

## **Criminal Procedure**

### **Pleas**

[\*State v. Rouson\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). There was a sufficient factual basis for the defendant's pleas to possession of a stolen firearm and possession with intent to sell or deliver a controlled substance. There was evidence that the gun was stolen and that the defendant knew or had reasonable grounds to know that. There was also evidence that the defendant possessed cocaine with the intent to sell and deliver it. Additionally, the fact that the defendant purchased the firearm in exchange for cocaine constituted other incriminating evidence of knowledge and intent.

### **Motions to Dismiss**

[\*State v. Steen\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). The court rejected the defendant's argument that the trial court erred by denying his motion to dismiss where the defendant's argument went to issues of credibility.

### **Verdict**

[\*State v. Torres-Gonzales\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). The jury's verdict was not legally inconsistent where the defendant was found guilty of conspiracy to traffic in cocaine by possession but not guilty of trafficking in cocaine by possession. [Author's note: Although the opinion suggests that possession is an element of conspiracy to traffic in possession, North Carolina law provides that a conspiracy occurs when a defendant enters into an agreement to carry out an unlawful act with the intent that the agreement be carried out. There is no requirement that the act actually be carried out. See generally JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 72-73 (7<sup>th</sup> ed. 2012) (discussing the elements of conspiracy)]

### **Sex Offenders**

[\*In re McClain\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). The court rejected the defendant's argument that the trial court erred by denying his petition for removal from the sex offender registry because the incorporation of the Adam Walsh Act and SORNA into G.S. 14-208.12A(a1)(2) was an unconstitutional delegation of legislative authority. The court reasoned in part that "[s]imply defining when particular conduct is unlawful by reference to an external standard . . . has not been deemed an unconstitutional delegation of legislative authority."

## **Evidence**

### **Opinions**

[\*State v. Ragland\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). (1) In a child sex case, the trial court did not err by allowing the State's properly qualified medical expert to testify that the victim's profile was consistent with that of a sexually abused child. The court rejected the defendant's argument that the

State failed to lay a proper foundation for the testimony, concluding that because the witness was properly qualified to testify as an expert regarding the characteristics of sexually abused children, a proper foundation was laid. (2) The trial court erred by admitting expert testimony regarding DNA evidence that amounted to a "prosecutor's fallacy." That fallacy, the court explained, involves the use of DNA evidence to show "random match probability." Random match probability evidence, it continued, is the probability that another person in the general population would share the same DNA profile as the person whose DNA profile matched the evidence. Citing, *McDaniel v. Brown*, 558 U.S. 120 (2010), the court explained that "[t]he prosecutor's fallacy is the assumption that the random match probability is the same as the probability that the defendant was not the source of the DNA sample." It continued, quoting from *McDaniel*:

In other words, if a juror is told the probability a member of the general population would share the same DNA is 1 in 10,000 (random match probability), and he takes that to mean there is only a 1 in 10,000 chance that someone other than the defendant is the source of the DNA found at the crime scene (source probability), then he has succumbed to the prosecutor's fallacy.

Here, error occurred when the State's expert improperly relied on the prosecutor's fallacy. However, the error did not rise to the level of plain error.

### **Judicial Notice**

[\*Little v. Little\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). In a domestic violence protective order hearing a district court judge committed prejudicial error by taking judicial notice of the fact that the defendant's criminal file showed a conviction for assault on a female where in fact a PJC was entered on that charge.

### **Hearsay**

[\*Little v. Little\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). A wife's testimony in a domestic violence protective order hearing that a doctor told her that her neck suffered a cervical strain was inadmissible hearsay. Because the trial court relied on the inadmissible hearsay the error was not harmless.

### **Arrest Search and Investigation**

#### **Interrogation**

[\*State v. Quick\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). The court rejected the State's argument that the defendant initiated contact with the police following his initial request for counsel and thus waived his right to counsel. After the defendant asserted his right to counsel, the police returned him to the interrogation room and again asked if he wanted counsel, to which he said yes. Then, on the way from the interrogation room back to the jail, a detective told the defendant that an attorney would not be able to help him and that he would be served with warrants regardless of whether an attorney was there. The police knew or should have known that telling the defendant that an attorney could not help him with the warrants would be reasonably likely to elicit an incriminating response. It was only after

this statement by police that the defendant agreed to talk. Therefore, the court concluded, the defendant did not initiate the communication. The court went on to conclude that even if the defendant had initiated communication with police, his waiver was not knowing and intelligent. The trial court had found that the prosecution failed to meet its burden of showing that the defendant made a knowing and intelligent waiver, relying on the facts that the defendant was 18 years old and had limited experience with the criminal justice system, there was a period of time between 12:39 p.m. and 12:54 p.m. where there is no evidence as to what occurred, and there was no audio or video recording. The court found that the defendant's age and inexperience, when combined with the circumstances of his interrogation, support the trial court's conclusion that the State failed to prove the defendant's waiver was knowing and intelligent.

### **Stops**

[\*State v. Rouson\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). The trial court's findings of fact support its rejection of the defendant's argument that the show of force by law enforcement during a traffic stop amounted to an arrest.

### **Searches**

[\*State v. Torres-Gonzales\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). In a drug trafficking case, the court concluded that the search warrant was supported by probable cause. The affiant was an officer with more than twenty-two years of experience in law enforcement who had previously been involved in numerous investigations concerning the sale of illegal substances and the information in the affidavit included specific facts supporting a determination of probable cause.

### **Criminal Offenses**

#### **Sexual Assaults**

[\*In re K.C.\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). There was insufficient evidence to support a delinquency adjudication for sexual battery. Although there was sufficient evidence of sexual contact, there was insufficient evidence of a sexual purpose. When dealing with children, sexual purpose cannot be inferred from the act itself and that there must be "evidence of the child's maturity, intent, experience, or other factor indicating his purpose in acting." It continued, "factors like age disparity, control by the juvenile, the location and secretive nature of the juvenile's actions, and the attitude of the juvenile should be taken into account." Evaluating the circumstances, the court found the evidence insufficient.

#### **Drugs**

[\*State v. Torres-Gonzales\*](#), \_\_ N.C. App. \_\_, \_\_ S.E.2d \_\_ (April 16, 2013). There was sufficient evidence of a drug trafficking conspiracy. An undercover officer set up a time and location for the sale of drugs. When Blanco, the officer's drug contact, arrived at the location, he was with the defendant. Both men

then came to look at the officer's money. The defendant and Blanco left the location together, and the defendant told Blanco to wait at a parking lot where the drugs would be delivered. Later, the defendant told Blanco to go to the defendant's house to pick up the drugs to complete the sale. [Author's note: Although the opinion suggests that possession is an element of conspiracy to traffic in possession, North Carolina law provides that a conspiracy occurs when a defendant enters into an agreement to carry out an unlawful act with the intent that the agreement be carried out. There is no requirement that the act actually be carried out. *See generally* JESSICA SMITH, NORTH CAROLINA CRIMES: A GUIDEBOOK ON THE ELEMENTS OF CRIME 72-73 (7<sup>th</sup> ed. 2012) (discussing the elements of conspiracy)]