

PROSECUTORIAL MISCONDUCT

Court Affirms Trial Judge's Pretrial Dismissal of Charge Under G.S. 15A-954(a)(4) Because Defendant Met His Burden of Proving That State Flagrantly Violated His Constitutional Rights and Irreparably Prejudiced Preparation of His Defense When State Willfully Destroyed Material Evidence Favorable to Defendant—Ruling of Court of Appeals Is Affirmed

State v. Williams, 362 N.C. 628, 669 S.E.2d 290 (12 December 2008), affirming, ___ N.C. App. ___, 660 S.E.2d 189 (6 May 2008).

The court upheld the trial judge's pretrial dismissal of a charge (felony assault of a government officer) under G.S. 15A-954(a)(4) because the defendant met his burden of proving that the state flagrantly violated the defendant's constitutional rights and irreparably prejudiced the preparation of his defense when the state willfully destroyed material evidence favorable to the defendant. The destroyed evidence consisted of two photographs in the prosecutor's office: one photo showed the uninjured defendant and was captioned "Before suing the District Attorney's office" and the other photo showed the defendant's injuries and was captioned, "After he sued the District Attorney's office." (See the court's analysis why these photos were materially favorable evidence for the defendant and how their willful destruction satisfied the standard under G.S. 15A-954(a)(4) and justified the trial judge's dismissal of the charge.)

Sentencing--Discretion to proceed capitally--Reliance on testimony of accomplice

State v. Allen, 360 NC 297 (2006)

The testimony of an accomplice is sufficient to uphold a criminal conviction, and the prosecution here did not abuse its discretion by proceeding capitally based on the testimony of accomplices after enactment of N.C.G.S. § 15A-2004(a)(2005) (which granted prosecutors discretion in determining whether to pursue the death penalty when an aggravating circumstance exists). to prevail on a claim of prosecutorial abuse of discretion, defendant must show a discriminatory purpose and a discriminatory effect. See *State v. Garner*, 340 N.C. 573, 588, 459 S.E.2d 718, 725 (1995), cert. denied, 516 U.S. 1129 (1996).

Criminal Law--Prayer for judgment--No presumption of judicial or prosecutorial vindictiveness

State v. Trusell 170 N.C. App. 33 (2005)

The trial court did not err by granting the State's prayer for judgment for a

second charge of robbery with a dangerous weapon after defendant's appeal of his conviction of first-degree kidnapping and subsequent resentencing to a lesser sentence for second-degree kidnapping, because: 1) there is no presumption of vindictiveness when a trial court sentences on a prayer for judgment continued following appeal of a separate conviction; and 2) defendant failed to demonstrate actual vindictiveness even though the record indicated some spurious motivation on the part of the prosecutor to correct his own error in sending the wrong appellate record for review to the Court of Appeals since the trial court articulated a legitimate reason for sentencing defendant on the robbery with a dangerous weapon charge. See Farb p. 21

Criminal Law--Prosecutorial misconduct--Reading defense counsel's billing records that were in open court file--Not attorney-Client privilege

State v. Cherry, 141 N.C. App. 642, 2000

The trial court did not err in a first-degree murder case by denying defendant's motion for a mistrial based on the district attorney's alleged prosecutorial misconduct of reading some of defense counsel's billing records that had been inadvertently placed in the open court files, because: 1) billing records do not automatically fall under the attorney-client privilege; 2) the billing records in this case disclose only general professional activities such as travel, interviews, phone calls, and memo writing; and 3) the records do not contain any confidential communications such as specific research or litigation strategy undertaken by defense counsel.

Criminal Law - Prosecutorial vindictiveness - Additional charge

State v. Ford, 136 N.C. App. 634 (2000)

The trial court did not err in denying defendant's motion to dismiss a charge of first-degree sexual offense based on prosecutorial vindictiveness when defendant was initially charged with taking indecent liberties with a child before plea negotiations broke down because the decision to charge defendant with first-degree sexual offense was made before trial and defendant's assertions, without more, do not establish a showing of prosecutorial vindictiveness.