

Criminal Procedure

Sentencing

State v. Morston, __ N.C. App. __, __ S.E.2d __ (July 3, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0xMzMtMS5wZGY=>). (1) The trial court properly conducted a de novo review on resentencing, even though the defendant was sentenced to the same term that he received at the original sentencing hearing. (2) At a resentencing during which new evidence was presented, the trial court did not err by failing to find a mitigating factor of limited mental capacity, a factor that had been found at the first sentencing hearing. (3) The trial court did not abuse its discretion by finding that one aggravating factor outweighed six mitigating factors.

Evidence

Opinions

State v. Huerta, __ N.C. App. __, __ S.E.2d __ (July 3, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xNDxLTEucGRm>). In a case in which the defendant was convicted of trafficking in more than 400 grams of cocaine, the trial court did not err by allowing the State's expert to testify that the substance was cocaine where the expert combined three separate bags into one bag before testing the substance. After receiving the three bags, the expert performed a preliminary chemical test on the material in each bag. The test showed that the material in each bag responded to the reagent in exactly the same manner. She then consolidated the contents of the three bags into a single mixture, performed a definitive test, and determined that the mixture contained cocaine. The defendant argued that because the expert combined the substance in each bag before performing the definitive test, she had no basis for opining that each bag contained cocaine, that all of the cocaine could have been contained in the smallest of the bags, and thus that he could have only been convicted of trafficking in cocaine based upon the weight of cocaine in the smallest of the three bags. Relying on *State v. Worthington*, 84 N.C. App. 150 (1987), and other cases, the court held that the jury should decide whether the defendant possessed the requisite amount of cocaine and that speculation concerning the weight of the substance in each bag did not render inadmissible the expert's testimony that the combined mixture had a specific total weight.

Privileges

Mosteller v. Stiltner, __ N.C. App. __, __ S.E.2d __ (July 3, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi04OS0xLnBkZg==>). Because the social worker-patient privilege belongs to the patient alone, a social worker did not have standing to appeal an order compelling her comply with a subpoena where the patient never asserted the privilege. In this civil action the court found that the record and the patient's failure to participate in the appeal showed that the patient had raised no objection to the social worker's testimony or document production.

Relevancy

State v. Huerta, __ N.C. App. __, __ S.E.2d __ (July 3, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xNDxLTEucGRm>). In a drug trafficking and maintaining a dwelling case, evidence that a handgun and ammunition were found in the defendant's home was relevant to both charges.

Arrest, Search & Investigation

Seizure

State v. Harwood, __ N.C. App. __, __ S.E.2d __ (July 3, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xNTEzLTEucGRm>). The defendant was seized when officers parked directly behind his stopped vehicle, drew their firearms, and ordered the defendant and his passenger to exit the vehicle. After the defendant got out of his vehicle, an officer put the defendant on the ground and handcuffed him.

Anonymous Tips

State v. Harwood, __ N.C. App. __, __ S.E.2d __ (July 3, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xNTEzLTEucGRm>). No reasonable and articulable suspicion supported seizure of the defendant made as a result of an anonymous tip. When evaluating an anonymous tip in this context, the court must determine whether the tip taken as a whole possessed sufficient indicia of reliability. If not, the court must assess whether the anonymous tip could be made sufficiently reliable by independent corroboration. The tip at issue reported that the defendant would be selling marijuana at a certain location on a certain day and would be driving a white vehicle. The court held that given the limited details contained in the tip and the failure of the officers to corroborate its allegations of illegal activity, the tip lacked sufficient indicia of reliability.

Criminal Offenses

Drug Offenses

State v. Huerta, __ N.C. App. __, __ S.E.2d __ (July 3, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xNDxLTEucGRm>). (1) In this drug trafficking case the court held that there was sufficient evidence to support a finding of constructive possession of cocaine. Police had previously received a tip that drug sales were occurring at the home where the drugs were found; police later received similar information in connection with a DEA investigation; when officers went to the home the defendant admitted living there with his wife and children for three years, the defendant had a pistol, which he admitted having purchased illegally, ammunition, and more than \$9,000.00 in cash in his closet; the defendant had more than \$2,000 in cash on his person; almost 2 kilograms of powder cocaine worth more than \$50,000 were found within easy reach of an opening leading from the hallway area to the attic; and the home small and had no residents other than the defendant and his family. (2) There was sufficient evidence to support a conviction of maintaining a dwelling. The defendant argued that there was insufficient evidence that he knew about

the drugs found in the home. However, the court held that its conclusion that he constructively possessed the drugs resolved that issue in favor of the State.