

## **Criminal Procedure**

### **Motions to Dismiss**

*State v. Carver*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Jan. 25, 2013)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMy8zMDFBMTItMS5wZGY=>). The court per curiam affirmed *State v. Carver*, \_\_ N.C. App. \_\_, 725 S.E.2d 902 (June 5, 2012), in which the court of appeals held, over a dissent, that there was sufficient evidence that the defendant perpetrated the murder. The State's case was entirely circumstantial. Evidence showed that at the time the victim's body was discovered, the defendant was fishing not far from the crime scene and had been there for several hours. Although the defendant repeatedly denied ever touching the victim's vehicle, DNA found on the victim's vehicle was, with an extremely high probability, matched to him. The court of appeals found *State v. Miller*, 289 N.C. 1 (1975), persuasive, which it described as holding "that the existence of physical evidence establishing a defendant's presence at the crime scene, combined with the defendant's statement that he was never present at the crime scene and the absence of any evidence that defendant was ever lawfully present at the crime scene, permits the inference that the defendant committed the crime and left the physical evidence during the crime's commission." The court of appeals rejected the defendant's argument that the evidence was insufficient given that lack of evidence regarding motive.

## **Criminal Offenses**

### **Weapons**

*Baysden v. State*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (Jan. 25, 2013)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMy81MjJBMTItMS5wZGY=>). With one justice taking no part in consideration of the case, an equally divided court left undisturbed the following opinion below, which stands without precedential value:

*Baysden v. North Carolina*, \_\_ N.C. App. \_\_, 718 S.E.2d 699 (Nov. 15, 2011). Over a dissent, the court of appeals 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 of appeals 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.