

Gangs

(2) Trial Judge Did Not Err in Allowing Officer with Training and Experience with Gangs to Explain Meaning of Gang Terminology

State v. Brockett, ___ N.C. App. ___, 647 S.E.2d 628 (7 August 2007).

The defendant was convicted of first-degree murder and felonious assault involving gang-related offenses. (2) The court ruled that the trial judge did not err in allowing an officer with training and experience with gangs to explain the meaning of gang terminology in a taped telephone conversation between the defendant and his brother.

Trial Judge Erred in Drug Prosecution in Allowing State to Introduce Evidence of Defendant's Gang Membership and That Hollow Point Bullets Were Recovered in Guns Seized from Defendant and Accomplice

State v. Gayton, ___ N.C. App. ___, 648 S.E.2d 275 (7 August 2007).

An undercover officer bought cocaine from the defendant and his accomplice. A gun was recovered from the passenger seat of a vehicle that the defendant had been occupying. The defendant was convicted of trafficking by possessing cocaine and carrying a concealed weapon. The court ruled that the trial judge erred by allowing the state to introduce evidence of the defendant's gang membership. The court stated that even if the officers felt forced to revamp the drug buy operation after learning of the defendant's gang membership to reduce the likelihood of violence, this information was irrelevant to the offenses being tried. The court also ruled that the trial judge erred in allowing an officer to testify that hollow point bullets were recovered from guns seized from the defendant and his accomplice; the evidence was irrelevant to the issues in this case.

Evidence_gang membership and colors_identification_admissible

State v. Medina, 174 NCA 723 (2005)

The trial court did not err in a prosecution for first-degree murder by admitting evidence that defendant was a gang member. Defendant's identity was in issue and the gang color and defendant's gang involvement helped the witness in identifying defendant.

Evidence--prior crimes or bad acts--involvement in gang--robberies--drug dealing—motive and intent--modus operandi

State v. Hightower, 168 NCA 661 (2005)

The trial court did not commit plain error in a first-degree felony murder case by admitting evidence of defendant's prior illegal activity including involvement in the Jericho gang, prior robberies, and drug dealing, because: (1) the testimony about the gang provided evidence of defendant's motive as well as the reason for a coparticipant's involvement in the crime; (2) the testimony about defendant's pattern of robbing others of illegal drugs and selling them provided evidence of defendant's motive and intent to commit the crimes at bar as well as his modus operandi; (3) considering the other overwhelming evidence of defendant's guilt presented through numerous eyewitnesses, the admission of this evidence was not plain error; and (4) although defendant contends he received ineffective assistance of counsel based on his attorney's failure to object to the evidence of defendant's prior bad acts, the admission of the Rule 404(b) evidence was not error.

Detention of House Occupant in Handcuffs for Two to Three Hours During Execution of Search Warrant Concerning Gang Shooting Was Reasonable Under Fourth Amendment

Muehler v. Mena, (22 March 2005)

Officers obtained a search warrant for a house and premises to search for deadly weapons and evidence of gang membership related to an investigation of a gang-related drive-by shooting. A SWAT team and other officers (a total of 18 officers altogether) executed the warrant. Aware that the gang was composed primarily of illegal immigrants, an INS officer accompanied the officers. One or two officers

guarded four occupants detained at the scene, who were handcuffed for about two to three hours while the warrant was executed. In addition, an INS questioned the occupants about their immigration status while the warrant was executed. One of the occupants (the plaintiff in this case) sued the officers for allegedly violating her Fourth Amendment rights during the execution of the search warrant. (1) The Court ruled that the detention of the plaintiff in handcuffs was reasonable under the Fourth Amendment. The two to three hour detention in handcuffs in this case did not outweigh the officers' continuing safety interests.

Evidence—incidents of prior misconduct—no prejudice

State v. Augustine, 359 NC 709 (2005)

There was no plain error in a first-degree murder prosecution where the court allowed the prosecutor to cross-examine defendant about twenty-two alleged incidents of prior misconduct, consisting of nineteen alleged incidents involving law enforcement and corrections officers and three alleged assaults against civilians. It cannot be said that the cross-examination amounted to a miscarriage of justice or denied defendant a fundamental right.

Evidence—photos—gang brands and tattoos—Miranda

State v. Riley, 159 NCA 546 (2003)

There was no plain error in the admission of an officer's testimony about the meaning of photos of defendant's tattoos and brands, which allegedly depict gang membership, where defendant contended that the information was obtained after he had indicated that he did not want to be questioned without an attorney. Defendant did not object to testimony that the markings indicated membership in a gang, and there was other evidence in the record about the meaning of the marks and that the officer knew the meaning of the marks from other sources.