

2021 Evidence Update

Criminal

I. Authentication of social media material

State v. Clemmons, ___ N.C.App. ____, December 1, 2020

Screenshots must be authenticated as both photographs and written statements. Circumstantial evidence is sufficient.

II. ACIS printouts to prove prior convictions

State v. Waycaster, ___ N.C. ____, August 14, 2020

Yes.

III. Impaired witness

State v. Burgess, ___ N.C. App. ____, May 5, 2020

An impaired witness isn't necessarily incompetent. Judge is in best position to determine, therefore is reviewed for abuse of discretion.

IV. Sixth Amendment confrontation right in probation violations

State v. Jones, ___ N.C.App. ____, January 21, 2020

Right to cross examine in PV cases comes from 14th Amendment Due Process and not the 6th Amendment. (Watch for a NCSC case on this)

V. Post arrest silence

State v. Shuler, ___ N. C. App. ____, April 7, 2020

Good analysis of a complicated issue. Can be used to impeach Defendant if the silence is inconsistent with trial testimony.

VI. Expert witnesses

A. Blood spatter

State v. Corbett and Marten, ___ N.C.App. ____, February 4, 2020

Evidence should have been excluded because it was not the product of reliable principles and methods and the methods weren't applied reliably to the facts of the case. Trial court was reversed even using an abuse of discretion standard.

Case also has several other difficult evidence issues including statements made for purposes of medical treatment and residual hearsay exception. Was argued in NCSC a couple of weeks ago, so look for a decision in the coming months.

B. Ballistics

State v. Miller, ____ N.C.App. ____, December 31, 2020

Rule 702 analysis of ballistics evidence. There is a dissent, so be on the lookout for a NCSC case on this.

VII. Sex offense

State v. Warden, ____ N.C. ____, December 18, 2020

Plain error to let DSS investigator testify that DSS had substantiated sexual abuse and that Defendant was the perpetrator.

Civil

VIII. Standard of care testimony in med mal

DaSilva v. Wakemed, ____ N.C. ____, August 14, 2020

Exclusion of Plaintiff's standard of care expert was reversed. Abuse of discretion.

IX. Relationship between statutory medical lien and fair billing statute

Sykes v. Vixamer, ____ N.C. App. ____, June 18, 2019

Evidence of amount of medical lien admissible even when hospital chooses not to bill Plaintiff's medical insurance