

Criminal Procedure

Appeal Issues

[State v. Bryan](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). Because the State failed to file a certificate as required by G.S. 15A-1432(e), the appellate court lacked jurisdiction over the appeal. In district court the defendant moved to dismiss his DWI charge on speedy trial grounds. When the district court issued an order indicating its preliminary approval of the defendant's motion, the State appealed to superior court. The superior court remanded to the district court for additional factual findings. Once the superior court received further findings of fact, it affirmed the district court's preliminary order and remanded the case to district court with orders to affirm the dismissal. After the district court issued its final judgment, the State again appealed and the superior court affirmed the district court's judgment. The court determined that G.S. 15A-1432(e), not G.S. 15A-1445(a)(1), applied to the State's appeal to the appellate division. Because the State failed to comply with G.S. 15A-1432(e)'s certificate requirement, the court had no jurisdiction over the appeal.

Jury Selection

[State v. James](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). The trial court did not err by dismissing the defendant's *Batson* objection. The prosecutor's explanation for its peremptory challenge to the black juror was that she was unemployed and that the prosecutor recognized the juror's name, possibly from a prior domestic violence case. The court noted that the State accepted a white juror who was unemployed. However, a review of the record revealed that the trial court conducted a full *Batson* inquiry and its conclusion that there was no purposeful discrimination was not erroneous.

Capacity

[State v. Holland](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). (1) The trial court did not err by failing to inquire, sua sponte, about the defendant's competency after he was involuntarily committed to a psychiatric unit during trial. After the defendant failed to appear in court mid-trial and defense counsel was unable to explain his absence, the defendant was tried in absentia. Later during trial, defense counsel obtained information indicating that the defendant might have been committed, but was unable to confirm that. Evidence produced in connection with the defendant's motion for appropriate relief (MAR) established that he in fact had been committed at that time. However, during trial, there was no evidence that the defendant had a history of mental illness and the defendant's conduct in court indicated that he was able to communicate clearly and with a reasonable degree of rational understanding. While the trial court had information indicating that the defendant might have been committed, defense counsel was unable to confirm that information. Furthermore, at the MAR hearing defense counsel maintained he had no reason to believe anything was wrong with the defendant and thought the defendant's hospitalization was part of a plan to avoid prosecution. (2) The trial court did not err by denying the defendant's MAR which asserted that the defendant was incompetent to stand trial. Adequate evidence supported the trial court's determination that the defendant was malingering.

Contempt

[State v. Phillips](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). A criminal contempt order was fatally deficient where it failed to indicate that the standard of proof was proof beyond a reasonable doubt.

Counsel Issues

[State v. Smith](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). The defendant was not denied effective assistance of counsel in a case where defense counsel had a meeting with the State's witnesses in which they offered to drop the charges against the defendant in exchange for compensation. Defense counsel cross-examined the witnesses extensively about their visit to his office and the resulting discussion, including that defense counsel did not give them any money or otherwise cooperate with their demands. Through cross-examination and closing argument, counsel called issues with the witnesses' credibility to the attention of the jury. Counsel was able to make the required points without serving as a witness in the defendant's trial.

Jury Deliberations

[State v. May](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). The trial court committed reversible error when charging a deadlocked jury. Specifically, the trial court erred when it instructed the deadlocked jury to resume deliberations for an additional thirty minutes, stating: "I'm going to ask you, since the people have so much invested in this, and we don't want to have to redo it again, but anyway, if we have to we will." Instructing a deadlocked jury regarding the time and expense associated with the trial and a possible retrial is error. Additionally, the trial court erred by giving only a portion of the G.S. 15A-1235(b) instruction. Although the trial court is not required to reinstruct the jury under G.S. 15A-1235(b), if it chooses to do so it must give all of the statutory instructions. The court went on to conclude that the State failed to prove that the errors were harmless beyond a reasonable doubt.

Probation

[State v. High](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). The trial court lacked jurisdiction to extend the defendant's probation after his original probation period expired. Although the probation officer prepared violation reports before the period ended, they were not filed with the clerk before the probation period ended as required by G.S. 15A-1344(f). The court rejected the State's argument that a file stamp is not required and that other evidence established that the reports were timely filed.

[State v. Williams](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). The trial court lacked jurisdiction to extend the defendant's probation after the expiration of his original probation period where the State failed to present evidence that the violation report was filed before the defendant's probation expired.

Sex Offenders

[*State v. Smith*](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). The trial court did not err by requiring the defendant to report as a sex offender after he was convicted of sexual battery, a reportable conviction. The court rejected the defendant's argument that because he had appealed his conviction, it was not yet final and thus did not trigger the reporting requirements.

Evidence

404(b) Evidence

[*State v. May*](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). In a child sex case, the trial court did not err by admitting, under Rule 404(b), evidence of the defendant's sexual contact with the victim's sister and the victim.

Opinions in Child Sex Cases

[*State v. May*](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). In a child sexual abuse case, the trial court did not err by admitting testimony by the State's medical experts. The court rejected the defendant's argument that an expert pediatrician improperly testified that the victim had been sexually abused, concluding that the expert gave no such testimony. Rather, she properly testified regarding whether the victim exhibited symptoms or characteristics consistent with sexually abused children. The court reached the same conclusion regarding the testimony of a nurse expert.

Arrest, Search and Investigation

[*State v. Malunda*](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). The trial court erred by concluding that the police had probable cause to conduct a warrantless search of the defendant, a passenger in a stopped vehicle. After detecting an odor of marijuana on the driver's side of the vehicle, the officers conducted a warrantless search of the vehicle and discovered marijuana in the driver's side door. However, officers did not detect an odor of marijuana on the vehicle's passenger side or on the defendant. The court found that none of the other circumstances, including the defendant's location in an area known for drug activity or his prior criminal history, nervousness, failure to immediately produce identification, or commission of the infraction of possessing an open container of alcohol in a motor vehicle, when considered separately or in combination, amounted to probable cause to search the defendant's person.

Criminal Offenses

Altering a Court Document

[*State v. Martinez*](#), __ N.C. App. __, __ S.E.2d __ (Nov. 5, 2013). The trial court erred by failing to grant the defendant's motion to dismiss a charge of altering court documents in violation of G.S. 14-221.2. The State conceded that the evidence showed only that the defendant forged signatures on a document before it was filed with the court.