

Criminal Procedure

Pleas

State v. Rico, __ N.C. __, __ S.E.2d __ (Dec. 14, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi81MjlBMTEtMi5wZGY=>). For the reasons stated in the dissenting opinion below, the court reversed *State v. Rico*, __ N.C. App. __, 720 S.E.2d 801 (Jan. 17, 2012) (holding, over a dissent, that where there was a mistake in the plea agreement and where the defendant fully complied with the agreement, and the risk of any mistake in a plea agreement must be borne by the State; according to the court, both parties mistakenly believed that the aggravating factor of use of a firearm could enhance a sentence for voluntary manslaughter by use of that same firearm; the court determined that the State remains bound by the plea agreement and that the defendant must be resentenced on his guilty plea to voluntary manslaughter; the dissenting judge argued that the proper remedy was to set aside the plea arrangement and remand for disposition of the original charge (murder)).

Evidence

***Crawford* Issues**

State v. Burrow, __ N.C. __, __ S.E.2d __ (Dec. 14, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi83OEExMi0xLnBkZg==>). The court vacated and remanded *State v. Burrow*, __ N.C. App. __, 721 S.E.2d 356 (Feb. 7, 2012), after allowing the State's motion to amend the record to include a copy of the State's notice under G.S. 90-95 indicating an intent to introduce into evidence a forensic report without testimony of the preparer. In the opinion below, the court of appeals had held that the trial court committed plain error by allowing the State to admit a SBI forensic report identifying the substance at issue as oxycodone when neither the preparer of the report nor a substitute analyst testified at trial.

Arrest, Search & Investigation

State v. Heien, __ N.C. __, __ S.E.2d __ (Dec. 14, 2012)

(<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8zODBQQTExLTEucGRm>). The court reversed *State v. Heien*, __ N.C. App. __, 714 S.E.2d 827 (Aug. 16, 2011), and held that there was reasonable suspicion for a stop that led to the defendant's drug trafficking convictions. An officer stopped a vehicle on the basis of a non-functioning brake light. The evidence indicated that although the left brake light was operating, the right light was not. Interpreting various statutes, the Court of Appeals held that a vehicle is not required to have more than one operating brake light. It went on to conclude that because no violation of law had occurred, the stop was unreasonable. Before the supreme court, the State did not appeal the court of appeals' interpretation of statutory law; the State appealed only the court's determination that the stop was unreasonable. Thus, the issue before the court was whether an officer's mistake of law may nonetheless give rise to reasonable suspicion to conduct a routine traffic stop. On this issue the court held that an officer's objectively reasonable but mistaken belief that a traffic

violation has occurred can provide reasonable suspicion a stop. Applying this standard to the facts at hand, the court found the officer's mistake objectively reasonable and that the stop was justified.

Criminal Offenses

Hest Technologies, Inc. v. North Carolina, __ N.C. __, __ S.E.2d __ (Dec. 14, 2012) (<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8xNjBMTetMi5wZGY=>). The court reversed *Hest Technologies, Inc. v. North Carolina*, __ N.C. App. __, 725 S.E.2d 10 (Mar. 6, 2012), and held that G.S. 14-306.4 does not violate the First Amendment because it regulates conduct, not protected speech. The court also concluded that even if the statute incidentally burdens speech, it passes muster under the test of *United States v. O'Brien* and that the statute was not overbroad.

Sandhill Amusements v. North Carolina, __ N.C. __, __ S.E.2d __ (Dec. 14, 2012) (<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8xNzBBMTetMi5wZGY=>). For the reasons stated in *Hest*, the court reversed *Sandhill Amusements v. North Carolina*, __ N.C. App. __, 724 S.E.2d 614 (Mar. 6, 2012) (G.S. 14-306.4 is unconstitutional).

State v. Lindsey, __ N.C. __, __ S.E.2d __ (Dec. 14, 2012) (<http://appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8xMjRBMTItMS5wZGY=>). For the reasons stated in the dissenting opinion below, the court reversed *State v. Lindsey*, __ N.C. App. __, 725 S.E.2d 350 (Mar. 6, 2012). In the opinion below the court of appeals held—over a dissent—that there was insufficient evidence of constructive possession of controlled substances and that the trial court erred by denying the defendant's motion to dismiss a felony speeding to elude charge where the officer lost sight of the vehicle and was unable to identify the driver.