

VERDICT

Trial Court Committed Plain Error By Instructing Jury That It Could Return Guilty Verdicts for Both First-Degree Murder and Accessory After Fact to First-Degree Murder; Trial Court Should Have Submitted Them as Alternative Verdicts

State v. Melvin, ___ N.C. App. ___, 682 S.E.2d 238 (1 September 2009).

The defendant was on trial for first-degree murder and accessory after the fact to first-degree murder. The defendant was convicted of both offenses. The trial court arrested judgment on the conviction of accessory after the fact and entered judgment for the first-degree murder conviction.

(Author's note: Although first-degree murder and accessory after the fact arising from the same transaction may be joined for trial, a defendant may not be convicted of both because they are mutually exclusive.) The court ruled, relying on *State v. Speckman*, 326 N.C. 576 (1990), and *State v. Jewell*, 104 N.C. App. 350, *aff'd per curiam*, 331 N.C. 379 (1992), that the trial court committed plain error because the jury should have been instructed on these offenses as alternative verdicts. The court also found that the error was prejudicial and ordered a new trial for both offenses.

Because Trial Court's Instructions to Individual Juror Violated Defendant's Right to Unanimous Verdict Under Art. I, Sec. 24 of North Carolina Constitution, Error Was Preserved for Appellate Review Despite Defendant's Failure to Object—Ruling of Court of Appeals Is Affirmed

State v. Wilson, 363 N.C. 478, 681 S.E.2d 325 (28 August 2009), *affirming*, 192 N.C. App. 359, 665 S.E.2d 751 (2008).

The defendant was on trial for armed robbery. The jury during its deliberations notified the court that there was a problem with the foreperson that needed to be addressed. Instead of summoning all the jurors to the courtroom to hear the jury's request, the trial court proposed to the attorneys for the state and defendant that only the foreperson be summoned. They agreed. After the foreperson told the court on the record that the jury seemed to believe that he had already had his "mind made up," the court conducted an unrecorded bench conference with the foreperson and both attorneys, then a conversation on the record, and then another unrecorded bench conference. The court summoned all the jurors to the courtroom and instructed them on their duty to consult with one another. The court then directed the jurors, except the foreperson, back to the jury room but not to resume deliberations. The court then held a third unrecorded bench conference with the foreperson and two attorneys. The court instructed the foreperson not to discuss what occurred during the bench conference with the other jurors, kept the foreperson as a juror because the court determined he could be fair and impartial, and brought the other jurors back into the courtroom and instructed all jurors to continue their deliberations. The court ruled that because trial court's

instructions to the individual juror, the foreperson, violated the defendant's right to a unanimous verdict under Art. I, Sec. 24 of the North Carolina Constitution, the error was preserved for appellate review despite the defendant's failure to object. The court also ruled that the error was not harmless beyond a reasonable doubt and ordered a new trial. The court in footnote one stated that the dissent characterized the conversations between the court and foreperson as mere bench conferences and surmised that the court's opinion will lead to inconsistency and confusion in future cases and a chilling effect on juror communication. The court stated that those dire consequences will be avoided because its ruling is limited to instructions and not all communications between a judge and juror.

Trial Court Erred in Capital Case Mental Retardation Hearing in Denying Defendant's Request for Jury Instruction That Verdict Finding Defendant Mentally Retarded Would Result in Sentence of Life Imprisonment Without Parole

State v. Locklear, 363 N.C. 438, 681 S.E.2d 293 (28 August 2009).

The defendant was convicted of first-degree murder and sentenced to death. The court ruled that the trial court erred in a mental retardation hearing in denying the defendant's request for a jury instruction that a 2 verdict finding the defendant mentally retarded would result in a sentence of life imprisonment without parole.

(1) Defendant May Not Be Sentenced for Both Involuntary Manslaughter and Felony Death by Vehicle Based on Same Death

(2) Defendant May Not Be Sentenced for Both Felony Death by Vehicle and DWI Based on Same Incident

(3) Trial Court Did Not Commit Error Concerning Defendant's Right to Unanimous Verdict When Involuntary Manslaughter Jury Instruction on Culpable Negligence Allowed Jury to Consider One or More Traffic Violations to Establish Element

(4) Court Orders Remand for Resentencing

State v. Davis, ___ N.C. App. ___, 680 S.E.2d 239 (4 August 2009).

The defendant was convicted of DWI, involuntary manslaughter, and felony death by vehicle arising from a crash in which the defendant was impaired and one person died as a result of the crash. The trial court imposed sentences for all three convictions. (1) Although the court, based on North Carolina Supreme Court cases, rejected the ruling in *State v. Williams*, 90 N.C. App. 614 (1988), that the offenses of felony death by vehicle and involuntary manslaughter have the same elements, it ruled that the legislature did not intend that a defendant could be sentenced for convictions of both offenses. (2) The court ruled, relying on *State v. Richardson*, 96 N.C. App. 270 (1989), that the defendant could not be sentenced for both DWI and felony death by vehicle. (3) The court ruled, relying on *State v. Funchess*, 141 N.C. App. 302 (2000), that the trial court did not commit error concerning the defendant's right to a unanimous verdict when the involuntary manslaughter jury instruction on culpable negligence allowed the jury to consider one or more traffic violations to establish the element. (4) The court ordered that on remand for resentencing, if the trial court vacates the

conviction of involuntary manslaughter and sentences the defendant for felony death by vehicle, then the court must arrest the DWI judgment. If the trial court vacates the felony death by vehicle conviction, the defendant may be sentenced for both involuntary manslaughter and DWI.

Apparent Inconsistency Between Jury's Verdicts of Not Guilty on Some Charges and Inability to Reach Verdicts (Hung Jury) on Other Charges at Same Trial Does Not Affect Not Guiltys' Preclusive Effect Under Double Jeopardy Clause

Yeager v. United States, 129 S. Ct. 2360, 174 L. Ed. 2d 78 (18 June 2009).

A jury at a federal criminal trial acquitted the defendant of fraud charges but failed to reach a verdict (hung jury) on insider-trading and money-laundering charges. The defendant moved to dismiss the insidertrading and money-laundering charges on the ground that the jury, by acquitting him of the fraud charges, had necessarily decided that he did not possess material, nonpublic information, and the issue-preclusion component (commonly known as collateral estoppel) of the Double Jeopardy Clause barred a second trial for the insider-trading and money-laundering charges. (For example, if the possession of insider information was a critical issue of fact in all of the charges against the defendant, a jury verdict that necessarily decided that issue in his favor protects him from prosecution for any charge for which that is an essential element.) The Court ruled, relying on *Ashe v. Swenson*, 397 U.S. 436 (1970), that the apparent inconsistency between the jury's not guilty verdicts and its inability to reach verdicts on other charges did not affect the not guiltys' preclusive effect under the Double Jeopardy Clause. The Court remanded the case to allow the government an opportunity to argue in the federal court of appeals that a factual analysis of the evidence and verdicts does not support the defendant's double jeopardy argument. [Author's note: The Court's ruling in this case does not affect the United States Supreme Court ruling in *United States v. Powell*, 469 U.S. 57 (1984) (defendant may not successfully challenge guilty verdicts that may have been inconsistent with not guilty verdicts rendered at same trial).]

Because The Verdict Form Did Not Say "Guilty" or "Not Guilty," The Jury Did Not Fulfill It's Constitutional Responsibility to Make An Actual Finding Of Guilt

State v. Douglas, ___ N.C. App. ___, 676 S.E.2d 620 (May 19, 2009).

Ordering a new trial because of a defective verdict form. On the verdict form, the jury answered "Yes" to each of these questions: "Did the defendant possess cocaine, a controlled substance, with the intent to sell or deliver it? Did the defendant sell cocaine, a controlled substance, to Officer Eugene Ramos?" Because the verdict form did not include the words "guilty" or "not guilty," the jury did not fulfill its constitutional responsibility to make an actual finding of defendant's guilt. The verdict form only required the jury to make factual findings on the essential elements of the crimes; it thus was a "true special verdict" and could not support the judgment.

Inconsistency of Verdicts in Sexual Assault Prosecution Did Not Require That Guilty Verdicts Be Set Aside

State v. Shaffer, ___ N.C. App. ___, 666 S.E.2d 856 (7 October 2008).

The defendant was found guilty of first-degree sexual offense (forcible anal intercourse) and crime against nature (based on forced fellatio), but rejected a verdict of guilty for first- or second-degree sexual offense for the forced fellatio. The defendant was also found not guilty of first-degree rape and assault by strangulation. The court ruled, relying on *State v. Rosser*, 54 N.C. App. 660 (1981), *State v. Reid*, 335 N.C. 647 (1994), and *United States v. Powell*, 469 U.S. 57 (1984), that inconsistency of verdicts does not require that the guilty verdicts be set aside.

(2) Jury's Guilty Verdict of Felony Possessing Stolen Goods Must Be Set Aside When Jury Found Defendant Not Guilty of Felony Breaking or Entering and Judge Had Instructed Jury on Charge of Felony Possessing Stolen Goods Only on Theory That Property Was Stolen Pursuant to Breaking or Entering

State v. Tanner, ___ N.C. App. ___, 666 S.E.2d 845 (7 October 2008).

The defendant was convicted of felony possession of stolen goods. (2) The court ruled, relying on *State v. Marsh*, ___ N.C. App. ___, 652 S.E.2d 744 (2007), and other cases, that a jury's guilty verdict of felony possessing stolen goods must be set aside when the jury found the defendant not guilty of felony breaking or entering and the judge had instructed the jury on the charge of felony possessing stolen goods only on the theory that the property was stolen pursuant to a breaking or entering. Although the indictment in this case had alleged that the value of the stolen goods exceeded \$1,000.00 and evidence was presented at trial to support this valuation, the trial judge failed to submit this theory to the jury.

(2) No Unanimity-of-Verdict Violation When Judge Instructed on Victim Being Mentally Incapacitated or Physically Helpless

State v. Haddock, ___ N.C. App. ___, 664 S.E.2d 339 (5 August 2008).

The defendant was convicted of second-degree rape in a case when the victim had lost consciousness from excessive alcohol consumption. (2) The court ruled, relying on *State v. Hartness*, 326 N.C. 561 (1990), that there was no unanimity-of-verdict violation when the judge instructed on the victim being mentally incapacitated or physically helpless. The victim's condition (mentally incapacitated or physically helpless) constituted alternative ways of proving one rape, not separate rapes.

(1) Jury Verdict Only Supported Conviction of Misdemeanor Possession of Stolen Property When Trial Judge Submitted Charge of Felonious Possession of Stolen

Goods Solely on Theory of Goods Taken Pursuant to Felonious Breaking and Entering, and Jury Acquitted Defendant of That Charge

State v. Marsh, 187 N.C. App. 235, 652 S.E.2d 744 (20 November 2007).

The defendant was charged with felonious breaking and entering of a garage, felonious larceny of tools from the garage, and felonious possession of stolen goods pursuant to the breaking and entering. The defendant was found guilty of felonious possession of stolen goods, but not guilty of felonious breaking and entering and felonious larceny. (1) The court ruled, relying on *State v. Matthews, 175 N.C. App. 550 (2006)*, that the jury verdict only supported a conviction of misdemeanor possession of stolen property when the trial judge submitted the charge of felonious possession of stolen goods solely on theory of goods taken pursuant to the felonious breaking and entering, and the jury acquitted the defendant of that charge. The jury was not charged on the alternative felony theory that the stolen property was worth more than \$1,000.00.

No Violation of Right to Unanimous Jury Verdict When Jury Instruction for Felony Eluding Officer (G.S. 20-141.5) Did Not Require Jury Unanimity on Which of Several Motor Vehicle Violations Constituted Two Aggravating Factors to Support Felony Conviction

State v. Hazelwood, 187 N.C. App. 94, 652 S.E.2d 63 (6 November 2007).

The defendant was convicted of felony eluding officer under G.S. 20-141.5. The court ruled, relying on *State v. Funchess, 141 N.C. App. 302 (2000)*, that there was no violation of the defendant's state constitutional right to a unanimous jury verdict when the jury instruction did not require jury unanimity on which of several motor vehicle violations constituted the two aggravating factors to support the felony conviction.

No Violation of Right to Unanimous Verdict When There Were Greater Number of Acts of Sexual Misconduct Than Number of Charged Offenses and Convictions

State v. Massey, 361 N.C. 406, 646 S.E.2d 362 (28 June 2007), reversing, 174 N.C. App. 216, 621 S.E.2d 633 (2005).

The defendant was convicted of five counts of first-degree statutory sexual offense, ten counts of sexual acts with a minor when defendant assumed position of parent, and four counts of indecent liberties. The court ruled, relying on *State v. Markeith Lawrence, 360 N.C. 368 (2006)*, and *State v. Gary Lawrence, 360 N.C. 393 (2006)*, that there was no violation of the defendant's right to a unanimous verdict when there were a greater

number of acts of sexual misconduct than the number of charged offenses and convictions.

(1) Court Discusses Use of Special Verdicts in Criminal Cases

State v. Blackwell, 361 N.C. 41, 638 S.E.2d 452 (15 December 2006).

The defendant was convicted of second-degree murder and other offenses when he drove his vehicle while impaired and crashed into another vehicle, killing one of the occupants. In a sentencing hearing held before the ruling in *Blakely v. Washington*, 542 U.S. 296 (2004), the trial judge found the statutory aggravating factor that the defendant was on pretrial release for another charge and imposed a sentence in the aggravated range for the second-degree murder conviction and two other felony convictions.

(1) In responding to one of the defendant's arguments that *Blakely* error was not harmless beyond a reasonable doubt because trial judge allegedly lacked a procedural mechanism by which to submit the aggravating factor to the jury, the court discussed the use of special verdicts in criminal cases. The court stated that North Carolina law permits the submission of aggravating factors to a jury by using a special verdict. [Author's note: The court's discussion was in the context of a sentencing hearing conducted before the *Blakely* ruling and the enactment of the legislation setting out procedures for the jury to find aggravating factors.]

(2) Guilty Verdicts Need Not Be Set Aside on Ground That They Were Inconsistent With Not Guilty Verdicts in Same Trial

State v. Teel, 180 N.C. App. 446, 637 S.E.2d 288 (5 December 2006).

The defendant was indicted for felony eluding arrest (G.S. 20-141.5) based on the factors of reckless driving and speeding in excess of fifteen miles per hour over the speed limit; reckless driving (G.S. 20-140(b)); and resisting a public officer (G.S. 14-223). He was convicted of misdemeanor eluding arrest and reckless driving and found not guilty of resisting a public officer. (2) The court ruled that the defendant did not cite any authority for his assignment of error concerning his motion for appropriate relief to set aside the guilty verdicts because they were inconsistent with the not guilty verdicts (a verdict of misdemeanor eluding arrest instead of felony eluding arrest and not guilty of resisting arrest), and thus the assignment of error was considered abandoned. The defendant's argument rested on: (1) the inconsistency between the guilty verdict of reckless driving and the jury's failure to find the defendant guilty of felony eluding arrest, with one of the elements being reckless driving; and (2) the inconsistency between the guilty verdict of misdemeanor eluding

arrest, which was based on the defendant's failure to stop, and the not guilty verdict of resisting a public officer, which also was based on failure to stop. The court also noted that the defendant's assignment of error was without merit even if the court would reach the merits. It stated, relying on *State v. Rosser*, 54 N.C. App. 660, 284 S.E.2d 130 (1981), *United States v. Powell*, 469 U.S. 57 (1984), and other cases, that a jury is not required to be consistent, and that incongruity alone will not invalidate a verdict.

Defendant's Right to Unanimous Verdict Was Not Violated Although There Was Evidence of More Sexual Acts Than Charges of Statutory Sexual Offense

State v. Wallace, 179 N.C. App. 710, 635 S.E.2d 455 (17 October 2006).

The defendant was convicted of three counts of statutory sexual offense. There was evidence of more sexual acts than charged offenses. The court ruled, relying on *State v. Markeith Lawrence*, 360 N.C. 368, 627 S.E.2d 609 (2006), that the defendant's right to a unanimous verdict was not violated.

Appeal and Error--Preservation of issues--Failure to cite authority--- Incongruity alone will not invalidate verdict

State v Teel, 180 N. C. APP. 446 (2006)

Although defendant contends the trial court erred by denying defendant's motion for appropriate relief to set aside the verdicts of misdemeanor fleeing to elude arrest and reckless driving as being inconsistent with the jury's other verdicts, this assignment of error is dismissed because: 1) defendant failed to cite any authority in support of his assignment of error; and 2) defendant's assignment of error is without merit when it is well-established in North Carolina that a jury is not required to be consistent and that incongruity alone will not invalidate a verdict.

Indecent Liberties--Sexual Offenses--Unanimous verdict--More incidents than charges

State v Smith, 180 N. C. APP. 86 (2006)

Defendant's conviction for sexual misconduct was by a unanimous jury, even though he argued that there was testimony of more incidents than there were individual charges, where the instructions and the verdict sheets were clear as to what incident corresponded to each charge.

Constitutional Law--Unanimous verdict--Sexual offenses against child--

Agreement on specific acts to support each verdict

State v Wallace 179 N. C. APP. 710 (2006)

Defendant's constitutional right to a unanimous jury was not violated where he was charged with multiple sexual offenses against a child and argued that neither the instructions nor the verdict sheets required that the jury agree unanimously on the specific acts to support each verdict. The reasoning of *State v. Lawrence*, 360 N.C. 368, may be imputed to sexual offense charges.

1) Criminal Law--Unanimous verdicts--Indecent liberties--More indictments than verdicts

State v Bates, 179 N. C. APP. 628 (2006)

The fact that the jury may have considered evidence of ten counts of indecent liberties to arrive at seven guilty verdicts does not violate defendant's right to a unanimous verdict under *State v. Lawrence*, 360 N.C. 368.

2) Criminal Law--Unanimous verdicts--First-degree sexual offenses--Verdicts matched to specific incidents

State v Bates, 179 N. C. APP. 628 (2006)

Defendant's right to unanimous verdicts as to convictions for first-degree sexual offense was not violated where it was possible to match the verdict of guilty with specific incidents presented in evidence and in the trial court's instructions. The factors considered included the evidence, the indictments, the jury charge, and the verdict sheets.

Constitutional Law--Right to unanimous jury--Indecent liberties--First-degree rape

State v Fuller, 179 N. C. APP. 61

Defendant was not denied his constitutional right to a unanimous jury in a double count of indecent liberties with a child and triple count of first-degree rape of a child case by the State's presentation of evidence of a greater number of sexual acts than there were charges, and the trial court's instructions and verdict sheet failing to require the jury to unanimously agree on which specific criminal acts defendant committed before finding him guilty, because: 1) a defendant may be convicted of indecent liberties even if the juror considered a higher number of incidents of immoral or indecent behavior than the number of counts charged and the indictments lacked specific details to identify the specific incidents since while one

juror may have found some incidents of misconduct and another juror might have found different incidents of misconduct, the jury as a whole found that improper sexual conduct occurred; 2) regarding the three counts of first-degree rape, while the victim's testimony and statement to the police suggested that other incidents may have occurred, the evidence and argument focused in detail upon only three specific occasions of intercourse which was the same number of instances as verdict sheets; and 3) a general instruction on unanimity was given to the jury.

Constitutional Law--Right to unanimous verdict--Generic testimony

State v Bullock 178 N. C. APP. 460 (2006)

Defendant's right to a unanimous verdict was not violated by the trial court's submission to the jury of eleven counts of first-degree rape of a child under thirteen based on the victim's testimony that she was raped by defendant at least twice a week for ten months, because: 1) there was no indication that there was any confusion on the part of the jury on its duty to render a unanimous verdict based on the six factors enumerated by our Supreme Court; 2) although the victim gave specific testimony concerning only the first act of sexual intercourse, generic testimony can in fact support a conviction of a defendant and the number of convictions based upon generic testimony is not limited to one; and 3) there was no possibility that some jurors believed some of the rapes took place and some believed that they did not.

Constitutional Law--Right to unanimous jury verdict

State v Brigman 178 N. C. APP. 78 (2006).

The trial court did not err or commit plain error in a multiple first-degree sex offense and multiple taking indecent liberties with a minor case by failing to require the jury to be unanimous as to the actus reus for each charge, because: 1) the risk of a nonunanimous verdict does not arise even if the jury considered a greater number of incidents than charged in the indictments because, while one juror might have found some incidents of misconduct and another juror might have found different incidents of misconduct, the jury as a whole found that improper sexual conduct occurred; and 2) the jury was instructed on all issues including unanimity and separate verdict sheets were submitted to the jury for each charge.

Constitutional Law--Right to unanimous verdict--Multiple sexual offenses with child

State v Massey, 174 N. C. APP. 216 (2005)

Defendant's right to a unanimous verdict was not violated with respect to convictions on five counts of first-degree sexual offense with a child under thirteen where the instructions and verdict sheets contained specific references to the date, act and location of each of the alleged acts, and it was possible from those references to determine which of defendant's five convictions correspond to the acts testified to at trial.

Constitutional Law--Right to unanimous verdict--Multiple sexual offenses in parental role

State v Massey, 174 N. C. APP. 216 (2005)

Defendant's right to a unanimous verdict was not violated with respect to convictions on two of the ten counts of sexual offense by a person in a parental role where there was sufficient evidence to support convictions for acts occurring in two different locations, and the trial court's disjunctive instruction allowed different sexual acts to be considered as alternate means by which the State proved a single offense. However, defendant's right to a unanimous verdict was denied with respect to convictions on eight counts of sexual offense by a person in a parental role where it is impossible to relate the charges in the verdict sheets to specific instances because the verdict sheets did not associate an offense with a given incident. But see *State v Markeith Lawrence, 360 NC 368 (2006)* & *State v Gary Lawrence, 360 NC 393 (2006)*.

Constitutional Law--Right to unanimous verdict--Multiple indecent liberties offenses

State v Massey, 174 N. C. APP. 216 (2005)

Defendant's right to a unanimous verdict was denied with respect to convictions on four counts of indecent liberties, even though defendant was charged with only four counts of indecent liberties, where the State presented evidence of more than four incidents of indecent liberties; although the trial court instructed the jury to consider each count a separate and distinct act, the instructions made no further attempt to distinguish among the counts; and it is therefore impossible to determine whether each juror had in mind the same four incidents when voting to convict defendant. But see *State v Markeith Lawrence, 360 NC 368 (2006)* & *State v Gary Lawrence, 360 NC 393 (2006)*.

Constitutional Law--Denial of unanimous verdict--Sexual offenses

State v Bates, 172 N. C. APP. 27 (2005)

Defendant was denied his right to a unanimous verdict with respect to

convictions on six counts of first degree sexual offense where defendant was charged with eleven counts of that offense; evidence of between four and ten possible instances of first-degree sexual offense was presented at trial; the State did not effectively associate each particular offense or incident with a particular indictment or verdict sheet; the trial court did not explain the need for unanimity on each specific sexual incident; and neither the indictments, jury instructions nor verdict sheets associated a given indictment or verdict sheet with any particular incident.

Constitutional Law--Denial of unanimous verdict--Indecent liberties

State v Bates, 172 N. C. APP. 27 (2005)

Defendant was denied his right to a unanimous verdict with respect to convictions on seven counts of indecent liberties with a minor where defendant was charged with ten counts of taking indecent liberties with a minor; more incidents of indecent liberties were presented at trial than the number charged; evidence presented on charges of first-degree sexual offense could also support convictions for indecent liberties; the trial court gave the pattern jury instruction for indecent liberties with no explanation as to which acts by defendant could support a conviction for indecent liberties; and the jury received no guidance from the trial court and no indication from the State as to which offenses were to be considered for which verdict sheets.

Jury unanimity--First-degree sexual offense

State v. Brewer, 171 NC App 686 (2005)

Court ruled that the defendant's right to unanimous jury verdicts concerning his convictions of three counts of first-degree sexual offense and three counts of indecent liberties was not violated, considering the indictments, evidence, jury instructions, and verdict sheets. (See the court's discussion of the detailed facts in this case.)

Homicide--Second-degree murder--Final mandate--Exclusion of verdict of not guilty by reason of self defense

State v. Ledford, 171 N. C. APP.144 (2005)

The trial court erred in a second-degree murder case by omitting the verdict of not guilty by reason of self defense in its final mandate to the jury and defendant is entitled to a new trial.

Criminal Law--Inconsistent verdicts--Manslaughter and assault--Intent to kill

State v. Hames, 170 N. C. APP. 312 (2005)

A new trial was awarded where the offenses of which defendant was found guilty were mutually exclusive and the jury's verdicts were logically inconsistent. Defendant was charged with assault with a deadly weapon with intent to kill inflicting serious injury and attempted murder of the same victim, and found guilty of assault with a deadly weapon inflicting serious injury and voluntary manslaughter. The jury necessarily found intent to kill for the manslaughter but not for the assault.

Constitutional Law--Right to unanimous jury--Sexual assaults

State v. Lawrence 165 N. C. APP. 548 (2004)

The trial court in a multiple second-degree rape, multiple second-degree sex offense, and double indecent liberties case deprived defendant of his right to a unanimous verdict, because comparison of the evidence adduced at trial with the charges brought against defendant reveals that with regard to the charges of second-degree sex offense: 1) there was evidence of a greater number of separate criminal offenses than the number of charges for two of the victims; 2) there was general testimony with no accompanying instructions on limiting its consideration to one criminal offense in regard to one of the victims; 3) the jury was permitted to consider evidence of numerous criminal sexual acts with no guidance separating them into separate criminal offenses for all three victims; and 4) none of the verdict sheets associated the offense number with a given incident or separate criminal offense, nor did the trial court's instructions make any attempt to separate the individual criminal offenses or guide the jury to identify a given verdict sheet with a corresponding instance of alleged sexual abuse.

Constitutional Law--Right to unanimous verdict--Failing to differentiate each individual charge in jury instructions and verdict sheet

State v. Wiggins, 161 N. C. APP. 583 (2003)

The trial court did not violate defendant's right to a unanimous verdict in a multiple statutory rape and statutory sexual offense case by failing to specifically differentiate each individual charge in its jury instructions and on the verdict sheet, because: 1) verdict sheets do not need to match the specificity of indictments; 2) the indictments in this case which distinguished the offenses charged by their names and case numbers without pointing to any specific encounter between defendant and the victim were proper since they could be understood by the jury based on

the evidence presented at trial; and 3) the trial court differentiated each instruction on two counts of statutory sexual offense and five counts of statutory rape by the applicable case number found on the indictments

Trial--Inconsistent verdicts--Conspiracy and attempt

State v. Reaves, 132 N.C. App. 615 (1999)

A jury did not render inconsistent verdicts by finding defendant guilty of conspiracy to murder and not guilty of attempted murder; a conviction for conspiracy is not affected by the degree of the substantive crime or even by the nonoccurrence of the crime.