

Criminal Procedure

Corpus Delicti Rule

State v. Blue, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091717-1.pdf>). Applying the corpus delicti rule (State may not rely solely on the extrajudicial confession of a defendant, but must produce substantial independent corroborative evidence) the court held that the State produced substantial independent corroborative evidence to show that a robbery and rape occurred. As to the robbery, aspects of the defendant's confession were corroborated with physical evidence found at the scene (weapons, etc.) and by the medical examiner's opinion testimony (regarding cause of death and strangulation). As to the rape, the victim's body was partially nude, an autopsy revealed injury to her vagina, rape kit samples showed spermatozoa, and a forensic analysis showed that defendant could not be excluded as a contributor of the weaker DNA profile.

Indictment Issues

State v. Clagon, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100299-1.pdf>). A burglary indictment does not need to identify the felony that the defendant intended to commit inside the dwelling.

Sequestration

State v. Patino, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100201-1.pdf>). The trial court did not abuse its discretion by denying the defendant's motion to sequester the State's witnesses. In support of sequestration, defense counsel argued that there were a number of witnesses and that they might have forgotten about the incident. The court noted that neither of these reasons typically supports a sequestration order and that counsel did not explain or give specific reasons to suspect that the State's witnesses would be influenced by each other's testimony. The court also held that a trial court is not required to explain or defend a ruling on a motion to sequester.

Juror Misconduct

State v. Patino, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100201-1.pdf>). The trial court did not abuse its discretion by failing to conduct an inquiry into allegations of jury misconduct or by denying the defendant's motion for a new trial. The day after the verdict was delivered in the defendant's sexual battery trial and at the sentencing hearing, defense counsel moved for a new trial, arguing that several jurors had admitted looking up, on the Internet during trial, legal terms (sexual gratification, reasonable doubt, intent, etc.) and the sexual battery statute. The trial court did not conduct any further inquiry and denied defendant's motion. Because definitions of legal terms are not extraneous information under Evidence Rule 606 and did not implicate defendant's constitutional right to confront witnesses against him, the allegations were not proper matters for an inquiry by the trial court.

Sentencing

State v. Shaw, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091096-1.pdf>). The court rejected the defendant's argument that the trial court took into account a non-statutory aggravating factor neither stipulated to nor found by the jury beyond a reasonable doubt. The defendant's argument was based on the trial court's comments that (1) the defendant could have been tried for premeditated first degree

murder and (2) “the State . . . made a significant concession . . . allowing [him] to plead second-degree murder.” When taken in context, these comments were merely responses to those made by defense counsel.

Evidence

***Crawford* Issues**

State v. Blue, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091717-1.pdf>). The trial court did not err by allowing the Chief Medical Examiner to testify regarding an autopsy of a murder victim when the Medical Examiner was one of three individuals who participated in the actual autopsy. The Medical Examiner testified to his own observations, provided information rationally based on his own perceptions, and did not testify regarding anyone else’s declarations or findings.

Privilege

State v. Terry, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100009-1.pdf>). The marital privilege did not apply when the parties did not have a reasonable expectation of privacy of their conversation, which occurred after they were arrested and in an interview room at the sheriff’s department. Warning signs indicated that the premises were under audio and visual surveillance and there were cameras and recording devices throughout the department.

Arrest Search and Investigation

Knock and Announce

State v. Terry, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100009-1.pdf>). In a drug case, officers properly knocked and announced their presence when executing a search warrant. The court rejected the defendant’s argument that the period of time between the knock and announcement and the entry into the house was too short. It concluded that because the search warrant was based on information that marijuana was being sold from the house and because that drug could be disposed of easily and quickly, the brief delay between notice and entry was reasonable.

Criminal Offenses

Acting in Concert

State v. Clagon, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100299-1.pdf>). The court rejected the defendant’s argument that to convict of burglary by acting in concert the State was required to show that the defendant had the specific intent that one of her accomplices would assault the victim with deadly weapon. The State’s evidence, showing that the defendant forcibly entered the residence accompanied by two men carrying guns and another person, armed with an axe, who immediately asked where the victim was located, was sufficient evidence that an assault on the victim was in pursuance of a common purpose or as a natural or probable consequence thereof.

Homicide

State v. Blue, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091717-1.pdf>). (1) The defendant’s statement that he formed the intent to kill the victim and contemplated whether he would be caught before

he began the attack was sufficient evidence that he formed the intent to kill in a cool state of blood for purposes of a first-degree murder charge. (2) The court rejected the defendant's argument that his evidence of alcohol and crack cocaine induced intoxication negated the possibility of premeditation and deliberation as a matter of law.

Robbery

State v. Blue, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091717-1.pdf>). There was sufficient evidence that the theft and the use of force were part of one continuous transaction when the defendant formed an intent to rob the victim, attacked her, and then took her money. The court rejected the defendant's argument that his rape of the victim constituted a break in the continuous transaction.

Larceny and Related Offenses

State v. Nickerson, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/091511-1.pdf>). Reversing and remanding for a new trial because the trial court failed to submit unauthorized use of a motor vehicle as a lesser included offense of felonious possession of stolen goods. Based on a "fact-specific inquiry," the court concluded that unauthorized use was a lesser-included offense of felonious possession. The evidence showed that the defendant told the police that he was in the area for a funeral and that the car belonged to his friend. The defendant's mother testified that the defendant had gone to a funeral, and the police confirmed a funeral in the area. The evidence, the court concluded, was more than a mere denial by the defendant that he knew the vehicle was stolen, and established contradictory evidence to two of the elements of the possession offense. Accordingly, the court held, the trial judge should have instructed the jury on the lesser-included offense of unauthorized use of a motor vehicle.

Burglary

State v. Clagon, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100299-1.pdf>). The evidence was sufficient to establish that the defendant intended to commit a felony assault inside the dwelling. Upon entering the residence, carrying an axe, the defendant asked where the victim was and upon locating her, assaulted her with the axe.

Sex Crimes

State v. Patino, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100201-1.pdf>). In a sexual battery case, the evidence was sufficient to establish that the defendant grabbed the victim's crotch for the purpose of sexual arousal, sexual gratification, or sexual abuse. The defendant previously had asked the victim for her phone number and for a date, and had brushed against her thigh in such a manner that the victim reported the incident to her supervisor and was instructed not to be alone with the defendant.

Drug Crimes

State v. Terry, __ N.C. App. __, __ S.E.2d __ (Oct. 5, 2010) (<http://www.aoc.state.nc.us/www/public/coa/opinions/2010/pdf/100009-1.pdf>). There was sufficient evidence of constructive possession of drugs found in a house. The defendant lived at and owned a possessory interest in the house; he shared the master bedroom where the majority of the marijuana and drug paraphernalia were found; he was in the living space adjoining the master bedroom when the search

warrant was executed; there were drugs in plain view in the back bedroom; he demonstrated actual control over the premises in demanding the search warrant; and in a conversation with his wife after their arrest, the two questioned each other about how the police found out about the drugs and the identity of the confidential informant who said that the contraband belonged to the defendant).