

Criminal Procedure

Preserving Issues for Appeal

[State v. Howard](#), __ N.C. App. __, __ S.E.2d __ (June 18, 2013). Over a dissent, the court dismissed the defendant's appeal where the defendant objected to the challenged evidence at trial under Rule 403 but on appeal argued that it was improper under Rule 404(b). The court stated: "A defendant cannot 'swap horses between courts in order to get a better mount[.]'" The dissenting judge believed that the defendant preserved his argument and that the evidence was improperly admitted.

Evidence

Relevancy

[State v. Garcia](#), __ N.C. App. __, __ S.E.2d __ (June 18, 2013). The trial court did not commit plain error by failing to redact portions of a transcript of the defendant's interrogation where the challenged statements were relevant. The court rejected the defendant's argument that the trial court should have redacted statements made by the detective, finding that they provided context for the defendant's responses. The court also rejected the defendant's argument that the detective's statements during the interrogation that the defendant was lying constituted improper opinion testimony on the defendant's credibility and that of the State's witnesses.

Arrest Search and Investigation

Protective Sweep

[State v. Dial](#), __ N.C. App. __, __ S.E.2d __ (June 18, 2013). The trial court did not err by denying the defendant's motion to suppress evidence discovered as a result of a protective sweep of his residence where the officers had a reasonable belief based on specific and articulable facts that the residence harbored an individual who posed a danger to the officers' safety. Officers were at the defendant's residence to serve an order for arrest. Although the defendant previously had answered his door promptly, this time he did not respond after an officer knocked and announced his presence for 10-15 minutes. The officer heard shuffling on the other side of the front door. When two other officers arrived, the first officer briefed them on the situation, showed them the order for arrest, and explained his belief that weapons were inside. When the deputies again approached the residence, "the front door flew open," the defendant exited and walked down the front steps with his hands raised, failing to comply with the officers' instructions. As soon as the first officer reached the defendant, the other officers entered the home and performed a protective sweep, lasting about 30 seconds. Evidence supporting the protective sweep included that the officers viewed the open door to the residence as a "fatal funnel" that could provide someone inside with a clear shot at the officers, the defendant's unusually long response time and resistance, the known potential threat of weapons inside the residence, shuffling noises that could have indicated more than one person inside the residence, the defendant's alarming exit from the residence, and the defendant's own actions that led him to be arrested in the open doorway.

Vehicle Stops

[State v. Coleman](#), __ N.C. App. __, __ S.E.2d __ (June 18, 2013). An officer lacked reasonable suspicion to stop the defendant's vehicle. A "be on the lookout" call was issued after a citizen caller reported that there was a cup of beer in a gold Toyota sedan with license number VST-8773 parked at the Kangaroo gas station at the corner of Wake Forest Road and Ronald Drive. Although the complainant wished to remain anonymous, the communications center obtained the caller's name as Kim Creech. An officer responded and observed a vehicle fitting the caller's description. The officer followed the driver as he pulled out of the lot and onto Wake Forest Road and then pulled him over. The officer did not observe any traffic violations. After a test indicated impairment, the defendant was charged with DWI. Noting that the officer's sole reason for the stop was Creech's tip, the court found that the tip was not reliable in its assertion of illegality because possessing an open container of alcohol in a parking lot is not illegal. It concluded: "Accordingly, Ms. Creech's tip contained no actual allegation of criminal activity." It further found that the officer's mistaken belief that the tip included an actual allegation of illegal activity was not objectively reasonable. Finally, the court concluded that even if the officer's mistaken belief was reasonable, it still would find the tip insufficiently reliable. Considering anonymous tip cases, the court held that although Creech's tip provided the license plate number and location of the car, "she did not identify or describe defendant, did not provide any way for [the] Officer . . . to assess her credibility, failed to explain her basis of knowledge, and did not include any information concerning defendant's future actions."