victim coworker's vehicle, because defendant took and subsequently abandoned the vehicle which was enough to show his intent to permanently deprive the victim of her property.

## **4) Robbery--Sufficiency of evidence--Killing victim and taking car**

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

The evidence was sufficient to permit a rational jury to find that defendant robbed the victim with a dangerous weapon where defendant admitted that he called the victim and arranged to meet him; defendant and a friend waited for the victim and pulled a gun when he arrived; the victim was forced into his car with a gun to his head; the friend shot the victim and

defendant decided to shoot him twice in the head when he heard him gasping for breath and calling for help; and defendant drove the victim's car until he was apprehended.

**5) Robbery--Taking car after victim killed--Continuous transaction with murder--Sufficiency of evidence**

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

The evidence was sufficient to permit a rational jury to find that the victim's murder and the act of stealing his car were so connected as to form a continuous chain of events and to support defendant's conviction of armed robbery where the victim was lured to a church so that defendant and a friend could forcibly take his car; the victim was killed soon after; and defendant claimed the car as his own and used the car in a manner suggesting ownership, driving the car until the day he was apprehended.

**Conspiracy--Attempted robbery--One conspiracy, two attempts**

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

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

**Robbery--Dangerous weapon--BB gun--No evidence of capability to inflict death or great bodily harm**

*State v. Fleming, 148 N. C. APP. 16 (2001)*

The trial court erred by not dismissing an armed robbery charge where it was clear that the weapon was a BB gun, even giving the State all reasonable inferences which could be drawn from the facts, and there was no evidence in the record of the BB gun's capability to inflict death or great bodily injury. The presumption that a brandished instrument which

appears to be a dangerous weapon is what it appears to be applies in the absence of any evidence to the contrary. Finally, there was plain error in that the trial court instructed on robbery with a dangerous weapon and on common law robbery using the Pattern Jury Instruction, but did not define “dangerous weapon.”

**1) Robbery--Common law--Larceny from person--Instruction on lesser included offense not required**

*State v. White, 142 N.C. App. 201, 2001*

The trial court did not err in a common law robbery case by denying defendant's request for a jury instruction on the lesser included offense of larceny from the person even though defendant contends the State failed to show defendant assaulted his victims, because: 1) the use of force in common law robbery need not be actual, but may be constructive; 2) a reasonable person working as a convenience store clerk alone and in the middle of the night would be afraid of the potential for immediate bodily harm after receiving a note threatening to blow his or her head off; 3) all three victims testified they were not sure whether defendant had access to a weapon; and (4) fear and compliance with the threat were the natural and actual consequences of the victims' receiving the note.

**2) Robbery--Dangerous weapon--Plural victims in indictment versus single victim in jury instruction**

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

The trial court did not err by submitting the charge of robbery with a dangerous weapon to the jury even though there was an insertion of plural victims in the indictment compared to the requirement of only a single victim in the jury instructions, because: 1) the use of a conjunctive in the indictment does not require the State to prove various alternative matters alleged; 2) the evidence showed that both defendants acting in concert forced the two victims into the bedroom where one defendant stole a necklace; 3) there are no substantial discrepancies between the allegations in the indictment and the evidence presented at trial; and 4) defendant has failed to cite any authority in support of this assignment of error.

**3) Robbery--Dangerous weapon--Motion to dismiss--Sufficiency of evidence**

*State v. Fowler, 353 N.C. 599, 2001*

The trial court did not err by denying defendant's motion to dismiss the

robbery with a dangerous weapon charge for one of the victims even though defendant concedes the evidence was sufficient to prove he stole the motel's money, because the State's evidence showed that: 1) the victim habitually carried cash in his wallet; 2) the victim's wallet, business cards, and birth certificate were lying by his side at the crime scene; and 3) the wallet contained no money.

#### **4) Robbery--Purse snatching--Force-sufficiency of evidence**

*State v. Robertson, 138 NC App 506 (2000)*

The trial court erred by failing to dismiss a charge of common law robbery based on the State's inability to produce sufficient evidence as to the requisite element of force, because: 1) defendant used neither actual nor constructive force to gain possession of his victim's purse; 2) defendant never attempted to overpower his victim or otherwise restrain her; 3) this incident was no more than a typical purse-snatching incident, which courts in other jurisdictions routinely have held to be larceny instead of robbery; and 4) the victim was not induced to part with her property as a result of defendant's placing her in fear.

#### **5) Robbery--Attempted armed--No merger with burglary conviction**

*State v. Cunningham, 140 NC App 315 (2000)*

Although defendant contends his conviction for attempted armed robbery must be arrested since it allegedly merged with his burglary conviction when robbery was submitted as the intended felony for purposes of burglary, the conviction is upheld because: 1) the attempted robbery offense was not committed until defendant took some further action apart from the alleged burglary; and 2) the crimes did not merge since they were separate offenses.

#### **6) Robbery--Shooting and taking--Same transaction--Sufficiency of evidence**

*State v. Jarrett, 137 N.C. App. 256 (2000)*

The trial court did not err by denying defendant's motion to dismiss a charge of robbery with a dangerous weapon where there was evidence from which it might reasonably be inferred that defendant took money from the victim after shooting him.

## **7) Robbery--Motion to dismiss--Sufficiency of evidence**

*State v. Hill, 139 N.C. App. 471 2000*

The trial court did not err by denying defendant's motion to dismiss the robbery with a dangerous weapon charge even though defendant later abandoned the victim's car a short distance away from the crime, because viewed in the light most favorable to the State, a rational trier of fact could find that defendant, by forcing his way into the victim's car at gunpoint, driving the car to another location, and subsequently forcing the victim out of her car and driving away in it, intended to permanently deprive the victim of her car.

### **Robbery 117 (NCI4th)--Armed robbery--Appearance of firearm - Instructions**

*State v. Williams, 335 N.C. 518 (1994) 438 S.E.2d 727*

The trial court did not err in a prosecution for armed robbery and attempted armed robbery by instructing the jury that it was to apply the mandatory presumption that the implement employed by defendant was a firearm where one convenience store clerk testified that defendant had used an object which was wrapped but which looked like a pistol and which she believed to be a pistol; another clerk at another store testified that she had believed that defendant had a gun because he had his hand in his pocket and kept saying that he was going to shoot her; and defendant testified that he did not own a gun and did not "mess with guns." Evidence that a defendant does not own a gun does not amount to substantial evidence contrary to State's evidence to the effect that he employed a gun during a robbery, and evidence tending to show that a defendant does not "mess with guns" is ambiguous at best and also does not amount to evidence contrary to State's evidence tending to show that the defendant used a firearm at the time he committed a robbery.

### **Robbery 4.3 (NCI3d)--Armed robbery--Pellet pistol and BB gun --Armed robbery and common law robbery submitted--No error**

*State v. Summey, 109 N.C. App. 518 (1993) 428 S.E.2d 245*

### **Robbery 4.3 (NCI3d)--Armed robbery --Intent to deprive victim of property --Evidence sufficient**

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

### **Robbery 80 (NCI4th) - Pellet gun dangerous weapon**

*State v. Westall, 116 N.C. App. 534 (1994) \_\_\_ S.E.2d \_\_\_*

A pellet gun may be a dangerous weapon per se, or at a minimum, such determination must be made upon a consideration of the instrument's use.

**Homicide 266 (NCI4th); Robbery 79 (NCI4th) use of rifle as club robbery with firearm felony murder**

*State v. McNatt, 342 N.C. 173 (1995) \_\_\_ S.E.2d \_\_\_*

Evidence that defendant committed a robbery-murder by using a rifle as a club rather than by firing it was sufficient to support defendant's conviction of felony murder in accordance with the trial court's instruction on the underlying felony of armed robbery that the jury must find that defendant obtained property "by endangering or threatening the life of the [victim] with [a] firearm," since the rifle did not cease to be a firearm by virtue of being used as a club.

**Robbery 145 (NCI4th) robbery with dangerous weapon no instruction on lesser offense based on alibi testimony question as to whether stick was dangerous weapon instruction on lesser offense required**

*State v. Brandon, 120 N.C. App. 815 (1995) \_\_\_ S.E.2d \_\_\_*

There was no merit to defendant's contention that his alibi testimony entitled him to a charge on attempted common law robbery; however, defendant was entitled to an instruction on the lesser-included offense because there was a question as to whether the stick he used was a dangerous weapon.

**Robbery 76 (NCI4th) armed robbery and murder taking of property as afterthought evidence sufficient**

*State v. Richardson, 342 N.C. 772 (3-8-1996) \_\_\_ S.E.2d \_\_\_*

There is sufficient evidence that defendant kidnapped the victim to rape and rob her and possessed the intent to permanently deprive her of her property from the moment he entered her car. The State is not bound by the statements of defendant which it has introduced where they are contradicted by other evidence;

**1) Robbery § 5 (NCI4th) spouses exempted from larceny prosecutions rule inapplicable to armed robbery**

*State v. Mahaley, 122 N.C. App. 490 (1996) 470 S.E.2d 549*

The common law rule exempting spouses from prosecution in larceny cases in order to preserve family unity did not apply to these prosecutions, since defendant was convicted of robbery with a dangerous weapon, a crime involving dangerous violence and an offense mainly against the person rather than against property.

**2) Robbery § 85 (NCI4th) attempt approaching and shooting victim overt acts beyond mere preparation**

*State v. Miller, 344 N.C. 658 (1996) 477 S.E.2d 915*

There was sufficient evidence to support convictions for attempted armed robbery and first-degree murder under the felony-murder rule where there was sufficient evidence of intent to commit armed robbery and overt acts toward its commission. Although defendant argues that the evidence was insufficient to show that his actions advanced beyond a mere preparation to commit robbery and that even if they did, he abandoned his robbery attempt as a matter of law when he ran away voluntarily after shooting the victim in the head, defendant clearly intended to rob the victim and took substantial overt actions toward that end. The sneak approach to the victim with the pistol drawn and the first attempt to shoot were each more than enough to constitute an overt act toward armed robbery, not to mention the two fatal shots fired thereafter. It was only after seeing what he had done that defendant became scared and ran away.

**3) Robbery § 85 (NCI4th) running away after shooting victim overt act abandonment of attempted armed robbery not possible**

*State v. Miller, 344 N.C. 658 (1996) 477 S.E.2d 915*

Defendant's contention in an prosecution for first-degree murder and attempted armed robbery that he had abandoned his robbery attempt when he ran away after shooting the victim is untenable. The evidence clearly shows that defendant had committed an overt act in furtherance of the crime well before he left the scene; once defendant placed his hand on the pistol to withdraw it with the intent of shooting and robbing the victim, he could no longer abandon the crime of attempted armed robbery.

**Robbery § 72 (NCI4th)--Brandished weapon after goods were stolen--Continuous transaction--Armed robbery**

*State v. Barnes, 125 N.C. App. 75 (1997)*

The evidence was sufficient to support a jury finding that defendant Hooks' use of a handgun was inseparable from the taking of merchandise from a store so as to support defendants' conviction of armed robbery

where it tended to show that after leaving a store with merchandise the defendants had stolen, defendant Hooks brandished a gun at store personnel in the store's parking lot to thwart the efforts of store personnel as they attempted to retain lawful possession of the store merchandise. When viewed in its entirety, the evidence tended to show one continuous transaction with the element of use of a dangerous weapon so joined in time and circumstances with the taking as to be inseparable.

**Robbery § 135 (NCI4th)--Armed robbery--Weapon allegedly acquired in struggle with victim--Instruction on common law robbery refused**

*State v. Cummings, 346 N.C. 291 (1997)*

The trial court did not err in an armed robbery prosecution by refusing to give defendant's requested instruction on the lesser included offense of common law robbery where defendant argued that his confession could have provided a factual basis by which a juror could have found that defendant acquired the gun in a struggle with the victim and that this conduct constituted a common law robbery. The evidence was uncontradicted that the robbery was committed with the use of a deadly weapon; whether defendant carried the gun into the store with him or acquired it in a struggle is irrelevant. Moreover, the uncontradicted physical evidence did not support defendant's contention that a struggle occurred.

**Robbery § 70 (NCI4th)--Armed robbery--No evidence of ownership of property--Evidence of possession sufficient**

*State v. Willis, 127 N.C. App. 549 (1997)*

The trial court did not err in an armed robbery prosecution by not granting defendant's motion for a directed verdict where Floyd Burnette was in his mobile home with his fiancée when a man with a shotgun entered the home; the man asked where the drugs were; Burnette told the man he didn't know what he was talking about; the man took eight or ten dollars from him; defendant and another man entered the home; and defendant went to the bedroom of Burnette's brother, returning immediately with a VCR and a black case. There was substantial evidence of each element of armed robbery, even though defendant contended that there was no evidence of ownership of the VCR and black case, because there was undisputed evidence that these items were taken by defendant from Burnette's possession while Burnette was present and being threatened with a shotgun. It is the taking of personal property from another with force or putting that person in fear that is the gist of the offense and the ownership of the property taken is not relevant.

**Constitutional Law § 189 (NCI4th)--Robbery and larceny--Separate takings-**

**- Not double jeopardy**

*State v. Jordan, 128 N.C. App. 469 (1998)*

The trial court did not err in finding that defendant's constitutional rights against double jeopardy were not violated by his being sentenced for both larceny and armed robbery in that there were two separate takings where there was a lapse of time between the defendant's taking of credit cards and jewelry in the victim's house and his leaving the house and stealing the victim's car.

**Robbery--Continuous transaction--Sufficiency of evidence**

*State v. McDonald, 130 N.C. App. 263 (1998)*

The State's evidence in an armed robbery prosecution tended to establish a continuous transaction even though defendant contended that the State failed to show that defendant's threatened use of force induced the victim to part with her property. There was sufficient evidence to permit a reasonable juror to find that defendant's threat to shoot the victim was inseparable from the taking of her money and that the threatened use of force induced the victim to part with her money.