

Recent NC Court of Appeals and North Carolina Supreme Court Cases
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NORTH CAROLINA COURT OF APPEALS OPINIONS

State v. McLymore, __ N.C. App. __, __ S.E.2d __ (August 17, 2021).

The Court held that it is better to designate the alleged victims(s) names in jury instructions as it is in the indictment, however, the trial court did not err in leaving the alleged victims names out.

State v. McDougald, __ N.C. App. __, __ S.E.2d __ (August 17, 2021).

The trial court did not err in denying Defendant’s motion for a mistrial. Defendant was not prejudiced by testimony from the Detective stating that he received Defendant’s photo for a photographic lineup from “jail archives,” when the Defendant then testified to his criminal history.

Further, the trial court cured any prejudice of the Detective’s testimony with a limiting instruction for the jury “not to consider the last response of the witness at this time as evidence.”

The Court dismissed Defendant’s claim for ineffective assistance of counsel without prejudice since an evidentiary hearing was not conducted and the “cold record” was not dispositive.

State v. Staton, __ N.C. App. __, __ S.E.2d __ (August 17, 2021).

The Court held that the trial court did not err in denying Defendant’s motion to dismiss. A bullet striking the exterior of a toolbox, fastened to a truck, is enough to satisfy the “into [property]” element for the charge of discharging a firearm into an occupied vehicle while in operation.

State v. Abbitt, __ N.C. App. __, __ S.E.2d __ (August 3, 2021).

- (1) The trial court properly excluded proffered evidence that others committed the crime charged as neither Defendant could show evidence to both implicate another person(s) and exculpate themselves.
- (2) Due to failing to object to the witness’s in-court identification, any possible error in the photograph lineup did not constitute plain error.
- (3) During closing arguments, the trial court did not err by allowing the State to comment on Defendant Albarran’s lack of exculpatory evidence to support her alibi.
- (4) The trial court did not err in sustaining the State’s objection to defense counsel’s comment regarding Defendant Albarran’s appearance when two years had passed since the crime.
- (5) Under Rule 401, Defendant Abbitt’s out-of-court statements to an officer were admissible, as they were not hearsay.

(6) Finally, the short form indictment for Defendant Abbitt was not fatally defective and did confer jurisdiction upon the courts.

State v. Malone-Bullock, __ N.C. App. __, __ S.E.2d __ (August 3, 2021).

While the Court agreed with the Defendant that the trial judge allowed improper lay-witness opinions, the State presented other sufficient evidence that a jury could have relied on to reach a guilty verdict of first-degree murder. Any errors were not prejudicial.

The trial court did not err in allowing the State to question the Detective about Defendant's post-arrest statement and his theory of defense at trial.

State v. Teesateskie, __ N.C. App. __, __ S.E.2d __ (August 3, 2021).

The Court held that the trial court did not err in denying the Defendant's motion to dismiss where the State offered ample evidence of impairment for the charges of driving while impaired and felony death by motor vehicle. The State offered into evidence results from the field sobriety tests (HGN, walk and turn, convergence, and finger-to-nose test), Defendant's statement to the arresting officer about the amount of alcohol she consumed, the amount of time since her last consumption of alcohol and additional consumption of Hydrocodone coupled with the inability to stay awake without injury, unsteady gait, slurred and strange speech. Further the officer offered his opinion that the Defendant was appreciably impaired based on the tests and the officer's observations.

Further, even if the trial court did err in admitting the toxicology expert's testimony about the possible presence of Hydrocodone in the Defendant's blood, there was no prejudice since she admitted to the consumption of Hydrocodone.

State v. Chavis, __ N.C. App. __, __ S.E.2d __ (July 20, 2021).

The Court held that a taser is a dangerous or deadly weapon considering the facts, the manner of use in the case, and precedent. *State v. Rivera*, 216 N.C. App. 566, 716 S.E.2d 859 (2011); *State v. Gay*, 151 N.C. App. 530, 566 S.E.2d 121 (2002). The Court also ruled that there was no improper judicial opinion, and the jury instructions clearly left the determination of whether the taser was a deadly weapon to the jury.

Further, the trial court did not commit a plain error by failing to instruct the jury on "serious bodily injury" as it was not an element of robbery with a dangerous weapon or conspiracy to commit robbery with a dangerous weapon.

The Defendant also contended she received ineffective assistance of counsel when counsel conceded her guilt of common law robbery, which was overruled. The trial court properly conducted a Harbison inquiry on whether the Defendant consented to the concession, which she affirmed.

Lastly, the trial court did err in holding the Defendant in criminal contempt when she refused to put on the clothes that were provided for her. Neither the transcript nor the contempt order indicated the standard used, so the Court reversed the contempt order only.

State v. Chambers, __ N.C. App. __, __ S.E.2d __ (July 20, 2021).

Under N.C. Gen. Stat. § 14-318.4(a), sufficient evidence provides that the Defendant was a person providing care to or supervision of the victim and could have been guilty of the underlying felony of child abuse required to convict Defendant of first-degree murder committed in the perpetration of a felony. Evidence showed that the Defendant lived in the house of the victim, cooked for everyone, watched after the children, played with the daughters, helped the children get ready for bed, checked in on the children at night, and even helped the victim brush his teeth and become potty trained.

State v. Logan, __ N.C. App. __, __ S.E.2d __ (July 6, 2021).

The Court held that supporting search warrant affidavit did not provide sufficient facts to indicate the timing of the events and therefore the magistrate could not conclude there was probable cause. Hence, the search warrant was invalid and resulted in an unreasonable search and seizure. During a suppression hearing, evidence outside the four corners should not be considered.

State v. Scott, __ N.C. App. __, __ S.E.2d __ (July 6, 2021).

The Court held that the State could not prove the Fourth Amendment seizure violation was harmless beyond a reasonable doubt when the Defendant's blood was unlawfully seized at a hospital after an auto collision. No evidence showed that anyone suspected Defendant was impaired, no one noticed the odor of alcohol at the scene, on the way to the hospital, at the hospital or after the Defendant's release.

State v. Crawford, __ N.C. App. __, __ S.E.2d __ (June 15, 2021).

The Court held that the Defendant could not demonstrate a fair and just reason to withdraw his *Alford* plea. Further, the trial court did not err in accepting the *Alford* plea since sufficient evidence supported the judicial determination of the factual basis as required by N.C.G.S. § 15A-1022(c).

State v. Gibson, __ N.C. App. __, __ S.E.2d __ (June 1, 2021).

The Court held that the State presented insufficient evidence that the truck contained "goods, wares, freight, or other thing of value," which is an essential element for the charge of felony breaking or entering a motor vehicle. While testimony could lead to suspicion that the truck contained items of value, this evidence alone was not enough to survive a motion to dismiss.

State v. McKoy, __ N.C. App. __, __ S.E.2d __ (June 1, 2021).

The trial court did not err in admitting a witness' identification of the Defendant since he had been "familiar with" and had "previous dealings" with him. However, the trial court did err

in admitting the three other witness' testimony on identification, but admission did not prejudice the Defendant so no plain error was found.

The trial court did not err in denying the Defendant's motion to dismiss due to the substantial evidence of each element for the charge of felony larceny and the Defendant's identification as the perpetrator.

The trial court did not err in ordering restitution by failing to consider the Defendant's ability to pay.

State v. Garrett, __ N.C. App. __, __ S.E.2d __ (May 18, 2021).

The Court held that while Fentanyl is not specifically mentioned in N.C. Gen. Stat. § 90-95(h)(4), Fentanyl does qualify as an opiate within the meaning of the statute. Therefore, the indictment was not facially defective.

Further, the trial court did not err in bringing the jury back to the courtroom to remind them "what their duties were as jurors and their obligations..." when the jury sent a note stating they were not in agreement as to guilt. No misstatements of law were offered since the key elements and ideas from N.C. Gen. Stat. § 15A-1235(b) were followed.

State v. Flow, __ N.C. App. __, __ S.E.2d __ (May 4, 2021).

The Court held that the trial court did not err in denying Defendant's counsel's motion to inquire into Defendant's capacity to proceed after he reportedly jumped off a second-floor mezzanine sixteen feet off the ground. Additionally, the trial court's jury instructions on first-degree sexual offense did not deprive the Defendant of his rights to a unanimous jury verdict.

State v. Daw, __ N.C. App. __, __ S.E.2d __ (May 4, 2021).

The Court held that the trial court did not err in denying Defendant's petition for habeas corpus under N.C. Gen. Stat. § 17-33(2), where the Defendant alleged imprisonment for a conviction during the COVID-19 pandemic was cruel and unusual punishment.

State v. Crudup, __ N.C. App. __, __ S.E.2d __ (May 4, 2021).

The trial court did not err in denying Defendant's motion for standby counsel, which was requested after Defendant waived counsel several times, after a jury was empaneled, and after trial began.

State v. Myrick, __ N.C. App. __, __ S.E.2d __ (April 20, 2021).

When the trial court held a hearing to determine the Defendant's capacity, made no findings as to the Defendant's capacity to proceed, and found Defendant NGRI, the error was contrary to statutory mandate, violated the right to due process, and prejudiced the Defendant.

The Court further held that on remand a determination of Defendant's capacity must be determined. If found incapable to proceed, the charge should be dismissed without leave

according to N.C. Gen. Stat. § 15A-1008(a)(2) since he has been confined for the maximum aggravated sentence.

State v. Steele, __ N.C. App. __, __ S.E.2d __ (April 20, 2021).

The trial court erred in denying Defendant's motion to suppress. No reasonable person would believe that they would be free to leave when a marked police car tailed the Defendant's car at 3 a.m., followed him into an empty parking lot, and then was hailed down with hand gestures by the officer. The Defendant was seized within the Fourth Amendment by the officers' show of authority which compelled the Defendant to stop.

State v. Wynn, __ N.C. App. __, __ S.E.2d __ (April 6, 2021).

In accordance with *State v. Golder*, 374 N.C. 238, 839 S.E.2d 782 (2020), the Court held that Defendant's conviction for possession of a firearm by a felon must be vacated due to lack of sufficient evidence of a firearm. A confession is not deemed sufficient evidence for a conviction unless independent evidence establishes the trustworthiness of the confession.

However, there was sufficient evidence of constructive possession of controlled substances to support the convictions for trafficking in heroin by possession, possession with the intent to sell or deliver a controlled substance and attaining the status of a habitual felon.

State v. Knight, __ N.C. App. __, __ S.E.2d __ (April 6, 2021).

The Court held that the State violated the plea arrangement and the trial court erred in imposing a different sentence than the terms of the plea arrangement. Defendant followed all requirements of the plea arrangement even though he was one hour and fifteen minutes late to court and the State continued the sentencing hearing date.

State v. Baldwin, __ N.C. App. __, __ S.E.2d __ (April 6, 2021)

The State presented sufficient evidence to cause a reasonable jury to find and convict Defendant of first-degree murder, conspiracy to commit first-degree murder, and attempted first-degree murder. The trial court did not err in denying the Defendant's motion to dismiss.

State v. Walters, __ N.C. App. __, __ S.E.2d __ (March 16, 2021).

Insufficient evidence was presented by the State that the Defendant constructively possessed heroin. The trial court erred in dismissing the Defendant's motion to dismiss for the charges of trafficking heroin by transportation and trafficking heroin by possession. Besides two bags of heroin recovered on the side of the road along the three-to-five-mile route of the chase, no other evidence was presented to connect the Defendant to the recovered heroin.

State v. Arnett, __ N.C. App. __, __ S.E.2d __ (March 2, 2021).

The Court held that the defense of voluntary intoxication does not apply to the charge of assault with a deadly weapon inflicting serious injury because it is a general intent crime.

Further, the trial court's two *Harbison* inquiries were adequate to ensure the Defendant understood and agreed with defense counsel's strategy of admitting an element of the charge. Defendant did not receive ineffective assistance of counsel when we had prior knowledge and consented to his attorney's trial strategy.

State v. Carpenter, __ N.C. App. __, __ S.E.2d __ (March 2, 2021).

The Court held that the trial court did not err in denying the Defendant's motion for a jury instruction on a lesser-included offense. Evidence from the State was sufficient to support each element for the charged offense of first-degree forcible sex offense.

State v. Edwards, __ N.C. App. __, __ S.E.2d __ (February 16, 2021).

The trial court did not err in denying Defendant's proposed jury instruction for lack of flight in a first-degree felony murder trial. Evidence at trial revealed the Defendant did flee the scene of the crime, but did not flee when identified and approached by investigators.

The Court further ruled that even if the trial court did err in denying the jury instruction, the error was harmless due to the overwhelming evidence of guilt.

State v. Corpening, __ N.C. App. __, __ S.E.2d __ (February 16, 2021).

The Court vacated the trial court's civil judgment for attorney's fees because the Defendant was not provided with notice of the fees along with an opportunity to be heard on the fees.

State v. Anderson, __ N.C. App. __, __ S.E.2d __ (December 31, 2020).

The Court held that the sentencing of the Defendant to two consecutive sentences of life with parole for two murders committed when he was 17 years old was not unconstitutional. However, the court remanded for a new hearing because the trial court had discretion to determine whether the sentence should be run concurrently.

State v. McCants, __ N.C. App. __, __ S.E.2d __ (December 31, 2020).

The trial court erred in denying the Defendant's motion to suppress evidence discovered from a warrantless search of Defendant's home as a condition of his mandatory post-release supervision. Warrantless searches for post-release supervision under N.C.G.S. § 15A-1368.4(e)(10) should be limited to the supervisee's "person." The General Assembly did not intend for the catch all provision of N.C.G.S. § 15A-1368.4(c) to expand the Commission's authority to impose such warrantless searches of a supervisee's home. Even with the Defendant's consent to search, the search was unlawful.

State v. Falls, __ N.C. App. __, __ S.E.2d __ (December 15, 2020).

The trial court erred in denying the Defendant's motion to suppress when officers improperly conducted a knock and talk. The officers parked in a lot beside the home, wore dark clothing, cut across the property while cutting through trees to "cover" themselves, were shining flashlights at and surrounding a moving vehicle, went at 9:30 p.m., ignored a no trespassing sign, and did not act like "reasonably respectful citizen[s]." Officers can do no more than a private citizen during a knock and talk and their conduct went far beyond the "implied license."

State v. Clemmons, __ N.C. App. __, __ S.E.2d __ (December 1, 2020).

Screenshots of comments on a Facebook post were properly authenticated with sufficient circumstantial evidence. Screenshots of this type, of online written statements, must be authenticated as both a photograph and a written statement to be admitted into evidence. Evidence tended to show the comments were made by the Defendant and properly left for the jury to decide if it violated the DVPO.

State v. McDaris, __ N.C. App. __, __ S.E.2d __ (November 17, 2020).

The Court held the trial court erred in denying the Defendant's motion to dismiss when there was a lack of evidence and an erroneous consideration of N.C.G.S. § 14-54(a1) as an underlying felony for the charge of first-degree burglary. N.C.G.S. § 14-54(a1), breaking or entering a building with intent to terrorize or injure, is not a lesser included charge and cannot be the sole reason for conviction when it is unsupported by the facts.

State v. McGaha, __ N.C. App. __, __ S.E.2d __ (November 3, 2020).

The Court held that the Defendant failed to properly preserve the denial of the motion to suppress for review on appeal and did not argue plain error on appeal, so no review was completed. Secondly, the trial court did not err in denying Defendant's motion to dismiss for insufficient evidence because there was sufficient evidence of impairment through testimony by the arresting officer and field tests. Finally, the trial court did not err in finding a grossly aggravating factor for sentencing purposes since the Defendant had a prior driving while impaired conviction within seven years of the date of offense and Defendant waived notice.

State v. Farook, __ N.C. App. __, __ S.E.2d __ (October 20, 2020).

While using the balancing test from *Barker v. Wingo*, 407 U.S. 514, 33 L.Ed. 2d 101 (1972), the Court held that a delay of over six years was enough for a presumption of prejudice to Defendant. The State could not meet its burden of explaining the delay, therefore, the court found a violation of Defendant's right to a speedy trial.

State v. Nunez, __ N.C. App. __, __ S.E.2d __ (October 20, 2020).

An officer merely activating their blue lights does not constitute a seizure when the vehicle is in a public vehicular area.

State v. French, __ N.C. App. __, __ S.E.2d __ (October 6, 2020).

The Court held that the Defendant failed to show error in the denial of his motion to dismiss for the child abduction charge. Substantial evidence presented by the State showed that the Defendant stole the vehicle while the child was in the back seat, he knew the child was in the back seat at some point by his 911 call, and then willfully led the police on a high-speed chase for more than fifteen minutes. No acts by the Defendant exculpated his mistake.

No errors were made in the jury instructions. However, the Defendant was improperly convicted of larceny and possession of the same stolen property so the Court held the judgment for felony possession of stolen property must be vacated.

NORTH CAROLINA SUPREME COURT OPINIONS

State v. Shuler, __ N. C __, __ S.E.2d __ (August 13, 2021)

The Defendant's assertion of an affirmative defense does not result in a waiver of his Fifth Amendment right to silence. The State was not entitled to preemptively impeach the Defendant during its' case in chief.

State v. Johnson, __ N. C __, __ S.E.2d __ (August 13, 2021)

The Court held that a traffic stop late at night, in a high crime area, with the driver acting nervous and blading his body when he reached for the registration, coupled with the defendant's history of violent crimes, was sufficient to justify a search of the Defendant's person and areas within his reach.

State v. Chavez, __ N.C. __, __ S.E.2d __ (August 13, 2021)

No reversible error in jury instruction that a conspiracy had to be between the Defendant and at least one other person where the indictment named one co-conspirator but the evidence showed a conspiracy between the person named in the indictment and another unknown subject. The Court found that the evidence as to the agreement with the named co-conspirator was overwhelming.

State v. Austin, __ N.C. __, __ S.E.2d __ (August 13, 2021)

When the court described what an assault was based on the evidence and told the jury that they would have to determine what the assault was, this did not amount to the Court expressing an opinion of the Defendant's guilt that would warrant a new trial when the defense could not show that it prejudiced his case.

State v. Goins, __ N.C. __, __ S.E.2d __ (June 11, 2021)

It was highly improper for the prosecutor to argue that the Defendant pled not guilty because he refused to take responsibility for his actions. While this type of argument was improper, the Defendant could not meet his burden of showing that it was so prejudicial that it caused the jury to reach a verdict that they would not have ordinarily reached but for the improper argument.

State v. Blagg, __ N.C. __. __ S.E.2d __ (June 11, 2021)

Evidence of several empty bags and bags containing different amounts of drugs that was several times the amount of personal use was sufficient evidence to withstand a motion to dismiss the possession with intent to sell or deliver count.

State v. Betts, __ N.C. __, __ S.E.2d __ (June 11, 2021)

Use of the term disclose by an expert witness in a child sex offense case does not standing alone amount to impermissible vouching. The converse is true if the witness testifies that the child is being truthful. It was also not error for the Court to admit evidence of domestic violence when it served as an explanation for the trauma and the delay in reporting the sex offense.

State v. Parker, __ N.C. __, __ S.E.2d __ (June 11, 2021)

The Court quoting another Court reiterated that defendant's "are entitled to a fair trial, not a perfect trial." The trial court had no duty to intervene ex mero motu when evidence was misstated. The court would only have a duty to intervene if the argument was grossly improper.

North Carolina in light of the *Miller* case amended our statute to make life without parole discretionary for juveniles. On appeal, the Court was not persuaded by the petitioner's ex post facto and vagueness arguments.

State v. Hamer, __ N.C. __, __ S.E.2d __ (June 11, 2021)

In this case, the Court did not initially have the proper colloquy with the defendant to make sure that he was knowingly and intelligently waiving his right to a jury trial and consenting to a bench trial. However, after the State rested, the trial judge

revisited the issue and engaged in the proper colloquy albeit not at the beginning of the trial. The Defendant could not show that the error led to his convictions. Conversely, the Court characterized the evidence as being overwhelming as to his guilt.

State v. Allen, __ N.C. __, __ S.E.2d __ (April 16, 2021)

There was no error when the trial court failed to hold a second competency hearing immediately before trial when no request was made. The trial court was aware that the defendant had been deemed competent six months prior to the trial and no request was made for a second hearing.

State v. Meader, __ N.C. __, __ S.E.2d __ (April 16, 2021)

The Defendant was not entitled to a voluntary intoxication instruction where the evidence showed that her speech was not slurred, her walking was fine and it appeared that she was able to respond to questions appropriately. The Court noted that the Defendant has the burden of proving intoxication to such a high extent that the Defendant cannot control his or her actions and is incapable of committing an intentional act.

State v. Ditenhafer, __ N.C. __, __ S.E.2d __ (March 12, 2021)

A mother was properly convicted of obstruction of justice where she continually denied the authorities access to her daughter who had made allegations of sexual abuse against her adoptive father. Further evidence tended to suggest that she also insisted that her daughter recant her accusations even though the mother actually witnessed the abuse.

State v. Corbett and Martens, __ N.C. __, __ S.E.2d __ (March 12, 2021)

Failure to give self defense instruction that would let the jury determine whether the Defendants used deadly force in furtherance of their theory that it was necessary to prevent one of them from imminent death was error and the Defendants were entitled to a new trial.

State v. Fuller, __ N.C. __, __ S.E.2d __ (March 12, 2021)

The Supreme Court found no error in the trial judge's decision to require the Defendant to register as a sex offender based on a finding that he posed a danger to the community even though there was no Static-99 assessment or a formal hearing. The Court determined that the trial judge made an ultimate finding and stated sufficient reasons in the record to support his decision requiring the defendant to register.

State v. Chandler, __ N.C. __, __ S.E.2d __ (December 18, 2020)

The Court held that the trial judge had no authority to reject a guilty plea because the Defendant said that he did not commit the act but offered an explanation for why he was pleading guilty. As a result, the Defendant went to trial and was convicted by a jury which resulted in a worst outcome than his previously tendered plea. For this reason, the conviction was vacated and sent back for the State to renew the initial plea which the Defendant would have the opportunity to accept or reject.

State v. Steen, __ N.C. __, __ S.E.2d __ (December 18, 2020)

The Supreme Court held that hands and arms could be considered deadly weapons for purposes of the felony-murder rule. However, it held that the instruction that a garden hoe was used as a deadly weapon was erroneous based on the facts of the case and therefore the Defendant was entitled to a new trial as it related to the murder of his grandfather.

State v. Farmer, __ N.C. __, __ S.E.2d __ (December 18, 2020)

The Court held that there was no violation of the Defendant's right to a speedy trial in a case that was tried approximately five years after indictment. The court examined the reasons for the delay and ultimately noted that the Defendant's case was tried within four months of his demand for a speedy trial.

State v. Hollars, __ N.C. __, __ S.E.2d __ (December 18, 2020)

Trial court committed reversible error when it failed to conduct a competency hearing when defense counsel requested the judge to make an inquiry as to the Defendant's competency on the third day of trial. Although the trial court inquired the next day, no formal hearing was held and the court indicated that based on the Defendant's mental health history, the Court should have held a hearing. Not doing so violated the Defendant's due process rights.

State v. Glover, __ N.C. __, __ S.E.2d __ (December 18, 2020)

The Defendant could not be deemed to have acted in concert to possess drugs that he was unaware of even though he had used drugs with the owner of the drugs on prior occasions.

State v. Crump, __ N.C. __, __ S.E.2d __ (December 18, 2020)

When a black defendant was accused of shooting two police officers, it was prejudicial error for the trial judge to restrict the defense counsel's questions regarding race and implicit bias during jury voir dire.

State v. Warden, __ N.C. __, __ S.E.2d __ (December 18, 2020)

It was plain error entitling Defendant to a new trial where the trial court allowed vouching testimony from a DSS worker who testified that a case is only substantiated if they find the allegations to be true.

State v. Sides, __ N.C. __, __ S.E.2d __ (December 18, 2020)

It was reversible error for the trial court to conclude that the Defendant had waived her right to be present at trial when she attempted suicide one evening when her trial was recessed. The Court held that the trial court should have conducted a competency hearing.