

Criminal Procedure

Discovery Issues

State v. Aguilar-Ocampo, __ N.C. App. __, __ S.E.2d __ (Mar. 20, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMTYwLTEucGRm>). In a case in which the State conceded that a translator testified as an expert, the trial court erred by failing to recognize the State's violation of the discovery rules in G.S. 15A-903(a)(2). However, on the facts presented, the trial court did not abuse its discretion by refusing to exclude the evidence. The translator had translated a conversation occurring in a van and pertaining to a drug transaction. Among other things, the translator testified to where a speaker was sitting based on "tonal quality of the voice."

Sentencing

State v. Oakes, __ N.C. App. __, __ S.E.2d __ (Mar. 20, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS00MTgtMS5wZGY=>). The trial court did not err by considering the seriousness of the offense when exercising its discretion to choose a minimum term within the presumptive range.

Evidence

***Crawford* Issues**

State v. Weathers, __ N.C. App. __, __ S.E.2d __ (Mar. 20, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMTMyLTEucGRm>). The trial court properly applied the forfeiture by wrongdoing exception to the *Crawford* rule. At the defendant's trial for first-degree murder and kidnapping, an eyewitness named Wilson was excused from testifying further after becoming distraught on the stand. The trial court determined that Wilson's testimony would remain on the record under the forfeiture by wrongdoing exception and denied the defendant's motion for a mistrial. At a hearing on the issue Wilson disclosed that, as they were being transported to the courthouse for trial, the defendant threatened to kill Wilson and his family. A detention officer testified that she heard the threat. Also, in a taped interview with detectives and prosecutors, Wilson repeatedly expressed concern for his life and the lives of his family members. Finally, the defendant made several phone calls that showing an intent to intimidate Wilson. In one call to his grandmother, the defendant repeatedly referred to Wilson as "nigger" and said he would "straighten this nigger out". During the phone calls, the defendant joked about the "slick moves" he used to prevent Wilson from testifying. In other calls, the defendant instructed acquaintances to come to court to intimidate Wilson while he was testifying. One of those acquaintances said he would be in court on the morning of 2 March 2011. On that date, Wilson, who already had been hesitant and fearful on the stand, became even more emotional and "broke down" upon seeing a young man dressed in street clothes indicative of gang attire enter the courtroom. These facts were sufficient to establish that the defendant intended to and did intimidate Wilson. The court rejected the defendant's argument that application of the doctrine was improper because Wilson never testified that he chose to remain silent out of fear of the defendant. The court stated: "It would be nonsensical to require that a witness testify against a defendant in order to establish that the defendant has intimidated the witness into not testifying. Put simply, if a witness is afraid to testify against a defendant in regard to the crime charged, we believe that witness will surely be afraid to finger the defendant for having threatened the witness, itself a criminal offense."

Relevance

State v. Oakes, __ N.C. App. __, __ S.E.2d __ (Mar. 20, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS00MTgtMS5wZGY=>). The trial court committed plain error during the habitual felon phase of a trial by admitting into evidence plea transcripts for the defendant's prior felony convictions without redacting irrelevant information pertaining to the defendant's prior drug use, mental health counseling, and lenient sentencing. However, no prejudicial error occurred. The court expressly declined to determine whether admission of the transcripts violated G.S. 15A-1025. [Author's note: For a discussion of that statute, see my chapter on that topic in the new superior court judges' benchbook: <http://www.sog.unc.edu/node/2194>]

Arrest, Search & Investigation

Vehicle Stops and Detentions

State v. Fisher, __ N.C. App. __, __ S.E.2d __ (Mar. 20, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS05ODAtMS5wZGY=>). The trial court erred by concluding that an officer lacked reasonable suspicion to detain the defendant beyond the scope of a routine traffic stop. The officer lawfully stopped the vehicle for a seatbelt violation but then extended the detention for arrival of a canine unit. The State argued that numerous factors established reasonable suspicion that the defendant was transporting contraband: an overwhelming odor of air freshener in the car; the defendant claimed to have made a five hour round trip to go shopping but had not purchased anything; the defendant was nervous; the defendant had pending drug charges and was known as a distributor of marijuana and cocaine; the defendant was driving in a pack of cars; the car was registered to someone else; the defendant never asked why he had been stopped; the defendant was "eating on the go"; and a handprint indicated that something recently had been placed in the trunk. Although the officer did not know about the pending charges until after the canine unit was called, the court found this to be a relevant factor. It reasoned: "The extended detention of defendant is ongoing from the time of the traffic citation until the canine unit arrives and additional factors that present themselves during that time are relevant to why the detention continued until the canine unit arrived." Even discounting several of these factors that might be indicative of innocent behavior, the court found that other factors--nervousness, the smell of air freshener, inconsistency with regard to travel plans, driving a car not registered to the defendant, and the pending charges--supported a finding that reasonable suspicion existed.

Criminal Offenses

Drugs

State v. Aguilar-Ocampo, __ N.C. App. __, __ S.E.2d __ (Mar. 20, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMTYwLTUucGRm>). The trial court did not err by declining to give the defendant's proposed jury instruction on the element that the defendant acted "knowingly." The instructions given by the trial court adequately contained the substance of the defendant's proposed instruction. Specifically, it instructed the jury that in order to possess or sell cocaine, the defendant must have been aware of its presence and have had the power and intent to control its distribution or use. These instructions effectively inform the jury that the defendant must have had knowledge of the substance and the crime being committed, and he must have intentionally and voluntarily participated in the crime.