

Criminal Procedure

Appeal Issues

[State v. Williams](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). On appeal from the trial court's order granting the defendant's suppression motion, the court rejected the defendant's argument that the State failed to meet the certification requirements of G.S. 15A-979(c) by addressing its certificate to "the court" rather than the trial court judge. The defendant argued that because G.S. 15A-979(c) requires that the certificate be presented to the judge who granted the motion, any deviation from this statutory language renders the State's certificate void. The court concluded that the word "judge" is synonymous with "the court."

Corpus Delicti Rule

[State v. Parks](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). Where the State failed to produce substantial, independent corroborative evidence to support the facts underlying the defendant's extrajudicial statement in violation of the corpus delicti rule, the trial court erred by denying the defendant's motion to dismiss charges of participating in the prostitution of a minor. [Author's note: For a discussion of the corpus delicti rule generally, see my judges' Benchbook section [here](#)].

Jury Instructions

[State v. Edgerton](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). In a case where the defendant was found guilty of violation of a DVPO with a deadly weapon the court held, over a dissent, that the trial court committed plain error by failing to instruct the jury on the lesser included offense, misdemeanor violation of a DVPO, where the court had determined that the weapon at issue was not a deadly weapon per se.

Post-Conviction

[State v. Collins](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). The trial court properly denied the defendant's pro se motion for post-conviction DNA testing where the defendant failed to adequately establish that newer and more accurate tests would identify the perpetrator or contradict prior test results. It reasoned:

Defendant's mere allegations that "newer and more accurate testing" methods exist, "which would provide results that are significantly more accurate and probative of the identity of the perpetrator [o]r accomplice, or have a reasonable probability of . . . contradicting prior test results" are incomplete and conclusory. Even though he named a new method of DNA testing, he provided no information about how this method is different from and more accurate than the type of DNA testing used in this case. Without more specific detail from Defendant or some other evidence, the trial court could not adequately determine whether additional testing would be significantly more

accurate and probative or have a reasonable probability of contradicting past test results.

[Author's note: For more information about post-conviction DNA testing, see my judges' Benchbook chapter [here](#)].

Blood Tests—Motor Vehicle Cases

[State v. Williams](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). In an impaired driving case involving a fatality, the trial court properly granted the defendant's motion to suppress blood test results. The defendant was transported an intoxilyzer room where an officer read and gave the defendant a copy of his implied consent rights. The defendant signed the implied consent rights form acknowledging that he understood his rights. After thirty minutes, the officer, a certified chemical analyst, asked the defendant to submit to a chemical analysis of his breath, but the defendant refused. The officer then requested that a blood testing kit be brought to the office. Although the officer did not re-advise the defendant of his implied consent rights for the blood test, he gave the defendant a consent form for the testing, which the defendant signed. The defendant's blood was then drawn. Challenging the trial court's suppression ruling, the State argued that evidence of the results of the blood test was admissible because the defendant signed a consent form for the testing. The court rejected this argument, concluding that although the State could seek to administer a blood test after the defendant refused to take a breath test, it was required, pursuant to G.S. 20-16.2(a) and G.S. 20-139.1(b5), to re-advise the defendant of his implied consent rights before requesting he take a blood test. The court also rejected the State's argument that any statutory violation was technical and not substantial and no prejudice occurred because the defendant had been advised of his implied consent rights as to the breath test less than an hour before the blood test. It reasoned: "A failure to advise cannot be deemed a mere technical and insubstantial violation."

Criminal Offenses

Deadly Weapon

[State v. Edgerton](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). In a felony violation of a DVPO case, the trial court properly determined that a knife used by the defendant was not a deadly weapon per se. There was conflicting evidence as to whether or not the knife was capable of producing death or great bodily harm, including testimony that the knife was so dull that even though the defendant "saw[ed]" the victim's neck with the knife, it left only "knicks" on her neck.

Burglary and Related Offenses

[State v. Mitchell](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). (1) When an indictment charging breaking or entering into a motor vehicle alleged that the defendant broke *and* entered the vehicle, the trial court did not err by instructing the jury that it could find the defendant guilty if he broke *or* entered the vehicle. The statute required only a breaking or entering, not both. (2) There was sufficient evidence to establish that either the defendant or his accomplice entered the vehicle where among other things,

the defendant was caught standing near the vehicle with its door open, there was no pollen inside the vehicle although the outside of the car was covered in pollen, the owner testified that the door was not opened the previous day, and the defendant and his accomplice each testified that the other opened the door. (3) There was sufficient evidence that the defendant broke into the vehicle "with intent to commit any felony or larceny therein." Citing prior case law, the court held that the intent to steal the motor vehicle itself may satisfy the intent element.

Disorderly Conduct

[*In re M.J.G.*](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). The evidence was sufficient to establish that a juvenile engaged in disorderly conduct by disrupting students (G.S. 14-288.4(a)(6)), where the juvenile's conduct caused a substantial interference with, disruption of, and confusion of the operation of the school. The juvenile's conduct "merited intervention by several teachers, the assistant principal, as well as the school resource officer" and "caused such disruption and disorder . . . that a group of special needs students missed their buses."

Drug Offenses

[*State v. Satterthwaite*](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). Where a drug paraphernalia indictment charged the defendant with possession of plastic baggies used to package and repackage pills but the State introduced no evidence of plastic baggies at trial, the trial court erred by denying the defendant's motion to dismiss. At trial, the State's evidence showed that the defendant used a bottle to deliver the pills. The court stated: "We hold that the specific items alleged to be drug paraphernalia must be enumerated in the indictment, and that evidence of such items must be presented at trial."

Judicial Administration

[*State v. Collins*](#), __ N.C. App. __, __ S.E.2d __ (June 17, 2014). The court held that the trial court had jurisdiction to enter an order denying the defendant's request for post-conviction DNA testing, rejecting the defendant's argument that the order was entered out of session and without his consent. Harmonizing *State v. Boone*, 310 N.C. 284 (1984), *State v. Trent*, 359 N.C. 583 (2005), and *Capital Outdoor Adver., Inc. v. City of Raleigh*, 337 N.C. 150 (1994), the court held:

The . . . rule is that the superior court is divested of jurisdiction when it issues an out-of-term order substantially affecting the rights of the parties unless that order is issued with the consent of the parties. If the court issues an order out of session, however, the court is not divested of jurisdiction as long as either section 7A-47.1 or Rule 6(c) is applicable.

Although Rule 6(c) had no bearing on this criminal case, G.S. 7A-47.1 applied and validated the trial court's out-of-session order.