

Criminal Procedure

Indictment Issues

[State v. Land](#), __ N.C. __, __ S.E.2d __ (June 13, 2013). The court, per curiam, affirmed the decision below in *State v. Land*, __ N.C. App. __, 733 S.E.2d 588 (2012), holding that a drug indictment was not fatally defective. Over a dissent, the court of appeals had held that when a defendant is charged with delivering marijuana and the amount involved is less than five grams, the indictment need not allege that the delivery was for no remuneration. Relying on G.S. 90-95(b)(2) (transfer of less than five grams of marijuana for no remuneration does not constitute a delivery in violation of G.S. 90-95(a)(1)), the defendant argued that the statute “creates an additional element for the offense of delivering less than five grams of marijuana -- that the defendant receive remuneration -- and that this additional element must be alleged.” Relying on *State v. Pevia*, 56 N.C. App. 384, 387 (1982), the court of appeals held that an indictment is valid under G.S. 90-95 even without that allegation.

Criminal Offenses

[State v. Boyd](#), __ N.C. __, __ S.E.2d __ (June 13, 2013). For the reasons stated in the dissenting opinion below, the court reversed *State v. Boyd*, __ N.C. App. __, 730 S.E.2d 193 (Aug. 7, 2012), and held that no plain error occurred in a kidnapping case. In the decision below, the court of appeals held, over a dissent, that the trial court committed plain error by instructing the jury on a theory of second degree kidnapping (removal) that was not charged in the indictment or supported by evidence. The dissenting judge did not believe that the error constituted plain error.

Arrest, Search & Investigation

Vehicle Stops

[State v. Kochuk](#), __ N.C. __, __ S.E.2d __ (June 13, 2013). For the reasons stated in the dissenting opinion below, the court reversed and found that an officer had reasonable suspicion for a stop. In the opinion below, *State v. Kochuk*, __ N.C. App. __, __ S.E.2d __ (Nov. 6, 2012), the court of appeals, over a dissent, affirmed the trial court’s order granting the defendant’s motion to suppress all evidence obtained as a result of a vehicle stop. Relying on *State v. Fields*, 195 N.C. App. 740 (2009) (weaving alone is insufficient to support a reasonable suspicion that the defendant was driving while impaired), the trial court had determined that the officer lacked reasonable suspicion for the stop. The officer saw the defendant’s vehicle cross over the dotted white line causing both passenger side wheels to enter the right lane for three to four seconds. He also observed the defendant’s vehicle drift to the right side of the right lane “where its wheels were riding on top of the white line . . . twice for a period of three to four seconds each time.” The court of appeals found these movements were “nothing more than weaving” and thus under *Fields*, the stop was improper. The dissenting judge believed that the officer had reasonable suspicion under *State v. Otto*, __ N.C. __, 726 S.E.2d 824 (2012).

Post-Conviction

Newly Discovered Evidence

[State v. Rhodes](#), __ N.C. __, __ S.E.2d __ (June 13, 2013). Reversing the court of appeals, the court held that information supporting the defendant’s motion for appropriate relief (MAR) was not newly discovered evidence. After the defendant was convicted of drug possession offenses, his father told a probation officer that the contraband belonged to him. The trial court granted the defendant’s MAR, concluding that this statement constituted newly discovered evidence

under G.S. 15A-1415(c). The court concluded that because the information implicating the defendant's father was available to the defendant before his conviction, the statement was not newly discovered evidence and that thus the defendant was not entitled to a new trial. The court noted that the search warrant named both the defendant and his father, the house was owned by both of the defendant's parents, and the father had a history of violating drug laws. Although the defendant's father invoked the Fifth Amendment at trial when asked whether the contraband belonged to him, the information implicating him as the sole possessor of the drugs could have been made available by other means. It noted that on direct examination of the defendant's mother, the defendant did not pursue questioning about whether the drugs belonged to the father; also, although the defendant testified at trial, he gave no testimony regarding the ownership of the drugs.