

Criminal Procedure

Corpus Delicti

[State v. Cox](#), __ N.C. __, S.E.2d __ (Nov. 8, 2013). The court reversed the decision below, *State v. Cox*, __ N.C. App. __, 731 S.E.2d 438 (2012), which had found insufficient evidence to support a conviction of felon in possession of a firearm under the corpus delicti rule. The defendant confessed to possession of a firearm recovered by officers ten to twelve feet from a car in which he was a passenger. The Supreme Court held that under the “*Parker* rule” the confession was supported by substantial independent evidence tending to establish its trustworthiness and that therefore the corpus delicti rule was satisfied. The court noted that after a Chevrolet Impala attempted to avoid a DWI checkpoint by pulling into a residential driveway, the driver fled on foot as a patrol car approached. The officer observed that the defendant was one of three remaining passengers in the car. Officers later found the firearm in question within ten to twelve feet of the driver’s open door. Even though the night was cool and the grass was wet, the firearm was dry and warm, indicating that it came from inside the car. The court determined that these facts strongly corroborated essential facts and circumstances embraced in the defendant’s confession and linked the defendant temporally and spatially to the firearm. The court went on to note that the defendant made no claim that his confession was obtained by deception or coercion, or was a result of physical or mental infirmity. It continued, concluding that the trustworthiness of the confession was “further bolstered by the evidence that defendant made a voluntary decision to confess.” [Author’s note: For a general discussion of the corpus delicti rule, see my benchbook chapter here: <http://benchbook.sog.unc.edu/criminal/corpus-delicti>]

Arrest Search and Investigation

Stops

[State v. Heien](#), __ N.C. __, S.E.2d __ (Nov. 8, 2013). The court per curiam affirmed the decision below, *State v. Heien*, __ N.C. App. __, 741 S.E.2d 1 (2013). Over a dissent the court of appeals had held that a valid traffic stop was not unduly prolonged and as a result the defendant’s consent to search his vehicle was valid. The stop was initiated at 7:55 am and the defendant, a passenger who owned the vehicle, gave consent to search at 8:08 am. During this time, the two officers discussed a malfunctioning vehicle brake light with the driver, discovered that the driver and the defendant claimed to be going to different destinations, and observed the defendant behaving unusually (he was lying down on the backseat under a blanket and remained in that position even when approached by an officer requesting his driver’s license). After each person’s name was checked for warrants, their licenses were returned. The officer then requested consent to search the vehicle. The officer’s tone and manner were conversational and non-confrontational. No one was restrained, no guns were drawn and neither person was searched before the request to search the vehicle was made. The trial judge properly concluded that the defendant was aware that the purpose of the initial stop had been concluded and that further conversation was consensual. The court of appeals also had held, again over a dissent, that the defendant’s consent to search the vehicle was valid even though the officer did not inform the defendant that he was searching for narcotics.

Criminal Offenses

Sexual Assault & Kidnapping

[*State v. Huss*](#), __ N.C. __, S.E.2d __ (Nov. 8, 2013). The court per curiam, with an equally divided court, affirmed the decision below, *State v. Huss*, __ N.C. App. __, 734 S.E.2d 612 (2012). That decision thus is left undisturbed but without precedential value. In this case, involving charges of second-degree sexual offense and second-degree rape, the court of appeals had held that the trial court erred by denying the defendant's motion to dismiss. The State proceeded on a theory that the victim was physically helpless. The facts showed that the defendant, a martial arts instructor, bound the victim's hands behind her back and engaged in sexual activity with her. The statute defines the term physically helpless to mean a victim who either is unconscious or is physically unable to resist the sexual act. Here, the victim was not unconscious. Thus, the only issue was whether she was unable to resist the sexual act. The court of appeals began by rejecting the defendant's argument that this category applies only to victims who suffer from some permanent physical disability or condition, instead concluding that factors other than physical disability could render a victim unable to resist the sexual act. However, it found that no such evidence existed in this case. The State had argued that the fact that the defendant was a skilled fighter and outweighed the victim supported the conclusion that the victim was physically helpless. The court of appeals rejected this argument, concluding that the relevant analysis focuses on "attributes unique and personal of the victim." Similarly, the court of appeals rejected the State's argument that the fact that the defendant pinned the victim in a submissive hold and tied her hands behind her back supported the conviction. It noted, however, that the evidence would have been sufficient under a theory of force. The defendant also was convicted of kidnapping the victim for the purpose of facilitating second-degree rape. The court of appeals reversed the kidnapping conviction on grounds that the State had proceeded under an improper theory of second-degree rape (the State proceeded on a theory that the victim was physically helpless when in fact force would have been the appropriate theory). The court of appeals concluded: "because the State proceeded under an improper theory of second-degree rape, we are unable to find that the State sufficiently proved the particular felonious intent alleged here."

Weapons Offenses

[*Johnston v. State*](#), __ N.C. __, S.E.2d __ (Nov. 8, 2013). The court per curiam affirmed the decision below, *Johnston v. State*, __ N.C. App. __, 735 S.E.2d 859 (Dec. 18, 2012), which 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 right under the U.S. and N.C. constitutions and remanded to the trial court for additional proceedings. The court of appeals 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.