

Criminal Procedure

Jury Selection

State v. Jackson, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNTY2LTEucGRm>). The trial court did not err by denying the defendant's motion to discharge the jury venire on grounds that the defendants' race (African-American) was disproportionately underrepresented. To establish a prima facie violation for disproportionate representation in a venire, a defendant must show that: (1) the group alleged to be excluded is a "distinctive" group in the community; (2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) this underrepresentation is due to systematic exclusion of the group in the jury selection process. Although the defendants met their burden with respect to the first prong, they failed to satisfy the other prongs. As to the second prong, the defendants failed to produce any evidence that the representation African-Americans was not fair and reasonable in relation to the number of such persons in the community. Defendants stated that the African-American population in the county was "certainly greater than . . . five percent" but produced no supporting evidence. As to the third prong, the defendants presented no evidence showing that the alleged deficiency of African-Americans in the venire was because of the systematic exclusion. Although the defendants noted that only three out of 60 potential jurors were African-American, this fact was insufficient to show systematic exclusion.

Suppression Motions

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMTMzLTEucGRm>). Although there was no material conflict in the evidence as to whether the defendant was impaired when he made a statement, the court held, over a dissent, that there was a material conflict as to whether he was in custody and that the trial court erred by failing to make the necessary findings of fact on that issue. Because the defendant's testimony did not meet the standard for rendering his statement involuntary, any conflict in the evidence on this issue was not material. As to custody, the officer's testimony suggested the defendant was not in custody. However the defendant's testimony if believed would support a contrary conclusion; therefore there was a material conflict on this issue.

State v. Oates, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC03MjUtMS5wZGY=>). The State failed to give proper notice of appeal from a ruling granting a motion to suppress. The State filed a written notice of appeal after the judge orally granted the motion but before the judge filed his written order.

Jury Deliberations

State v. Williams, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMTMzLTEucGRm>). The trial court violated G.S. 15A-1233 by responding to a jury request to review evidence and sending the evidence back to the jury room instead of bringing the jury into the courtroom. However, no prejudice resulted.

Bond Forfeiture

State ex rel Guilford County Board of Educ. v. Herbin, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMTc4LTEucGRm>). (1) A bail agent

may file a motion to set aside a forfeiture. (2) Filing such a motion by a bail agent does not constitute unauthorized practice of law. (3) A bail agent may appear pro se at a hearing on a motion to set aside forfeiture if the agent has a financial liability to the surety as a result of the bond. However, a bail agent may not appear at the motion hearing in court to represent the corporate surety.

Evidence

Course of Conduct

State v. Howard, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMjc2LTEucGRm>). In an armed robbery prosecution, evidence of a break-in occurring hours after the incident in question was properly admitted under the “‘course of conduct’” or ‘complete story’ exception.” The evidence was necessary for the jury to understand how the defendant was identified as the perpetrator and how items stolen from the robbery victim and purchased with her credit card were recovered. The break-in evidence “was necessary for the jury to understand the complete story and timeline of the events that took place on the night in question, and therefore was properly admitted under the ‘course of conduct’ exception.” A footnote to the court’s opinion suggests that this basis for admission was separate from and independent of admissibility under Rule 404(b).

Opinions

State v. Howard, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMjc2LTEucGRm>). (1) No plain error occurred when the trial court allowed a detective to give lay opinion testimony that items were purchased with a stolen credit card and it looked like someone had tried to hide them; subtotals on a store receipt indicated that the credit card was stolen; blood was present on clothing and in a car; and a broken wood panel piece matched a break at the entry site. Some testimony was proper on grounds that an officer may give lay opinion testimony based on investigative training. Other testimony was nothing more than an instantaneous conclusion reached by the detective. Finally, the Supreme Court of North Carolina has upheld lay opinion testimony identifying blood or bloodstains. (2) The trial court did not commit plain error by allowing a detective to identify the defendant as the person shown in a still photograph from a store’s surveillance tapes. The detective observed the defendant in custody on the morning that the photo was taken, affording him the opportunity to see the defendant when his appearance most closely matched that in the video. The detective also located the defendant’s clothes. As such, the detective had more familiarity with the defendant’s appearance at the time the photo was taken than the jury could have.

Miscellaneous Evidence Issues

State v. McDowell, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNTUzLTEucGRm>). In a murder case, the trial court did not err by allowing law enforcement officers to testify that they had observed a small hair on the wall at the murder scene and that the hair appeared to have tissue attached. The hair was not collected as evidence. The court concluded that the State is not required to collect evidence as a pre-condition to offering testimony about a particular subject.

Arrest, Search & Investigation

Pat Down of Person Present During Search of a Residence

State v. Richmond, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMjk2LTEucGRm>). An officer executing a search warrant at a home reasonably believed that for officer safety he should pat down the defendant, who was present at the house when officers arrived to execute the search warrant. The search warrant application stated that illegal narcotics were being sold from the residence and that officers had conducted two previous controlled buys there, one only 72 hours earlier. When officers entered, they found six individuals, including defendant and saw drugs in plain view. Based on his experience as a narcotics officer, the officer testified to a connection between guns and drugs.

Plain Feel

State v. Richmond, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMjk2LTEucGRm>). The evidence supported the trial court's finding that based on an officer's training and experience, he immediately formed the opinion that a bulge in the defendant's pants contained a controlled substance when conducting a pat down. The officer was present at the location to execute a search warrant in connection with drug offenses.

Criminal Offenses

Acting in Concert

State v. Jackson, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNTY2LTEucGRm>). The evidence was sufficient to support a conviction of armed robbery under an acting in concert theory. Although the record did not reveal whether the defendant shared the intent or purpose to use a dangerous weapon during the robbery, this was not a necessary element under the theory of acting in concert.

Defenses

Diminished Capacity

State v. McDowell, __ N.C. App. __, __ S.E.2d __ (Sept. 6, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNTUzLTEucGRm>). In a murder case, the trial court did not err by denying the defendant's request for a jury instruction on diminished capacity. The defendant had argued that he was entitled to the instruction based on evidence that he suffered from post-traumatic stress syndrome, alcohol dependence, and cognitive impairment resulting from a head injury, causing him to possibly overreact to stress or conclude that deadly force was necessary to deal with a threatening situation. The court found no evidence casting doubt on the defendant's ability to premeditate, deliberate, or form the specific intent to kill necessary for guilt of first-degree murder on the basis of malice, premeditation, and deliberation.