

Criminal Procedure

Indictment Issues

State v. Hinson, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/176A10-1.pdf>). For the reasons stated in the dissenting opinion below, the court reversed *State v. Hinson*, __ N.C. App. __, 691 S.E.2d 63 (April 6, 2010). The defendant was indicted for manufacturing methamphetamine by “chemically combining and synthesizing precursor chemicals to create methamphetamine.” However, the trial judge instructed the jury that it could find the defendant guilty if it found that he produced, prepared, propagated, compounded, converted or processed methamphetamine, either by extraction from substances of natural origin or by chemical synthesis. The court of appeals held, over a dissent, that this was plain error as it allowed the jury to convict on theories not charged in the indictment. The dissenting judge concluded that while the trial court’s instructions used slightly different words than the indictment, the import of both the indictment and the charge were the same. The dissent reasoned that the manufacture of methamphetamine is accomplished by the chemical combination of precursor elements to create methamphetamine and that the charge to the jury, construed contextually as a whole, was correct.

Jury Verdicts

State v. Mumford, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/32PA10-1.pdf>). The court reversed *State v. Mumford*, __ N.C. App. __, 688 S.E.2d 458 (Jan. 5, 2010), and held that because a not guilty verdict under G.S. 20-138.1 (impaired driving) and a guilty verdict under G.S. 20-141.4(a3) (felony serious injury by vehicle) were merely inconsistent, the trial court did not err by accepting the verdict where it was supported with sufficient evidence. To require reversal, the verdicts would have to be both inconsistent and legally contradictory, also referred to as mutually exclusive verdicts (for example, guilty verdicts of embezzlement and obtaining property by false pretenses; the verdicts are mutually exclusive because property cannot be obtained simultaneously pursuant to both lawful and unlawful means). The court overruled *State v. Perry*, 305 N.C. 225 (1982) (affirming a decision to vacate a sentence for felonious larceny when the trial court returned a guilty verdict for felonious larceny but a not guilty verdict of breaking or entering), and *State v. Holloway*, 265 N.C. 581 (1965) (per curiam) (ordering a new trial when the defendant was found guilty of felonious larceny, but was acquitted of breaking or entering and no evidence was presented at trial to prove the value of the stolen goods), to the extent they were inconsistent with its holding.

Sentencing

Restitution

State v. Mumford, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/32PA10-1.pdf>). The court reversed *State v. Mumford*, __ N.C. App. __, 688 S.E.2d 458 (Jan. 5, 2010) (trial court erred in its order requiring the defendant to pay restitution; vacating that portion of the trial court’s order), and held that although the trial court erred by ordering the defendant to pay restitution when the defendant did not stipulate or otherwise unequivocally agree to the amount of restitution ordered, the error was not prejudicial. As to prejudice, the court reasoned: “[A]t the time the judgment is collected, defendant cannot be made to pay more than what is actually owed, that is, the amount actually due to the various entities that provided medical treatment to defendant’s victims. Because defendant will pay the lesser of the actual amount owed or the amount ordered by the trial court, there is no prejudice to defendant.”

Sex Offenders

Satellite-Based Monitoring

State v. Bowditch, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/448PA09-1.pdf>). Subjecting defendants to satellite-based monitoring (SBM) does not violate the constitutional prohibition against ex post facto laws. The defendants all pleaded guilty to multiple counts of taking indecent liberties with a child; all of the offenses occurred before the SBM statutes took effect. The defendants challenged their eligibility for SBM, arguing that their participation would violate prohibitions against ex post facto laws. The court rejected this argument, concluding that the SBM program was not intended to be criminal punishment and is not punitive in purpose or effect. The court first determined that in enacting the SBM program, the General Assembly's intention was to enact a civil, regulatory scheme, not to impose criminal punishment. It further concluded that, applying the *Mendoza-Martinez* factors, the SBM program is not so punitive either in purpose or effect as to negate the General Assembly's civil intent.

State v. Wagoner, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/396A09-1.pdf>). For the reasons stated in *Bowditch* (summarized above), the court affirmed *State v. Wagoner*, __ N.C. App. __, 683 S.E.2d 391 (Sept. 1, 2009) (holding, over a dissent, that requiring the defendant to enroll in SBM does not violate the constitutional prohibition against ex post facto law or double jeopardy).

State v. Morrow, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/461A09-1.pdf>). For the reasons stated in *Bowditch* (summarized above), the court affirmed *State v. Morrow*, __ N.C. App. __, 683 S.E.2d 754 (Oct. 6, 2009) (concluding, over a dissent, that the SBM statute does not violate the ex post facto clause).

State v. Vogt, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/465A09-1.pdf>). For the reasons stated in *Bowditch* (summarized above), the court affirmed *State v. Vogt*, __ N.C. App. __, 685 S.E.2d 23 (Nov. 3, 2009) (concluding, over a dissent, that the SBM statute does not violate the ex post facto clause).

State v. Hagerman, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/491A09-1.pdf>). For the reasons stated in *Bowditch* (summarized above), the court affirmed *State v. Hagerman*, __ N.C. App. __, 685 S.E.2d 153 (Nov. 3, 2009) (rejecting the defendant's *Apprendi* challenge to SBM; reasoning that because SBM is a civil remedy, it did not increase the maximum penalty for the crime).

Arrest, Search & Investigation

State v. Mello, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/490A09-1.pdf>). The court affirmed per curiam *State v. Mello*, __ N.C. App. __, __ S.E.2d __ (Nov. 3, 2009) (holding, over a dissent, that reasonable suspicion supported a vehicle stop; while in a drug-ridden area, an officer observed two individuals approach and insert their hands into the defendant's car; after the officer became suspicious and approached the group, the two pedestrians fled, and the defendant began to drive off).

Steinkrause v. Tatum, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010) (<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/18A10-1.pdf>). The court affirmed per curiam *Steinkrause v. Tatum*, __ N.C. App. __, 689 S.E.2d 379 (Dec. 8, 2009) (holding, over a dissent, that there was probable cause to arrest the defendant for impaired driving in light of the severity of the one-car accident coupled with an odor of alcohol).

Criminal Offenses

Felon in Possession

State v. Whitaker, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/21A10-1.pdf>). Affirming, *State v. Whitaker*, __ N.C. App. __, 689 S.E.2d 395 (Dec. 8, 2009), the court held that G.S. 14-415.1, the felon in possession statute, was not an impermissible ex post facto law or bill of attainder.

Defenses

Self-Defense

State v. Cruz, __ N.C. __, __ S.E.2d __ (Oct. 8, 2010)

(<http://www.aoc.state.nc.us/www/public/sc/opinions/2010/pdf/193A10-1.pdf>). The court affirmed per curiam *State v. Cruz*, __ N.C. App. __, 691 S.E.2d 47 (April 6, 2010) (holding, in a murder case, and over a dissenting opinion, that an instruction on self-defense was not required where there was no evidence that the defendant believed it was necessary to kill the victim in order to save himself from death or great bodily harm).