evidence under Rule 403, has to make a determination as to whether or not the probative values substantially outweighs the dangers of unfair prejudice or confusion of the issues to the jury.

In the present case given all of the inconsistencies in the statements and testimony of the three jailhouse witnesses, it is respectfully contended that the highly prejudicial nature of the statements and confusion of far outweighed any probative value that the testimony may have had. Each of the witnesses had access to notes and documents that the Defendant had in her possession within the jail cell. In each case these witnesses apparently received some benefit for their testimony. Their testimony had an inherent lack of reliability given the fact that two of the witnesses were convicted felons and each of them were seeking some relief from the system by assisting the authorities. The failure of the Court to exclude this evidence under N.C.G.S. §8C-1, Rule 403 constituted an abuse of discretion, which denied the Defendant a fair trial.

2. The Trial Court committed prejudicial error by failing to grant Defendant/Appellant's Motion to Dismiss at the close of State's evidence and at the close of all of the evidence.

ASSIGNMENT OF ERROR NUMBER 2 (R. p. p. 139)

Standard of Review

It is well settled that in ruling upon a motion to dismiss at the close of the State's case the trial court must consider whether there is substantial evidence of each element of the charged offense. State v. Aldridge, 139 N.C. App. 706, 718, 534 S.E.2d 629 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." State v. Scott, 323 N.C. 350, 353, 372 S.E.2d 572 (1988). In reviewing such a motion, "[t]he evidence must be considered in the light most favorable to

the State, and the State is entitled to every reasonable inference." State v. Wright, 127 N.C. App. 592, 596-597, 492 S.E.2d 365 (1997), disc. rev. den'd., 347 N.C. 584, 502 S.E.2d 616 (1998).

Argument

In a criminal trial, the State is required to prove every element of the crime alleged in each count of an indictment beyond a reasonable doubt. State v. Weaver, 123 N.C. App. 276, 283, 473 S.E.2d 362 (1996). Here, the State did not prove the necessary elements of the charge of First Degree (Non-Capital) Murder or the lesser included offenses beyond a reasonable doubt. The Trial Court therefore committed reversible error in denying the Defendant's motion to dismiss at the close of the case for the State and again at the close of all the evidence.

It is respectfully contended that absent the improper admission the alleged statements of the Defendant made to law enforcement and/or the individuals as discussed hereinabove, there was insufficient evidence to justify the submission of the case to the jury. It is respectfully contended that taking into consideration the diminished capacity of the Defendant and the necessary elements for conviction of the offenses charged there was insufficient evidence to prove the charges beyond a reasonable doubt as a matter of law and therefore the Motion to Dismiss should have been allowed.

3. The Trial Court committed prejudicial error by improperly responding to questions and request for exhibits from the jury. ASSIGNMENT OF ERROR NUMBER 3 R.P. p. 140

STANDARD OF REVIEW

A review of this issue is address in the sound discretion of the Trial Judge and unless his ruling is clearly erroneous or shows an abuse of discretion, it will not be disturbed. State v. Bailey, 307 N.C. 110 296 S.E.2d 287 (1982). The general provisions for jury

instructions are set forth in N.C.G.S. 15A-1231 through 1234. N.C.G.S. 15A-1234(a)(1) authorizes the giving of appropriate additional instructions to respond to an inquiry of the jury, made in open Court. N.C.G.S. 15A-1234(b) allows the Judge to give or repeat other instructions to avoid giving undue prominence to the additional instruction. The trial judge is not required to repeat instructions correctly given during the original charge, but may do so in his discretion.

ARGUMENT

It is respectfully contended that the questions asked by the jury (T. Vol.5 pp.118-119) indicated their confusion. Since the confusion was with regard to an essential element necessary to find of first or second degree murder, the fact that the Judge reinstructed on this issue only and failed to instruct on all of the issues tended to further confuse rather than clarify the questions of the jury. The Defendant is certainly entitled to a balanced charge, which does not unduly place emphasis on one particular element to the exclusions of others. What in fact occurred over the objection of the defense counsel was the repeating of certain elements to the exclusion of others which created an unnecessary prejudice against the Defendant rather than clarify the confusion of the jury. For the reasons set forth, it is respectfully contended that the Court abused its discretion through its failure to properly recharge the jury and created prejudicial error.

4. The Trial Court committed prejudicial error by failing to grant Defendant/Appellants Motion to Set Aside the Verdict of the Jury, Motion for New Trial and Motion for Appropriate Relief.

ASSIGNMENT OF ERROR 4 R.P. p.140

STANDARD OF REVIEW

A motion to set aside the verdict as being against the weight

of the evidence is addressed to the discretion of the trial court, and it's refusal to grant the motion is not reviewable upon appeal in the absence of abuse of discretion. State v. Pratt, 306 N.C. 673, 295 S.E.2d 462 (1982).

ARGUMENT

In a criminal trial, the State is required to prove every element of the crime alleged in each count of an indictment beyond a reasonable doubt. State v. Weaver, 123 N.C.App. 276, 473 S.E.2d 362 (1996). Here, the State did not prove the elements of each of the charged offenses beyond a reasonable doubt and specifically failed to rebut self defense as required by law. It is respectfully submitted that it was an abuse of discretion for the trial Court to deny Defendant's motion to set aside the verdict or in the alternative, grant Defendant a new trial.

CONCLUSION

For the reasons as set forth herein above it is respectfully contended that the Defendant was denied a fair trial free from prejudicial error and should be granted a new trial. It is further respectfully requested that the Court conduct a review of the entire file and if the Court should determine that just cause exists, which has not been raised, that the Court on its own motion grant a new trial to the Defendant for errors of law committed during the trial of this matter.

THIS the 6th day of June 2011.

S/c. Gary Triggs
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CERTIFICATE OF COMPLIANCE WITH RULE 28(J) OF THE NORTH CAROLINA RULES OF APPELLATE PROCEDURE

This is to certify that the Appellant's Brief in this matter is proportionally typed in 12-point Courier font and that said Brief, including its case citations, cover, index, table of authorities, certificate of compliance with Rule 28(J), certificate of service, contains no more than 35 pages and does not exceed the word limitation established by Rule 28(J) of the Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

The undersigned counsel for the Defendant/Appellant does hereby certify that a copy of the foregoing Appellant's brief was this day served upon counsel for Plaintiff/Appellee in the manner as prescribed by North Carolina General Statutes §15(a)-931 by depositing a copy of the same in the United States Mail, first class postage prepaid, addressed as follows:

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This the 6th, day of June, 2011.

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June 21, 2011

Dear Gary,

I was thrilled to receive the brief. It is brilliant. It is obvious you have worked very hard and diligently. I feel very good about winning the appeal. The opposition made so many serious errors. I love the way you wove everything together. I understand you sought the advice of an appellate attorney who had just won an appeal. Two experts on the case is a grand idea. I see you have left room for strengthening your arguments down the road.

I am anxious to see what the State comes up with in their brief. I hope to receive a copy soon.

I pray for you and yours daily as well as for Divine Guidance in this case.

Thanks again for your untiring and very professional effort.

Respectfully,
Gloria Estes

7-12-11

Dear Gary,

I want to thank you from the bottom of my heart for being the best attorney on the planet. Oh, there's just one more thing (Colombo)", I forgot I knew Asst. A.G. Tom Miller on a face to face basis. Once, I went to Raleigh to see his Asst., Blackwell Brogden and "Black" was gone for the day. Tom overheard me give my name (Gloria Hughes Estes) and said, "I know Ms. Estes, I'll see her". He told me he had 15 minutes and stayed 15 mins. past 5:00 (30 mins.). These gentlemen have known me ~~gentlemen~~ for over 32 years and never a violation on any of my documents or any complaints. I will have monstrous amounts of money and I know "Three

"Sisters LLC" want to retain you. More later on that. I think this will move quickly in our favor. Please thank all your staff for me. The brief was an excellent work of art. Beautiful. I asked for Divine Guidance and got it.

Regards,

Gloria

P.S. I'm very tired, it's late.

I thank God for you.
II TIMOTHY 1:3 NLT