

Criminal Procedure

Jury Issues

[State v. Thomas](#), __ N.C. App. __, __ S.E.2d __ (Oct. 15, 2013). Following *State v. Holden*, 346 N.C. 404 (1997), the court held that the trial court erred by refusing to allow the defendant to use a remaining peremptory challenge when a juror revealed mid-trial that she knew one of the State's witnesses from high school. After re-opening voir dire on the juror, the trial court determined that there was no cause to remove her. The defendant then requested that he be allowed to use his remaining peremptory challenge, but this request was denied. The court reasoned that the trial court has discretion to re-open voir dire even after the jury has been empaneled. If that happens, each side has an absolute right to exercise any remaining peremptory challenges to excuse the juror.

Arrest Search and Investigation

[State v. Blankenship](#), __ N.C. App. __, __ S.E.2d __ (Oct. 15, 2013). Officers did not have reasonable suspicion to stop the defendant based on an anonymous tip from a taxicab driver. The taxicab driver anonymously contacted 911 by cell phone and reported that a red Mustang convertible with a black soft top, license plate XXT-9756, was driving erratically, running over traffic cones and continuing west on a specified road. Although the 911 operator did not ask the caller's name, the operator used the caller's cell phone number to later identify the taxicab driver as John Hutchby. The 911 call resulted in a "be on the lookout" being issued; minutes later officers spotted a red Mustang matching the caller's description, with "X" in the license plate, heading as indicated by the caller. Although the officers did not observe the defendant violating any traffic laws or see evidence of improper driving that would suggest impairment, the officers stopped the defendant. The defendant was charged with DWI. The court began:

[T]he officers did not have the opportunity to judge Hutchby's credibility firsthand or confirm whether the tip was reliable, because Hutchby had not been previously used and the officers did not meet him face-to-face. Since the officers did not have an opportunity to assess his credibility, Hutchby was an anonymous informant. Therefore, to justify a warrantless search and seizure, either the tip must have possessed sufficient indicia of reliability or the officers must have corroborated the tip.

The court went on to find that neither requirement was satisfied.

Criminal Offenses

[State v. Simpson](#), __ N.C. App. __, __ S.E.2d __ (Oct. 15, 2013). (1) The trial court erred by denying the defendant's motion to dismiss a charge of maintaining a vehicle for use, storage, or sale of a controlled substance. The statute provides two ways to show a violation: first, that the defendant knowingly allowed others to resort to his vehicle to use drugs; and second, that the defendant knowingly used the dwelling for the keeping or selling of drugs. The court reasoned that the defendant could not be convicted under the first prong because of his own use of drugs in his vehicle and that the State presented no evidence as to the second prong. [Author's note: the court does not explain why the

State's evidence that the defendant's acquaintance also "got[] high" with the defendant in the defendant's vehicle was insufficient to prove the first prong.] (2) Reiterating that in a manufacturing case based on preparing or compounding the State must prove intent to distribute, the court found that no plain error had occurred where such a jury instruction was lacking. (3) No double jeopardy violation occurred when the defendant was convicted of trafficking in methamphetamine, manufacturing methamphetamine, and possession of methamphetamine based on the same illegal substance.