

Criminal Procedure

Motion to Dismiss—Sufficient Evidence of Identity

State v. Boyd, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8wOS0xNjY2LTEucGRm>). In a robbery case, the trial court did not err by denying the defendant's motion to dismiss where there was substantial evidence that the defendant was the perpetrator. The victim, who knew the defendant well, identified the defendant's voice as that of his assailant; identified his assailant as a black man with a lazy eye, two characteristics consistent with the defendant's appearance; consistently identified the defendant as his assailant; and had a high level of certainty with regard to this identification.

Sentencing

Appeal of Sentence

State v. Ziglar, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC04MzktMS5wZGY=>). Because the defendant was sentenced in the presumptive range, he was not entitled to an appeal as a matter of right on the issue whether his sentence was supported by the evidence. Furthermore, the defendant did not petition for review by way of a writ of certiorari.

Sex Offenders

State v. Miller, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC05MTEtMS5wZGY=>). (1) The district court lacked subject matter jurisdiction to order the defendant to enroll in satellite-based monitoring (SBM) after a district court conviction for misdemeanor attempted sexual battery. G.S. 14-208.40B(b) requires that SBM hearings be held in superior court for the county in which the offender resides. (2) The superior court lacked subject matter jurisdiction to order the defendant to enroll in SBM after a de novo hearing on the district court's order than the defendant enroll. Hearings on SBM eligibility are civil proceedings. Pursuant to G.S. 7A-27(c), an appeal from a final judgment in a civil action in district court lies in the court of appeals, not in the superior court.

Evidence

Objections

State v. Boyd, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8wOS0xNjY2LTEucGRm>). By objecting only on the basis that the subject matter of questioning had been "covered" the previous day, the defense failed to preserve other grounds for exclusion of the evidence and plain error review applied.

Opening the Door

State v. Boyd, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8wOS0xNjY2LTEucGRm>). Although some portion of a videotape of the defendant's interrogation was inadmissible, the defendant opened the door to the evidence by, among other things, referencing the content of the interview in his own testimony.

Opinions

State v. Ziglar, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC04MzktMS5wZGY=>). In a felony

death by vehicle case, the trial court did not abuse its discretion by sustaining the State's objection when defense counsel asked the defendant whether he would have been able to stop the vehicle if it had working brakes. Because a lay opinion must be rationally based on the witness's perception, for the defendant's opinion to be admissible, some foundational evidence was required to show that he had, at some point, perceived his ability, while highly intoxicated, to slow down the vehicle as it went through the curve at an excessive speed. However, there was no evidence that the defendant ever had perceived his ability to stop the car under the hypothetical circumstances.

Arrest, Search & Interrogation

Interrogation

Waiver of Juvenile Rights

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01NzEtMS5wZGY=>). The trial court did not err by denying the defendant's motion to suppress statements made during a police interrogation where no violation of G.S. 7B-2101 occurred. The defendant, a 17-year-old juvenile, was already in custody on unrelated charges at the time he was brought to an interview room for questioning. When the defendant invoked his right to have his mother present during questioning, the detectives ceased all questioning. After the detectives had trouble determining how to contact the defendant's mother, they returned to the room and asked the defendant how to reach her. The defendant then asked them when he would be able to talk to them about the new charges (robbery and murder) and explained that the detectives had "misunderstood" him when he requested the presence of his mother for questioning. He explained that he only wanted his mother present for questioning related to the charges for which he was already in custody, not the new crimes of robbery and murder. Although the defendant initially invoked his right to have his mother present during his custodial interrogation, he thereafter initiated further communication with the detectives; that communication was not the result of any further interrogation by the detectives. The defendant voluntarily and knowingly waived his rights.

Sixth Amendment Right to Counsel

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01NzEtMS5wZGY=>). No violation of the defendant's sixth amendment right to counsel occurred when detectives interviewed him on new charges when he was in custody on other unrelated charges. The sixth amendment right to counsel is offense specific and had not attached for the new crimes.

Recording of Interview

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC01NzEtMS5wZGY=>). The trial court did not err by denying the defendant's motion to suppress asserting that his interrogation was not electronically recorded in compliance with G.S. 15A-211. The statute applies to interrogations occurring on or after March 1, 2008; the interrogation at issue occurred more than one year before that date.

Criminal Offenses

Conspiracy

State v. Boyd, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8wOS0xNjY2LTEucGRm>). In a conspiracy to commit robbery case, the evidence was sufficient to establish a mutual, implied understanding between the defendant and another man to rob the victim. The other man drove the defendant to intercept the

victim; the defendant wore a ski mask and had a gun; after the defendant hesitated to act, the other person assaulted the victim and took his money; and the two got into the car and departed.

Ineffective Assistance of Counsel

State v. Boyd, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8wOS0xNjY2LTEucGRm>). (1) The defendant's claim that trial counsel was ineffective by failing to object to a videotape of the defendant's interrogation was properly considered on appeal. Although the defendant asked the court to dismiss his claim without prejudice to raise it in a motion for appropriate relief, he failed to identify how the record on appeal was insufficient to resolve the claim. (2) The ineffective assistance claim fails because even if counsel had objected, the objection would have been overruled when the defendant opened the door to the evidence through his own trial testimony. (3) The defendant failed to demonstrate that counsel's performance was deficient. As noted, the defendant's own testimony opened the door to admission of the videotape. Trial counsel made a strategic decision to have the defendant testify to offer an alibi. On appeal, the defendant did not challenge this strategy, which the jury rejected, and thus did not overcome the presumption that counsel's trial strategy was reasonable.

State v. Miller, __ N.C. App. __, __ S.E.2d __ (Feb. 1, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC05MTEtMS5wZGY=>). The court noted in dicta that ineffective assistance of counsel claims are not available in civil appeals, such as that from an SBM eligibility hearing.