

Criminal Procedure

Indictment Issues

State v. Fox, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNDg1LTEucGRm>). Because the defendant was never arraigned on a second indictment (that did not indicate that it was a superseding indictment), the second indictment did not supersede the first indictment.

Jury Argument

State v. Teague, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0zOS0xLnBkZg==>). In a case involving attempted murder and other charges, the prosecutor's reference to the victims as sheep and the defendant as a "predator" did not require the trial court to intervene ex mero motu. However, the court stated that comparisons between criminal defendants and animals are strongly disfavored.

Jury's Request to Review Evidence

State v. Garcia, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0yNjltMS5wZGY=>). The trial court properly exercised its discretion when denying the jury's request to review testimony. Although the trial court's statements to the jury indicate it thought that a review of that testimony was not possible (statements that normally suggest a failure to exercise discretion), the trial court had previously discussed with counsel the possibility of having the testimony read to the jury. The trial court was aware it had the ability to grant the request, but exercised its discretion in declining to do so.

Mistrial

State v. Hester, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0xOTAtMS5wZGY=>). In a case involving first-degree murder and other charges, the trial court did not err by denying the defendant's mistrial motion. On July 16th the trial court learned that while two jurors were leaving the courthouse the previous day after the verdict was rendered in the guilt phase, they saw and heard a man thought to be the defendant's brother, cursing and complaining about the trial. The two jurors informed the other jurors about this incident. On July 20th, the trial court learned that over the weekend juror McRae had discussed the trial with a spectator at the defendant's trial. The trial court removed McRae and replaced him with an alternate juror. The court concluded that there was no evidence of jury misconduct prior to or during deliberations as to guilt and that there was no prejudice as to sentencing because the defendant received a sentence of life imprisonment not death.

Sex Offenders

State v. Sims, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0xODctMS5wZGY=>). (1) The court rejected the defendant's argument that since no civil summons was issued, the trial court had no jurisdiction to impose SBM; the trial court had jurisdiction under G.S. 14-208.40A to order SBM. (2) The trial judge erroneously concluded that the defendant had a reportable conviction on grounds that

indecent liberties is an offense against a minor. However, since that offense is a sexually violent offense, no error occurred.

Evidence

Authentication

State v. Collins, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0yMDctMS5wZGY=>). The trial court did not err by admitting a videotape of a controlled buy as substantive evidence where the State laid a proper foundation for the videotape. The court rejected the defendant's argument that the State was required to proffer a witness to testify that the tape accurately depicted the events in question.

Crawford Issues

State v. Jackson, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMCOxMTM1LTEucGRm>). (1) In a child sexual assault case, the defendant's confrontation rights were not violated when the trial court permitted the child victim to testify by way of a one-way closed circuit television system. The court held that *Maryland v. Craig* survived *Crawford* and that the procedure satisfied *Craig's* procedural requirements. (2) The court also held that the child's remote testimony complied with the statutory requirements of G.S. 15A-1225.1.

Opinions

State v. McDonald, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0xMDQtMS5wZGY=>). (1) In a drug case, no plain error occurred when the trial court allowed the State's expert forensic chemist to testify as to the results of his chemical analysis of the substance in question. Through the expert's testimony as to his professional background and use of established forensic techniques, the State met its burden of establishing "indices of reliability," as contemplated in *Howerton*. The court noted that although the laboratory was not accredited the defendant provided no legal authority establishing that accreditation is required when the forensic chemist who conducted the analysis at issue testifies at trial. (2) The court rejected the defendant's argument that the expert's lab report was inadmissible under G.S. 8-58.20(b) because the lab was not accredited. That statutory provision is relevant only when the State seeks to have the report admitted without the testimony of the preparer.

State v. Collins, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0yMDctMS5wZGY=>). The trial court did not commit plain error by admitting an officer's lay opinion testimony identifying the defendant as the person depicted in a videotape. The defendant argued that the officer was in no better position than the jury to identify the defendant in the videotape. However, the officer had contact with the defendant prior to the incident in question; because he was familiar with the defendant, the officer was in a better position than the jury to identify defendant in the videotape.

Arrest, Search & Investigation

State v. Jones, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0xNDktMS5wZGY=>). The trial court's

admission of photo identification evidence did not violate the defendant's right to due process. The day after a break-in at her house, one of the victims, a high school student, became upset in school. Her mother was called to school and brought along the student's sister, who was also present when the crime occurred. After the student told the Principal about the incident, the Principal took the student, her sister and her mother into his office and showed the sisters photographs from the N.C. Sex Offender Registry website to identify the perpetrator. Both youths identified the perpetrator from one of the pictures. The mother then contacted the police and the defendant was eventually arrested. At trial, both youths identified the defendant as the perpetrator in court. The court rejected the defendant's argument that the Principal acted as an agent of the State when he showed the youths the photos, finding that his actions "were more akin to that of a parent, friend, or other concerned citizen offering to help the victim of a crime." Because the Principal was not a state actor when he presented the photographs, the defendant's due process rights were not implicated in the identification. Even if the Principal was a state actor and the procedure used was unnecessarily suggestive, the procedure did not give rise to a substantial likelihood of irreparable misidentification given the circumstances of the identification. Finally, because the photo identification evidence was properly admitted, the trial court also properly admitted the in-court identifications of defendant.

State v. Jordan, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNDMyLTEucGRm>). Because the defendant presented an incomplete record on appeal the court treated as binding the trial court's findings of fact regarding a suppression motion (at issue was a police interrogation; the trial court had reviewed a transcript and video of the interview; although portions of the transcript were inaudible, the video was not included in the record on appeal). The court went on to hold that the trial court's findings supported its conclusions of law that the defendant was fully informed and advised of his *Miranda* rights, fully understood those rights, and intelligently, voluntarily, and knowingly waived them.

State v. Garcia, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0yNjltMS5wZGY=>). The trial court did not err by denying the defendant's motion to suppress statements made while a search warrant was being executed. The defendant and his wife were present when the search warrant was executed. After handcuffing the defendant, an officer escorted him to a bathroom, read him *Miranda* rights, and questioned him about drug activities in the apartment. While this procedure was applied to the defendant's wife, an officer discovered a digital scale and two plastic bags of a white, powdery substance; the defendant then stated that the drugs were his not his wife's. The court rejected the defendant's argument that he was arrested when he was moved to the bathroom and read his rights, noting that the questioning occurred during the search.

Criminal Offenses

Acting in Concert

State v. Bowden, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0zMDUwZGY=>). The trial court did not err by dismissing charges of felony breaking or entering and felony larceny. The State presented evidence that an unknown man, who appeared to be concealing his identity, was seen walking around the victim's yard carrying property later determined to have been taken from the victim's home. The man fled when he saw officers and was never apprehended or identified. The defendant was also seen in the yard, but was never seen entering or leaving the home or carrying any stolen property. Although

the defendant also fled from officers, no evidence linked him to the unknown man. The defendant's presence in the yard and his flight was insufficient evidence of acting in concert.

Homicide

State v. Teague, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0zOS0xLnBkZg==>). There was sufficient evidence of an intent to kill when among other things, the defendant attacked the sleeping victims, stabbing them in their throats.

Sexual Assaults & Related Crimes

State v. Sims, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0xODctMS5wZGY=>). In an indecent liberties case, the evidence was sufficient to establish that the defendant engaged in conduct for the purpose of arousing or gratifying sexual desire. While at a store, the defendant crouched down to look at the victim's legs, "fell into" the victim, wrapping his hands around her, and kneeled down, 6-8 inches away from her legs. Other evidence showed that he had asked another person if he could hug her legs and that he admitted to being obsessed with women's legs.

State v. Fox, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0yNzMtMS5wZGY=>). In a case involving a sex offender's failure to give notice of an address change, the court held that the evidence was sufficient to establish that the defendant changed his address. Among other things, a neighbor at the new address testified that the defendant stayed in an upstairs apartment every day and evening. Although the defendant claimed that he had not moved from his father's address, his father told an officer that the defendant did not live there any longer.

Stalking

State v. Fox, __ N.C. App. __, __ S.E.2d __ (Oct. 4, 2011) (<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMCOxNDg1LTEucGRm>). The defendant's right to be protected from double jeopardy was violated when, after being convicted of felony stalking, he was again charged and convicted of that crime. Because the time periods of the "course of conduct" for both indictments overlapped, the same acts could result in a conviction under either indictment. Also, in the second trial the State introduced evidence that would have established stalking during the overlapping time period.