

Criminal Procedure

Motion to Dismiss

State v. Patel, __ N.C. App. __, __ S.E.2d __ (Nov. 15, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0xNTY0LTEucGRm>). In a first-degree murder case, the trial court did not err by denying the defendant's motion to dismiss on grounds of insufficiency of the evidence where the State produced evidence of motive, opportunity, and means as well as admissions by the defendant.

Arrest, Search & Investigation

Vehicle Stops

State v. Otto, __ N.C. App. __, __ S.E.2d __ (Nov. 15, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0xODktMS5wZGY=>). In an impaired driving case, the court held, over a dissent, that the officer lacked reasonable suspicion for the stop. At 11 pm, the officer noticed the defendant weaving from the center line to the fog line; the defendant's vehicle did not leave the roadway or cross the center line, nor did the defendant commit any additional traffic violations. The officer initiated a stop after following the defendant for approximately 3/4 of a mile. When the officer initially observed the defendant, she was approximately 1/2 mile from the Rock Springs Equestrian Club, a private club, and was coming from the direction of the club. The officer was aware that a banquet was being held at the club that evening; although the officer did not know if alcohol would be served at the club that evening, the officer had heard alcohol was served at other club events. The court held that the trial court's finding that the officer knew that the club served alcohol was not supported by the evidence. The officer never testified to this fact and because the club didn't regularly serve alcohol, there was no basis for the officer to presume that alcohol was served that evening. The court also held that the trial court erred in concluding that the officer had a reasonable, articulable suspicion for stopping the defendant's vehicle, stating: "Without any additional circumstances giving rise to a reasonable suspicion that criminal activity is afoot, stopping a vehicle for weaving is unreasonable."

Criminal Offenses

Participants in Crime

State v. Surratt, __ N.C. App. __, __ S.E.2d __ (Nov. 15, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS00MjgtMS5wZGY=>). (1) The trial court did not err by instructing the jury that it could find the defendant guilty of second-degree burglary under a theory of accessory before the fact, aiding and abetting, or acting in concert. The separate theories were not separate offenses, but rather merely different methods by which the jury could find the defendant guilty. (2) By enacting G.S. 14-5.2 the General Assembly did not abolish the theory of accessory before the fact; the statute merely abolished the distinction between an accessory before the fact and a principal, meaning that a person who is found guilty as an accessory before the fact should be convicted as a principal to the crime.

General Crimes

State v. Surratt, __ N.C. App. __, __ S.E.2d __ (Nov. 15, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS00MjgtMS5wZGY=>). The trial court

erred in failing to arrest judgment on the defendant's conviction for accessory after the fact to second-degree burglary. A defendant cannot be both a principal and an accessory to the same crime.

Weapons Offenses

Baysden v. North Carolina, __ N.C. App. __, __ S.E.2d __ (Nov. 15, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS0zOTUtMS5wZGY=>). Over a dissent, the court applied the analysis of *Britt* and *Whitaker* and held that the felon in possession of a firearm statute was unconstitutional as applied to the plaintiff. The plaintiff was convicted of two felony offenses, neither of which involved violent conduct, between three and four decades ago. Since that time he has been a law-abiding citizen. After his firearms rights were restored, the plaintiff used firearms in a safe and lawful manner. When he again became subject to the firearms prohibition because of a 2004 amendment, he took action to ensure that he did not unlawfully possess any firearms and has "assiduously and proactively" complied with the statute since that time. Additionally, the plaintiff was before the court not on a criminal charge for weapons possession but rather on his declaratory judgment action. The court concluded: "[W]e are unable to see any material distinction between the facts at issue in . . . *Britt* and the facts at issue here." The court rejected the argument that the plaintiff's claim should fail because 2010 amendments to the statute expressly exclude him from the class of individuals eligible to seek restoration of firearms rights; the court found this fact irrelevant to the *Britt/Whitaker* analysis. The court also rejected the notion that the determination as to whether the plaintiff's prior convictions were nonviolent should be made with reference to statutory definitions of nonviolent felonies, concluding that such statutory definitions did not apply in its constitutional analysis. Finally, the court rejected the argument that the plaintiff's challenge must fail because unlike the plaintiff in *Britt*, the plaintiff here had two prior felony convictions. The court refused to adopt a bright line rule, instead concluding that the relevant factor is the number, age, and severity of the offenses for which the litigant has been convicted; while the number of convictions is relevant, it is not dispositive.

State v. Surret, __ N.C. App. __, __ S.E.2d __ (Nov. 15, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS00MjgtMS5wZGY=>). The trial court erred in convicting the defendant of two counts of possession of a stolen firearm under G.S. 14-71.1. It stated: "While defendant did possess the two separate stolen firearms, we hold that defendant may not be convicted on separate counts for each firearm possessed."

Defenses

Voluntary Intoxication

State v. Surret, __ N.C. App. __, __ S.E.2d __ (Nov. 15, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMS00MjgtMS5wZGY=>). Although the State presented evidence that the defendant smoked crack, there was no evidence regarding the crack cocaine's effect on the defendant's mental state and thus the trial court did not commit plain error in failing to instruct the jury on the defense of voluntary intoxication.