Criminal Procedure

Appellate Issues

State v. Hester, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00ODAtMS5wZGY=). Over a dissent, the court dismissed the defendant's first asserted issue on grounds that although he argued plain error, he failed provide an analysis of the prejudicial impact of the challenged evidence.

Counsel Issues

State v. Canty, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi04MDQtMS5wZGY=). Counsel rendered ineffective assistance by failing to file what would have been a meritorious motion to suppress.

State v. Redman, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0xNDItMS5wZGY=). Citing *Lafler v. Cooper,* __ U.S. __, 132 S. Ct. 1376 (2012) (defense counsel rendered ineffective assistance by advising a defendant to reject a plea offer), the court dismissed without prejudice the defendant's claim that defense counsel rendered ineffective assistance by advising him to reject a favorable plea offer. The court noted that the defendant may reassert his claim in a MAR.

Motions to Suppress

State v. Franklin, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00MTItMS5wZGY=). (1) The court rejected the defendant's argument that the trial court lacked jurisdiction to enter its written order on his motion to suppress because the order differed materially from the court's oral ruling. The appellate court found no material difference between the two orders. (2) The trial court had jurisdiction to enter a written order denying the defendant's motion to suppress when the written order was entered after the defendant had given notice of appeal but had the effect of merely reducing the court's oral ruling to writing.

Indictment Issues

State v. Hester, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00ODAtMS5wZGY=). Where a defendant failed to make a motion to dismiss on the basis of fatal variance at trial, the issue was waived for purposes of appeal.

State v. Redman, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0xNDItMS5wZGY=). Where a defendant

failed to make a motion to dismiss on the basis of fatal variance at trial, the issue was waived for purposes of appeal.

Arrest, Search & Investigation

Vehicle Stops

State v. Canty, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi04MDQtMS5wZGY=). (1) A passenger has standing to challenge a stop of a vehicle in which the passenger was riding. (2) No reasonable suspicion supported a traffic stop. The State had argued reasonable suspicion based on the driver's alleged crossing of the fog line, her and her passenger's alleged nervousness and failure to make eye contact with officers as they drove by and alongside the patrol car, and the vehicle's slowed speed. The court found that the evidence failed to show that the vehicle crossed the fog line and that in the absence of a traffic violation, the officers' beliefs about the conduct of the driver and passenger were nothing more than an "unparticularized suspicion or hunch." It noted that nervousness, slowing down, and not making eye contact is not unusual when passing law enforcement. The court also found it "hard to believe" that the officers could tell that the driver and passenger were nervous as they passed the officers on the highway and as the officers momentarily rode alongside the vehicle. The court also found the reduction in speed—from 65 mph to 59 mph—insignificant.

State v. Franklin, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00MTItMS5wZGY=). (1) Although a passenger who has no possessory interest in a vehicle has standing to challenge a stop of the vehicle, that passenger does not have standing to challenge a search of the vehicle. (2) Over a dissent, the court held that where officers have probable cause to believe that a traffic infraction (here, a seatbelt violation) has occurred, it is irrelevant whether their stop of the vehicle on that basis was a pretext. The dissenting judge believed that there was no probable cause that the seatbelt violation had occurred. (3) Over a dissent, the court held that a vehicle stop made on the basis of a seatbelt violation was sufficiently limited in scope and duration. The stop lasted ten minutes and the officer's actions related to the stop. The dissenting judge believed that the stop's duration was unreasonable.

State v. Royster, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00NTgtMS5wZGY=). (1) An officer had reasonable suspicion to stop the defendant's vehicle for speeding. The court rejected the defendant's argument that because the officer only observed the vehicle for three to five seconds, the officer did not have a reasonable opportunity to judge the vehicle's speed. The court noted that after his initial observation of the vehicle, the officer made a U-turn and began pursuing it; he testified that during his pursuit, the defendant "maintained his speed." Although the officer did not testify to a specific distance he observed the defendant travel, "some distance was implied" by his testimony regarding his pursuit of the defendant. Also, although it is not necessary for an officer to have specialized training to be able to visually estimate a vehicle's speed, the officer in question had specialized training in visual speed estimation. (2) The court rejected the defendant's argument that an officer lacked reasonable suspicion

to stop his vehicle for speeding on grounds that there was insufficient evidence identifying the defendant as the driver. Specifically, the defendant noted that the officer lost sight of the vehicle for a short period of time. The officer only lost sight of the defendant for approximately thirty seconds and when he saw the vehicle again, he recognized both the car and the driver. [Author's note: On this point the opinion discusses the court's earlier opinion in *State v. Lindsey*, __ N.C. App. __, 725 S.E.2d 350 (2012); that opinion was reversed by the N.C. Supreme Court earlier this week. However, because the court distinguished *Lindsey,* its discussion of the now-reversed decision does not seem to undermine the ultimate holding.]

Interrogation and Confession

State v. Randolph, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi02ODgtMS5wZGY=). The rule of *State v. Walker*, 269 N.C. 135 (1967) (State may not introduce evidence of a written confession unless that written statement bears certain indicia of voluntariness and accuracy) does not apply where an officer testified to the defendant's oral statements.

Criminal Offenses

Homicide

State v. Elmore, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00NTktMS5wZGY=). G.S. 20-141.4(c) does not bar simultaneous prosecutions for involuntary manslaughter and death by vehicle; it only bars punishment for both offenses when they arise out of the same death.

Sexual Assaults

State v. Randolph, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi02ODgtMS5wZGY=). The trial court did not err by denying the defendant's motion to dismiss a charge of second-degree sexual offense asserting insufficient evidence of the requisite sexual act. The evidence was sufficient to establish both cunnilingus and digital penetration.

Larceny

State v. Redman, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi0xNDItMS5wZGY=). In a felony larceny case, there was sufficient evidence that a stolen vehicle was worth more than $1,000. The value of a stolen item is measured by fair market value and a witness need not be an expert to give an opinion as to value. A witness who has knowledge of value gained from experience, information and observation may give his or her opinion of the value of the stolen item. Here, the vehicle owner's testimony regarding its value constituted sufficient evidence on this element.

Weapons

Johnston v. State , __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2012) (http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMi8xMi00NS0xLnBkZg==). Over a dissent the court reversed the trial court's ruling that G.S. 14-415.1 (proscribing the offense of felon in possession of a firearm) violated the plaintiff's substantive due process under the U.S. and N.C. constitutions and remanded to the trial court for additional proceedings. The court also reversed the trial court's ruling that the statute was facially invalid on procedural due process grounds, under both the U.S. and N.C. constitutions. The dissenting judge would have held that the plaintiff's substantive due process claim under the N.C. constitution was without merit.