

Criminal Procedure

Speedy Trial

[*State v. Goins*](#), __ N.C. App. __, __ S.E.2d __ (Feb. 18, 2014). No speedy trial violation occurred when there was a 27-month delay between the indictments and trial. Among other things, the defendant offered no evidence that the State's neglect or willfulness caused a delay and failed to show actual, substantial prejudice caused by the delay.

State's Reference to Defendant's Right to Remain Silent

[*State v. Goins*](#), __ N.C. App. __, __ S.E.2d __ (Feb. 18, 2014). By commenting in closing statements that the defendant failed to produce witnesses or evidence to contradict the State's evidence, the prosecutor did not impermissibly comment on the defendant's right to remain silent.

Sentencing

[*State v. Wilkerson*](#), __ N.C. App. __, __ S.E.2d __ (Feb. 18, 2014). The trial court erred by concluding that a 50-year sentence with the possibility of parole on a defendant who was a juvenile at the time the crimes were committed subjected him to cruel and unusual punishment in violation of the Eighth Amendment. The defendant was convicted of second degree burglary (1 count), felonious breaking or entering (3 counts), felonious larceny (four counts), and possession of stolen property (2 counts). Assessing the number of felony convictions, the fact that one was particularly serious, and the fact that the defendant's conduct involved great financial harm and led to criminal activity on the part of a younger individual, the court concluded that the sentence was not "grossly disproportionate."

Sex Offenders

Bring Back Hearings

[*State v. Mills*](#), __ N.C. App. __, __ S.E.2d __ (Feb. 18, 2014). (1) Although the State presented no evidence at the bring-back hearing establishing that the defendant received proper notice by certified mail of the hearing or that he received notice of the basis upon which the State believed him eligible for SBM, by failing to object to the trial court's findings at the hearing, the defendant waived the right to challenge them on appeal. (2) The court rejected the defendant's argument that the trial court lacked subject matter jurisdiction to conduct the hearing. The defendant argued that there was no competent evidence that he resided in the county where the hearing was held. G.S. 14-208.40B(b)'s requirement that an SBM hearing be brought in the county in which the offender resides addresses venue, not subject matter jurisdiction and therefore the defendant's failure to object at the hearing waived this argument on appeal.

Evidence

Impeachment

[*State v. Goins*](#), __ N.C. App. __, __ S.E.2d __ (Feb. 18, 2014). The trial court did not abuse its discretion by allowing the State to impeach its own witness where the impeachment was not mere subterfuge to introduce otherwise inadmissible evidence. The court held that it need not decide whether the record showed that the State was genuinely surprised by the witness's reversal because the witness's testimony was "vital" to the State's case and the trial court gave a proper limiting instruction. [Author's note: For a discussion of this issue, see my chapter "Impeachment" in the NC Superior Court Judges Benchbook at p. 9 here: <http://benchbook.sog.unc.edu/evidence/impeachment>]

404(b) Evidence

[*State v. Goins*](#), __ N.C. App. __, __ S.E.2d __ (Feb. 18, 2014). The court rejected the defendant's 404(b) challenge to evidence elicited by the State that a witness corresponded by mail with the defendant when he was in prison. The fact of "recent incarceration, in and of itself" does not constitute evidence of other crimes, wrongs, or acts within the meaning of the rule. [Author's note: for an extensive discussion of 404(b) evidence, see my Judges' Benchbook chapter here: <http://benchbook.sog.unc.edu/evidence/rule-404b-evidence-other-crimes-wrongs-or-acts>]

Arrest, Search and Investigation

[*State v. Thorpe*](#), __ N.C. App. __, __ S.E.2d __ (Feb. 18, 2014). Because the trial court failed to make adequate findings to permit review of its determination on the defendant's motion to suppress that the defendant was not placed under arrest when he was detained by an officer for nearly two hours, the court remanded for findings on this issue. The court noted that the officer's stop of the defendant was not a "de facto" arrest simply because the officer handcuffed the defendant and placed him in the front passenger seat of his police car. However, it continued, "the length of Defendant's detention may have turned the investigative stop into a de facto arrest, necessitating probable cause . . . for the detention." It added: "Although length in and of itself will not normally convert an otherwise valid seizure into a de facto arrest, where the detention is more than momentary, as here, there must be some strong justification for the delay to avoid rendering the seizure unreasonable."

Post-Conviction

Motions for Appropriate Relief

[*State v. Wilkerson*](#), __ N.C. App. __, __ S.E.2d __ (Feb. 18, 2014). (1) The court rejected the defendant's argument that the State had no avenue to obtain review of a trial court order granting his G.S. 15A-1415 MAR (MAR made more than 10 days after entry of judgment) on grounds that his sentence violated the Eighth Amendment. The court found that it had authority to grant the State's petition for writ of certiorari. The court rejected the contention that *State v. Starkey*, 177 N.C. App. 264, 268 (2006), required a different conclusion, noting that case conflicts with state Supreme Court decisions. (2) The defendant's claim that his sentence violated the Eighth Amendment was properly asserted under G.S. 15A-1415(b)(4) (convicted/sentenced under statute in violation of US or NC Constitutions) and (b)(8) (sentence unauthorized at the time imposed, contained a type of disposition or a term of imprisonment

not authorized for the particular class of offense and prior record or conviction level, was illegally imposed, or is otherwise invalid as a matter of law).