

Criminal Procedure

Indictment Issues

State v. Comeaux, __ N.C. App. __, __ S.E.2d __ (Dec. 31, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMjg5LTEucGRm>). Five indecent liberties indictments were sufficient where they were couched in the language of the statute and specified different and non-overlapping time frames. The court rejected the defendant's argument that the indictments were insufficient because they included "non-specific allegations."

Jury Verdict

State v. Comeaux, __ N.C. App. __, __ S.E.2d __ (Dec. 31, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMjg5LTEucGRm>). In a case involving five counts of indecent liberties, no unanimity issue arose where the trial court framed the jury instructions in terms of the statutory requirements and referenced the indictments, each of which specified a different, non-overlapping time frame. The trial court's instructions distinguished among the five charges, directed the jurors to find the defendant guilty on each count only if they found that he committed the requisite acts within the designated time period, and each verdict sheet was paired with a particular indictment.

Arrest, Search & Investigation

Search Warrants

State v. Oates, __ N.C. App. __, __ S.E.2d __ (Dec. 31, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMC03MjUtMi5wZGY=>). Reversing the trial court, the court held that probable cause supported issuance of a search warrant to search the defendant's residence. Although the affidavit was based on an anonymous caller, law enforcement corroborated specific information provided by the caller so that the tip had a sufficient indicia of reliability. Additionally, the affidavit provided a sufficient nexus between the items sought and the residence to be searched. Finally, the court held that the information was not stale.

Criminal Offenses

Participants

State v. Grainger, __ N.C. App. __, __ S.E.2d __ (Dec. 31, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00NDQtMS5wZGY=>). In a non-capital first-degree murder case, the trial court erred by denying the defendant's request for a jury instruction on accessory before the fact to murder where the defendant was neither actually nor constructively present at the murder scene. A defendant who is guilty as an accessory before the fact to a capital felony on the basis of the uncorroborated testimony of a co-conspirator only can be punished as a Class B2 felon. The court held that the defendant was convicted of a "capital felony" even though the case was non-capital. It went on to hold that because the trial court did not submit a special issue to the jury

as to whether the defendant was convicted on the uncorroborated testimony of a co-conspirator, prejudicial error occurred. It stated: "Failure to submit this issue to the jury results in prejudicial error as there is no record of whether the jury viewed the testimony of the 'principals, coconspirators, or accessories to the crime' as uncorroborated."

Sex Offenders

State v. Daniels, __ N.C. App. __, __ S.E.2d __ (Dec. 31, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00MTctMS5wZGY=>). (1) G.S. 14-208.18(a)(1)-(3) creates three separate and distinct criminal offenses. (2) Although the defendant did not have standing to assert that G.S. 14-208.18(a)(3) was facially invalid, he had standing to raise an as applied challenge. (3) G.S. 14-208.18(a)(3), which prohibits a sex offender from being "at any place" where minors gather for regularly scheduled programs, was unconstitutionally vague as applied to the defendant. The defendant's two charges arose from his presence at two public parks. The State alleged that on one occasion he was "out kind of close to the parking lot area or that little dirt road area[,] between the ballpark and the road and on the second was at an "adult softball field" adjacent to a "tee ball" field. The court found that on these facts, the portion of G.S. 14-208.18(a)(3), prohibiting presence "at any place," was unconstitutionally vague as applied to the defendant because it fails to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, and it fails to provide explicit standards for those who apply the law. (4) The trial court lacked jurisdiction to rule that G.S. 14-208.18(a)(2) was unconstitutional where the defendant only was charged with a violation of G.S. 14-208.18(a)(3) and those provisions were severable.

Judicial Administration

Closing the Courtroom

State v. Comeaux, __ N.C. App. __, __ S.E.2d __ (Dec. 31, 2012)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMS0xMjg5LTEucGRm>). The trial court did not violate the defendant's constitutional right to a public trial under *Waller v. Georgia* by closing the courtroom during a sexual abuse victim's testimony where the State advanced an overriding interest that was likely to be prejudiced; the closure of the courtroom was no broader than necessary to protect the overriding interest; the trial court considered reasonable alternatives to closing the courtroom; and the trial court made findings adequate to support the closure.