

Criminal Procedure

Appellate Issues

[State v. Hester](#), __ N.C. __, __ S.E.2d __ (Oct. 4, 2013). The court per curiam affirmed the decision below, *State v. Hester*, __ N.C. App. __, 736 S.E.2d 571 (Dec. 18, 2012), which had held, over a dissent, that the defendant's first asserted issue must be dismissed because although he argued plain error, he failed provide an analysis of the prejudicial impact of the challenged evidence.

Double Jeopardy

[State v. McKenzie](#), __ N.C. __, __ S.E.2d __ (Oct. 4, 2013). For the reasons stated in the dissenting opinion below, the court reversed *State v. McKenzie*, __ N.C. App. __, 736 S.E.2d 591 (Jan. 15, 2013), which had held, over a dissent, that prosecuting the defendant for DWI violated double jeopardy where the defendant previously was subjected to a one-year disqualification of his commercial driver's license under G.S. 20-17.4.

Indictment Issues

[State v. McDaris](#), __ N.C. __, __ S.E.2d __ (Oct. 4, 2013). The court per curiam affirmed the unpublished decision of a divided panel of the court of appeals in *State v. McDaris*, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (No. COA12-476). The court of appeals had held that a variance between the indictments and the jury instructions did not deprive the defendant of a defense. The indictments charged the defendant with statutory rape of a 13, 14, or 15 year old but specified that the victim was 15 years old at the time. Based on the evidence, the trial court instructed the jury that it could convict the defendant if the jury found that the victim was 14 or 15 years old. The jury found the defendant guilty. On appeal the defendant argued that the trial court committed reversible error by instructing the jury that it could convict if it found that the acts occurred when the victim was 14 or 15 years old, because the indictments alleged that she was 15 years old. At trial the defendant attempted to prove that the incidents occurred when the victim was 16, which would have been a complete defense. The jury rejected this defense. In light of this, the court of appeals determined that any error was not so prejudicial as to require a new trial.

[State v. Pizano-Trejo](#), __ N.C. __, __ S.E.2d __ (Oct. 4, 2013). On review of a unanimous, unpublished decision of the court of appeals in *State v. Pizano-Trejo*, __ N.C. App. __, 723 S.E.2d 583 (2012), the members of the Supreme Court equally divided, leaving the decision below undisturbed and without precedential value. The court of appeals had held that the trial court committed plain error by instructing the jury and accepting its guilty verdict for the crimes of "sexual offense with a child," a crime for which the defendant was not indicted. The defendant was indicted for one count of first degree statutory sexual offense under G.S. 14-27.4(a)(1), and two counts of taking indecent liberties with a minor. However, the trial court instructed the jury on the crime of sexual offense with a child by an adult offender under G.S. 14-27.4A. The defendant was found guilty of both counts of taking indecent liberties with a child and one count of first degree statutory sex offense pursuant to G.S. 14-27.4(a)(1).

Sentencing

[*Walters v. Cooper*](#), __ N.C. __, __ S.E.2d __ (Oct. 4, 2013). The court per curiam affirmed the decision below, *Walters v. Cooper*, __ N.C. App. __, 739 S.E.2d 185 (Mar. 19, 2013), in which the court of appeals had held, over a dissent, that a PJC entered upon a conviction for sexual battery does not constitute a “final conviction” and therefore cannot be a “reportable conviction” for purposes of the sex offender registration statute.

Criminal Offenses

[*State v. Wilkes*](#), __ N.C. __, __ S.E.2d __ (Oct. 4, 2013). The court per curiam affirmed the decision below, *State v. Wilkes*, __ N.C. App. __, 736 S.E.2d 582 (Jan. 15, 2013), in which the court of appeals had held, over a dissent, that the State presented substantial evidence supporting two separate assaults. The defendant attacked his wife with his hands. When his child intervened with a baseball bat to protect his mother, the defendant turned to the child, grabbed the bat and then began beating his wife with the bat. The court concluded that the assaults were the result of separate thought processes, were distinct in time, and the victim sustained injuries on different parts of her body as a result of each assault.

Post-Conviction

[*State v. Rollins*](#), __ N.C. __, __ S.E.2d __ (Oct. 4, 2013). The court per curiam affirmed the decision below, *State v. Rollins*, __ N.C. App. __, 734 S.E.2d 634 (Dec. 4, 2012), in which the court of appeals had held, over a dissent, that the trial court did not abuse its discretion by denying the defendant’s MAR without an evidentiary hearing. The MAR asserted that the defendant “did not receive a fair trial as a result of a juror watching irrelevant and prejudicial television publicity during the course of the trial, failing to bring this fact to the attention of the parties or the Court, and arguing vehemently for conviction during jury deliberations.” Although the MAR was supported by an affidavit from one of the jurors, the court found that the affidavit “merely contained general allegations and speculation.” The defendant’s MAR failed to specify which news broadcast the juror in question had seen; the degree of attention the juror had paid to the broadcast; the extent to which the juror received or remembered the broadcast; whether the juror had shared the contents of the news broadcast with other jurors; and the prejudicial effect, if any, of the alleged juror misconduct.