

Criminal Procedure

Sentencing

[State v. Facyson](#), __ N.C. __, __ S.E.2d __ (June 12 2014). Reversing the court of appeals, the court held the evidence necessary to prove a defendant guilty under the theory of acting in concert is not the same as that necessary to establish the aggravating factor that the defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy. Because the aggravating factor requires additional evidence beyond that necessary to prove acting in concert, the trial court properly submitted the aggravating factor to the jury. Specifically, the aggravating factor requires evidence that the defendant joined with at least two other individuals to commit the offense while acting in concert only requires proof that the defendant joined with at least one other person. Additionally, the aggravating factor requires proof that the defendant was not charged with committing a conspiracy, which need not be proved for acting in concert.

Probation

[State v. Murchison](#), __ N.C. __, __ S.E.2d __ (June 12 2014). Reversing an unpublished decision of the court of appeals, the court held that the trial court did not abuse its discretion by basing its decision to revoke the defendant's probation on hearsay evidence presented by the State. The court noted that under Rule 1101, the formal rules of evidence do not apply in probation revocation hearings.

[State v. Pennell](#), __ N.C. __, __ S.E.2d __ (June 12 2014). Reversing the court of appeals, the court held that on direct appeal from the activation of a suspended sentence, a defendant may not challenge the jurisdictional validity of the indictment underlying his original conviction. The court reasoned that a challenge to the validity of the original judgment constitutes an impermissible collateral attack. It explained:

[D]efendant failed to appeal from his original judgment. He may not now appeal the matter collaterally via a proceeding contesting the activation of the sentence imposed in the original judgment. As such, defendant's present challenge to the validity of his original conviction is improper. Because a jurisdictional challenge may only be raised when an appeal is otherwise proper, we hold that a defendant may not challenge the jurisdiction over the original conviction in an appeal from the order revoking his probation and activating his sentence. The proper procedure through which defendant may challenge the facial validity of the original indictment is by filing a motion for appropriate relief under [G.S.] 15A-1415(b) or petitioning for a writ of habeas corpus. Our holding here does not prejudice defendant from pursuing these avenues.

Slip Op. at 9-10 (footnote and citation omitted).

Arrest, Search and Investigation

[State v. Verkerk](#), __ N.C. __, __ S.E.2d __ (June 12 2014). Reversing the court of appeals in a DWI case where the defendant was initially stopped by a firefighter, the court determined that the trial court

properly denied the defendant's motion to suppress which challenged the firefighter's authority to make the initial stop. After observing the defendant's erratic driving and transmitting this information to the local police department, the firefighter stopped the defendant's vehicle. After some conversation, the driver drove away. When police officers arrived on the scene, the firefighter indicated where the vehicle had gone. The officers located the defendant, investigated her condition and charged her with DWI. On appeal, the defendant argued that because the firefighter had no authority to stop her, evidence from the first stop was improperly obtained. However, the court determined that it need not consider the extent of the firefighter's authority to conduct a traffic stop or even whether the encounter with him amounted to a "legal stop." The court reasoned that the firefighter's observations of the defendant's driving, which were transmitted to the police before making the stop, established that the police officers had reasonable suspicion to stop the defendant. The court noted that this evidence was independent of any evidence derived from the firefighter's stop.