

Criminal Procedure

Charging Instruments

[State v. Wainwright](#), ___ N.C. App. ___, ___ S.E.2d ___ (Mar. 17, 2015). In this DWI case, the court rejected the defendant's argument that the trial court erred by denying his motion to quash a citation on grounds that he did not sign that document and the charging officer did not certify delivery of the citation. Specifically, the defendant argued that the officer's failure to follow the statutory procedure for service of a citation divested the court of jurisdiction to enter judgment. The court found that the citation, which was signed by the charging officer, was sufficient. [Author's note: The court's opinion indicates that the citation was converted to a Magistrate's Order and that Order was properly served on the defendant. Thus, the Magistrate's Order, not the citation, was the relevant charging document and it is not clear why any defect with respect to the defendant's and officer's signatures on the citation was material.]

Motion to Suppress Procedure

[State v. Wainwright](#), ___ N.C. App. ___, ___ S.E.2d ___ (Mar. 17, 2015). Because the trial court provided the rationale for its ruling on the defendant's motion to suppress from the bench and there were no material conflicts in the evidence, the trial court was not required to enter a written order.

Sentencing

[State v. Pace](#), ___ N.C. App. ___, ___ S.E.2d ___ (Mar. 17, 2015). Finding that the trial court erred by sentencing the defendant in the aggravated range in this Fair Sentencing Act (FSA) child sexual assault case, the court remanded for a new sentencing hearing in compliance with *Blakely* and in accordance with the court's opinion regarding how *Blakely* applies to FSA cases.

Sex Offenders

[State v. Smith](#), ___ N.C. App. ___, ___ S.E.2d ___ (Mar. 17, 2015). In this indecent liberties case, the trial court did not err by considering evidence regarding the age of the alleged victims, the temporal proximity of the events, and the defendant's increasing sexual aggressiveness; making findings of fact based on this evidence; and imposing SBM. Although the trial court could not rely on older charges that had been dismissed, the other evidence supported the trial court's findings, was not part of the STATIC-99 evaluation, and could be considered by the trial court.

Evidence

Opinions

[State v. Pace](#), ___ N.C. App. ___, ___ S.E.2d ___ (Mar. 17, 2015). In this child sexual assault case the trial court did not abuse its discretion by allowing the victim's mother to testify about changes she observed in her daughter that she believed were a direct result of the assault. The court rejected the defendant's

argument that this testimony was improper lay opinion testimony, finding that the testimony was proper as a shorthand statement of fact.

Arrest, Search and Investigation

Stops

[*State v. Wainwright*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Mar. 17, 2015). In this DWI case, the officer had reasonable suspicion to conduct the defendant's vehicle. The officer observed the defendant's vehicle swerve right, cross the line marking the outside of his lane of travel and almost strike the curb. The court found that this evidence, along with "the pedestrian traffic along the sidewalks and in the roadway, the unusual hour defendant was driving, and his proximity to bars and nightclubs, supports the trial court's conclusion that [the] Officer . . . had reasonable suspicion to believe defendant was driving while impaired."

Criminal Offenses

Homicide

[*State v. Grullon*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Mar. 17, 2015). In this first-degree murder case, the trial court did not err by instructing the jury on a theory of lying in wait. The court rejected the defendant's argument that this theory required the State to prove a "deadly purpose" to kill, noting that the state Supreme Court has held that "lying in wait is a physical act and does not require a finding of any specific intent." (quotation omitted). The court continued:

As the Supreme Court has previously held, [h]omicide by lying in wait is committed when: the defendant lies in wait for the victim, that is, waits and watches for the victim in ambush for a private attack on him, intentionally assaults the victim, proximately causing the victim's death. In other words, a defendant need not intend, have a purpose, or even expect that the victim would die. The only requirement is that the assault committed through lying in wait be a proximate cause of the victim's death.

(quotation and citation omitted). The court went on to find that the evidence was sufficient to support a lying in wait instruction where, as here, the defendant waited underneath a darkened staircase for the opportunity to rob the victim.