

Criminal Procedure

Jury Deliberations

State v. Starr, __ N.C. __, __ S.E.2d __ (Dec. 9, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS82NFBBMTetMS5wZGY=>). The court modified and affirmed a decision of the court of appeals in *State v. Starr*, __ N.C. App. __, 703 S.E.2d 876 (Jan. 4, 2011) ((1) although the trial judge did not explicitly state that he was denying, in his discretion, the jury's request to review testimony, the judge instructed the jurors to rely on their recollection of the evidence that they heard and therefore properly exercised its discretion in denying the request and (2) when defense counsel consents to the trial court's communication with the jury in a manner other than in the courtroom, the defendant waives his right to appeal the issue; here, although the trial judge failed to bring the jurors to the courtroom in response to their request to review testimony and instead instructed them from the jury room door, prior to doing so he asked for and received counsel's permission to instruct at the jury room door). The supreme court determined that the trial court violated G.S. 15A-1233(a) by failing to exercise its discretion in deciding whether to allow the jury to review testimony. The court noted that as a general rule, when the trial court gives no reason for a ruling that must be discretionary, it is presumed that the court exercised its discretion. However, when the trial court's statements show that it did not exercise discretion, the presumption is overcome. Here, the court determined, trial court's statement that "we don't have the capability . . . so we cannot provide you with that" overcomes the presumption the court exercised its discretion. However, the court found that the error was not prejudicial. The court provided the following guidance to trial court judges to ensure compliance with G.S. 15A-1233(a): The trial court must exercise its discretion to determine whether the transcript should be made available to the jury but it is not required to state a reason for denying access to the transcript. The court explained that the trial judge may simply say, "In the exercise of my discretion, I deny the request," and instruct the jury to rely on its recollection of the trial testimony.

Evidence

State v. Nabors, __ N.C. __, __ S.E.2d __ (Dec. 9, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS80NzIQQTewLTEucGRm>). The court reversed a decision by the court of appeals in *State v. Nabors*, __ N.C. App. __, 700 S.E.2d 153 (Oct. 19, 2010) (the trial court erred by denying the defendant's motion to dismiss drug charges when the evidence that the substance at issue was crack cocaine consisted of lay opinion testimony from the charging police officer and an undercover informant based on visual observation; the court held that *State v. Ward*, 364 N.C. 133 (2010), calls into question "the continuing viability" of *State v. Freeman*, 185 N.C. App. 408 (2007) (officer can give a lay opinion that substance was crack cocaine), and requires that in order to prove that a substance is a controlled substance, the State must present expert witness testimony based on a scientifically valid chemical analysis and not mere visual inspection). The supreme court declined to address whether the trial court erred in admitting lay testimony that the substance at issue was crack cocaine, instead concluding that the testimony by the defendant's witness identifying the substance as cocaine was sufficient to withstand the motion to dismiss.

Criminal Offenses

State v. Slaughter, __ N.C. __, __ S.E.2d __ (Dec. 9, 2011)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMS8yNThBMTEtMS5wZGY=>). For the reasons stated in the dissenting opinion below, the court reversed a decision by the court of appeals in *State v.*

Slaughter, __ N.C. App. __, 710 S.E.2d 377 (May 17, 2011)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC04NDQtMS5wZGY=>). The court of appeals had held, over a dissent, that there was sufficient evidence of constructive possession of marijuana. The dissenting judge had noted that the evidence showed only that the defendant and two others were detained by a tactical team and placed on the floor of a 10-by-15 foot bedroom in the back of the mobile home, which had a pervasive odor of marijuana; inside the bedroom, police found, in plain view, numerous bags containing marijuana, approximately \$38,000 in cash, several firearms, a grinder, and a digital scale; stacks of \$20 and \$100 bills, plastic sandwich baggies, and marijuana residue were found in the bathroom adjoining the bedroom. The dissenter noted that there was no evidence of the defendant's proximity to the contraband prior to being placed on the floor, after being placed on the floor, or relative to the other two individuals detained in the room. Having concluded that the evidence was insufficient as to proximity, the dissenting judge argued that mere presence in a room where contraband is located does not itself support an inference of constructive possession. The dissenting judge further concluded that the fact that the contraband was in plain view did not "take this case out of the realm of conjecture." He asserted: "The contraband being in plain view suggests that defendant knew of its presence, but there is no evidence — and the majority points to none — indicating that defendant had the intent and capability to maintain control and dominion over it." (quotation omitted).

Motion for Appropriate Relief

State v. Williamson, __ N.C. __, __ S.E.2d __ (Dec. 9, 2011). The court vacated and remanded an opinion by the court of appeals in *State v. Williamson*, __ N.C. App. __, 698 S.E.2d 727 (Sept. 7, 2010) (over a dissent, the court rejected the defendant's argument that the trial court erred by failing to enter a written order with findings of fact and conclusions of law when denying the defendant's MAR; the trial court's oral order, containing findings of fact and conclusions of law and appearing in the transcript, was sufficient). The court noted that during review it became apparent that a written order actually was entered by the trial court, the existence of which apparently was not known to appellate counsel. The court remanded to the court of appeals to determine: (1) whether to amend the record on appeal under the appellate rules to permit consideration of the order; (2) whether to order new briefs and/or oral arguments in light of its ruling on item (1) above; (3) whether to address defendant's issues on the merits; and (4) whether to enter any other or further relief as it may deem appropriate.