

## **Criminal Procedure**

### **Opening and Closing Statements**

*State v. Sargent*, \_\_ N.C. App. \_\_. \_\_ S.E.2d \_\_ (Mar. 18, 2014)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=30708>). Where the defendant opened the door to the credibility of a defense witness, the prosecutor's possibly improper comments regarding the witness's credibility were not so grossly improper as to require intervention by the trial court ex mero motu. Among other things, the prosecutor stated: "that man would not know the truth if it came up and slapped him in the head."

### **DWI Procedure—Knoll Motions**

*State v. Kostick*, \_\_ N.C. App. \_\_. \_\_ S.E.2d \_\_ (Mar. 18, 2014)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=31015>). In this DWI case, the trial court did not err by denying the defendant's *Knoll* motion. The defendant argued that the magistrate violated his rights to a timely pretrial release by setting a \$500 bond and holding him in jail for approximately three hours and 50 minutes. The court found that evidence supported the conclusion that the magistrate properly informed the defendant of his rights and that the magistrate properly considered all of the evidence when setting the \$500 bond.

### **Probation**

*State v. McCollogh*, \_\_ N.C. App. \_\_. \_\_ S.E.2d \_\_ (Mar. 18, 2014)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=30684>). (1) The court held that because it had authority to consider the validity of a jurisdictional challenge to the underlying conviction when reviewing a judgment revoking probation, it would examine on the merits whether the trial court lacked the authority to revoke probation based on jurisdictional defects in the underlying felony convictions. (2) The district court lacked jurisdiction to accept the defendant's no contest pleas and enter the underlying probationary judgments where the relevant felonies were charged by way of arrest warrants. When a guilty or no contest plea to a Class H or I felony is entered in district court, the plea must be taken pursuant to either G.S. 7A-272(c)(1), which requires the filing of an information, or G.S. 7A-272(c)(2), which requires a transfer order entered pursuant to G.S. 15A-1029.1 and assumes that a bill of indictment has been returned. In this case, neither of the required charging instruments were ever returned or filed.

## **Arrest Search and Investigation**

### **Plain View**

*State v. Alexander*, \_\_ N.C. App. \_\_. \_\_ S.E.2d \_\_ (Mar. 18, 2014)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=30578>). The court remanded for findings of fact as to the third element of the plain view analysis. Investigating the defendant's involvement in the theft of copper coils, an officer walked onto the defendant's mobile home porch and knocked on the door. From

the porch, the officer saw the coils in an open trailer parked at the home. The officer then seized the coils. The court noted that under the plain view doctrine, a warrantless seizure is lawful if the officer views the evidence from a place where he or she has legal right to be; it is immediately apparent that the items observed constitute evidence of a crime, are contraband, or are subject to seizure based upon probable cause; and the officer has a lawful right of access to the evidence itself. The court found that the officer viewed the coils from the porch, a location where he had a legal right to be. In the course of its ruling, the court clarified that inadvertence is not a necessary condition of a lawful search pursuant to the plain view doctrine. Next, noting in part that the coils matched the description of goods the officer knew to be stolen, the court concluded that the trial court's factual findings supported its conclusion that it was immediately apparent to the officer that the coils were evidence of a crime. On the third element of the test however—whether the officer had a lawful right of access to the evidence—the trial court did not make the necessary findings. Specifically, the court noted:

Here, the trial court failed to make any findings regarding whether the officer[] had legal right of access to the coils in the trailer. The trial court did not address whether the trailer was located on private property leased by defendant, private property owned by the mobile home park, or public property. It also did not make any findings regarding whether, assuming that the trailer was located on private property, the officer[] had legal right of access either by consent or due to exigent circumstances.

### **Checkpoints**

*State v. Kostick*, \_\_ N.C. App. \_\_. \_\_ S.E.2d \_\_ (Mar. 18, 2014)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=31015>). In a DWI case, the court rejected the defendant's argument that the checkpoint at issue was unconstitutional. The court first found that the checkpoint had a legitimate primary programmatic purpose, checking for potential driving violations. Next, it found that the checkpoint was reasonable.

### **Criminal Offenses**

#### **Motor Vehicle Offenses**

*State v. Mulder*, \_\_ N.C. App. \_\_. \_\_ S.E.2d \_\_ (Mar. 18, 2014)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=30827>). Double jeopardy barred convicting the defendant of speeding and reckless driving when he also was convicted of felony speeding to elude arrest, which was raised from a misdemeanor to a felony based on the aggravating factors of speeding and driving recklessly. The court determined that the aggravating factors used in the felony speeding to elude conviction were essential elements of the offense for purposes of double jeopardy. Considering the issue of whether legislative intent compelled a different result, the court determined that the General Assembly did not intend punishment for speeding and reckless driving when a defendant is convicted of felony speeding to elude arrest based on the aggravating factors of speeding and reckless driving. Thus, the court arrested judgment on the speeding and reckless driving convictions.

*State v. Kostick*, \_\_ N.C. App. \_\_. \_\_ S.E.2d \_\_ (Mar. 18, 2014)

(<http://appellate.nccourts.org/opinions/?c=2&pdf=31015>). In this DWI case in which a State Highway Patrol officer arrested the defendant, a non-Indian, on Indian land, the court rejected the defendant's argument that the State lacked jurisdiction over the crime. The court noted that pursuant to the Tribal Code of the Eastern Band of the Cherokee Indians and mutual compact agreements between the Tribe and other law enforcement agencies, the North Carolina Highway Patrol has authority to patrol and enforce the motor vehicle laws of North Carolina within the Qualla boundary of the Tribe, including authority to arrest non-Indians who commit criminal offenses on the Cherokee reservation. Thus, the court concluded, "Our State courts have jurisdiction over the criminal offense of driving while impaired committed by a non-Indian, even where the offense and subsequent arrest occur within the Qualla boundary of the Cherokee reservation."