

Criminal Procedure

Bond Issues

State v. Cortez, __ N.C. App. __, __ S.E.2d __ (Sept. 20, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMjExLTEucGRm>). The county school board's notice of appeal from a judge's order affirming the Clerk's ruling setting aside bond forfeitures divested the Clerk and trial court of jurisdiction to enter a second forfeiture while the appeal was pending.

Sentencing

State v. Burgess, __ N.C. App. __, __ S.E.2d __ (Sept. 20, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0xOTMtMS5wZGY=>). The trial court erred by sentencing the defendant as a level IV offender when the State failed to present sufficient evidence establishing that out-of-state offenses were substantially similar to North Carolina offenses. The State presented printed copies of out-of-state statutes purportedly serving as the basis for the out-of-state convictions. However, the State's worksheet did not identify the out-of-state crimes by statute number and instead used brief and non-specific descriptions that could arguably describe more than one crime, making it unclear whether the statutes presented were the basis for the defendant's convictions. Also, the State presented 2008 versions of statutes when the defendant's convictions were from 1993 and 1994, and there was no evidence that the statutes were unchanged. Finally, the trial erred by accepting the classification of the defendant's out-of-state offenses without comparing the elements of those offenses to the elements of the North Carolina offenses the State contended were substantially similar.

Sex Offenders

State v. Burgess, __ N.C. App. __, __ S.E.2d __ (Sept. 20, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0xOTMtMS5wZGY=>). The trial court erred by ordering that the defendant register as a sex offender. Although the trial court determined that the defendant was convicted of a sexually violent offense, neither of the offenses for which the defendant was convicted—second-degree kidnapping and crime against nature—is a sexually violent offense.

Evidence

Opinions

State v. James, __ N.C. App. __, __ S.E.2d __ (Sept. 20, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMzc1LTEucGRm>). Under the circumstances, no error occurred when the trial court allowed an officer to testify that a substance was crack cocaine based on visual examination and on the results of a narcotics field test kit (NIK). After officers observed the substance, the defendant ate it, in an attempt to conceal evidence. As to the visual identification, the court noted that “[u]nder normal circumstances” the testimony would be inadmissible under *State v. Ward*, 364 N.C. 133 (2010) (testimony identifying a controlled substance must be based on a scientifically valid chemical analysis and not mere visual inspection). It also noted that testimony regarding the NIK typically would be inadmissible because the State did not sufficiently establish the reliability of that test. However, the court concluded that “[u]nder the unique circumstances of this case . . . Defendant forfeited his right to challenge the admission of this otherwise

inadmissible testimony.” It reasoned that “[j]ust as a defendant can lose the benefit of a constitutional right established for his or her benefit, we hold a defendant can lose the benefit of a statutory or common law legal principle established for his or her benefit in the event that he or she engages in conduct of a sufficiently egregious nature to justify a forfeiture determination.” It concluded: “[H]aving prevented the State from conducting additional chemical analysis by eating the crack cocaine, Defendant has little grounds to complain about the trial court’s decision to admit the police officers’ testimony identifying the substance as crack cocaine based on visual inspection and the NIK test results.”

State v. Trogdon, __ N.C. App. __, __ S.E.2d __ (Sept. 20, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMzQ0LTEucGRm>). No plain error occurred when the trial court admitted expert medical testimony identifying the victim’s death as a homicide. Medical experts described the nature of the victim’s injuries and how those injuries had resulted in his death. Their testimony did not use the word "homicide" as a legal term of art but rather to explain that the victim’s death did not occur by accident. Neither witness provided evidence that amounted to a legal conclusion based on the facts; instead, they testified as to the factual mechanism that resulted in the victim’s death.

Criminal Offenses

Homicide

State v. Trogdon, __ N.C. App. __, __ S.E.2d __ (Sept. 20, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xMzQ0LTEucGRm>). There was sufficient evidence of malice to support a second-degree murder conviction. Based on expert testimony the jury could reasonably conclude that the child victim did not die from preexisting medical conditions or from a fall. The jury could find that while the victim was in the defendant’s sole custody, he suffered non-accidental injuries to the head with acute brain injury due to blunt force trauma of the head. The evidence would permit a finding that the victim suffered a minimum of four impacts to the head, most likely due to his head being slammed into some type of soft object. Combined with evidence that the defendant bit the victim, was upset about the victim’s mother’s relationship with the victim’s father, and that the defendant resented the victim, the jury could find that the defendant intentionally attacked the month-old child, resulting in his death.