

Criminal Procedure

Discovery

[State v. Cooper](#), __ N.C. App. __, __ S.E.2d __ (Sept. 3, 2013). (1) In this murder case, the trial court abused its discretion by excluding, as a discovery sanction, testimony by defense expert Masucci. The defendant offered Masucci after the trial court precluded the original defense expert, Ward, from testifying that key incriminating computer files had been planted on the defendant's computer. The State made no pretrial indication that it planned to challenge Ward's testimony. At trial, the defendant called Ward to testify that based upon his analysis of the data recovered from the defendant's laptop, tampering had occurred with respect to the incriminating files found on the defendant's computer. The State successfully moved to exclude this testimony on the basis that Ward was not an expert in computer forensic analysis. The defendant then quickly located Masucci, an expert in computer forensic analysis, to provide the testimony Ward was prevented from giving. The State then successfully moved to exclude Masucci as a sanction for violation of discovery rules. The only State's evidence directly linking the defendant to the murder was the computer file evidence. Even if the defendant violated the discovery rules, the trial court abused its discretion with respect to the sanction imposed and violated the defendant's constitutional right to present a defense. (2) The trial court erred by failing to conduct an in camera inspection of discovery sought by the defense regarding information related to FBI analysis of the computer files. The trial court found that FBI information was used in counterterrorism and counterintelligence investigations and that disclosure would be contrary to the public interest. The court held that the trial court's failure to do an in camera review constituted a violation of due process. It instructed that on remand, the trial court "must determine with a reasonable degree of specificity how national security or some other legitimate interest would be compromised by discovery of particular data or materials, and memorialize its ruling in some form allowing for informed appellate review."

Indictment Issues

[State v. Gilbert](#), __ N.C. App. __, __ S.E.2d __ (Sept. 3, 2013). (1) A short form indictment under G.S. 15-144.1 was sufficient to charge the defendant with attempted statutory rape of a 13, 14, or 15 year old. The defendant had argued that the statutory short form does not apply to an indictment alleging statutory rape of a 13 year old. (2) The indictment conformed to the requirements of G.S. 15-144.1 even though it failed to allege that the act occurred "by force and against her will" or that the defendant attempted to "ravish and carnally know" the victim.

Jury Instructions

[State v. Gaston](#), __ N.C. App. __, __ S.E.2d __ (Sept. 3, 2013). In this murder case, the trial court did not err by denying the defendant's request for jury instructions on self-defense and voluntary manslaughter. The defendant's theory of the case was that the gun went off accidentally. Additionally, there was no evidence that the defendant in fact formed a belief that it was necessary to kill his adversary in order to protect himself from death or great bodily harm.

Evidence

Rule 403

[*State v. Cooper*](#), __ N.C. App. __, __ S.E.2d __ (Sept. 3, 2013). In this murder case, the trial court committed reversible error by excluding, under Rule 403, testimony by a defense expert that certain key incriminating computer files had been planted on the defendant's computer. Temporary internet files recovered from the defendant's computer showed that someone conducted a Google Map search on the laptop while it was at the defendant's place of work the day before the victim was murdered. The Google Map search was initiated by someone who entered the zip code associated with the defendant's house, and then moved the map and zoomed in on the exact spot on near a nearby road where the victim's body later was found.

Opinions

[*State v. Cooper*](#), __ N.C. App. __, __ S.E.2d __ (Sept. 3, 2013). In this murder case, the trial court committed reversible error by ruling that the defendant's expert was not qualified to give expert testimony that incriminating computer files had been planted on the defendant's computer. Temporary internet files recovered from the defendant's computer showed that someone conducted a Google Map search on the laptop while it was at the defendant's place of work the day before the victim was murdered. The Google Map search was initiated by someone who entered the zip code associated with the defendant's house, and then moved the map and zoomed in on the exact spot on near a nearby road where the victim's body later was found. Applying the old version of NC Evidence Rule 702 and the *Howerton* test, the court found that the trial court erred by concluding that the defendant's expert was not qualified to offer the relevant expert testimony. It went on to conclude that this error deprived the defendant of his constitutional right to present a defense.

Arrest Search and Investigation

[*State v. Verkerk*](#), __ N.C. App. __, __ S.E.2d __ (Sept. 3, 2013). (1) A seizure occurred when the defendant stopped her vehicle after a fire truck following behind her flashed its red lights and activated its siren. The fireman took this action after observing the defendant, among other things, weave out of her lane of traffic and almost hit a passing bus. (2) The court remanded to the trial court for findings of fact and conclusions of law regarding whether the fireman was acting as a state agent or a private person when the seizure occurred. (3) Whether the fireman lacked the statutory authority to stop the defendant's vehicle is irrelevant to whether the stop violated the Fourth Amendment. The court noted that the US Supreme Court has consistently applied traditional standards of reasonableness to searches or seizures effectuated by government actors who lack state law authority to act as law enforcement officers. Thus, if on remand the trial court determines that the fireman was a government actor, it should then determine whether the stop was constitutionally permissible by determining whether the stop was supported by reasonable articulable suspicion. (4) The trial court erred by holding that the fireman's stop was justified under G.S. 15A-404, which allows for a citizen's arrest when there is probable cause that certain crimes have been committed. Although reasonable suspicion may have supported a stop in

this case, the evidence did not support a finding of probable cause. (5) If on remand the trial court finds that the stop was illegal, it should address whether evidence stemming from the defendant's later arrest by the police is admissible under the inevitable discovery and independent source doctrines. One judge concurred in part and dissented in part. This judge concurred with the conclusion that that stop was a seizure and that the fireman was not authorized to stop the defendant under G.S. 15A-404. He dissented however because he found that the fireman was a state actor and that the stop violated the NC Constitution.