

Criminal Procedure

Indictment Issues

[State v. Williams](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 21, 2015). (1) Count 1 of an indictment charging the defendant with possessing a Schedule I controlled substance, “Methylethcathinone,” with intent to manufacture, sell or deliver was fatally defective. Although 4-methylethcathinone falls within the Schedule I catch-all provision in G.S. 90-89(5)(j), “Methylethcathinone” does not. Therefore, even though 4-methylethcathinone is not specifically named in Schedule I, the trial court erred by allowing the State to amend the indictment to allege “4-Methylethcathinone” and the original indictment was fatally defective. (2) Noting that the indictment defect was a jurisdictional issue, the court rejected the State’s argument that the defendant waived the previous issue by failing to object to the amendment. (3) Count two of the indictment charging the defendant with possessing a Schedule I controlled substance, “Methylone,” with intent to manufacture, sell or deliver was not fatally defective. The court rejected the defendant’s argument that the indictment was required to allege that methylone, while not expressly mentioned by name in G.S. 90-89, falls within the “catch-all” provision subsection (5)(j).

Arrest, Search and Investigation

Searches

[State v. Lowe](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 21, 2015). Although a search warrant to search a home was supported by probable cause, law enforcement exceeded the scope of the warrant when they searched a vehicle parked in the driveway but not owned or controlled by the home’s resident; the trial court thus erred by denying the defendant’s motion to suppress. The affidavit supporting the warrant indicated that one Terrence Turner was selling, using and storing controlled substances at a home he occupied at 529 Ashebrook Dr. No vehicles were specified in the warrant. When executing the warrant officers found Turner inside the home, as well as two overnight guests, the defendant and his girlfriend, Margaret Doctors. Parked in the driveway was a rental car, which the officers learned was being leased by Doctors and operated by both her and the defendant. Although the officers knew that Turner had no connection to the vehicle, they searched it and found controlled substances inside. As a result the defendant was charged with drug offenses. Prior to trial he unsuccessfully moved to suppress, arguing that the warrant was not supported by probable cause and alternatively that the search of his vehicle exceeded the scope of the warrant. (1) The court held that the warrant was supported by probable cause. The affidavit stated that after receiving information that Turner was involved in drug activity at the home the officer examined trash and found correspondence addressed to Turner at the home and a small amount of marijuana residue in a fast food bag. (2) The court agreed that the search of the defendant’s vehicle exceed the scope of the warrant issued to search Turner’s home. Noting that the officers could have searched the vehicle if it belonged to Turner, the court further noted that they knew Turner had no connection to the car. The court stated that the issue presented, “whether the search of a vehicle rented and operated by an overnight guest at a residence described in a search warrant may be validly searched under the scope of that warrant,” was one of first impression. The court rejected the State’s argument that a warrant to search a home permitted a search of any vehicle found within the curtilage, reasoning: “The State’s proffered rule would allow officers to search any

vehicle within the curtilage of a business identified in a search warrant, or any car parked at a residence when a search is executed, without regard to the connection, if any, between the vehicle and the target of the search.” (3) Finally, the court rejected the State’s argument that the good faith exception should apply because police department policy allowed officers to search all vehicles within the curtilage of premises specified in a warrant. The court found the good faith exception “inappropriate” where the error, as here, is attributable to the police, not a judicial official who issued the warrant.

Juvenile Interrogations

[*State v. Saldierna*](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 21, 2015). Deciding an issue of first impression, the court held that an ambiguous statement by a juvenile implicating his statutory right to have a parent present during a custodial interrogation requires that the law enforcement officer conducting the interview clarify the meaning of the juvenile’s statement before continuing questioning. The 16-year-old defendant was arrested in connection with several home break-ins. During a custodial interrogation, the defendant waived his rights on the Juvenile Waiver of Rights form and indicated that he wished to proceed without a parent. However, at the beginning of the interrogation, the defendant asked to call his mother. The defendant tried to call his mother but was unable to reach her. The interrogation then continued and the defendant gave incriminating statements, which he unsuccessfully moved to suppress. (1) The court found that rather than being an unambiguous request to have his mother present during questioning, the defendant’s question, “Can I call my mom?” was an ambiguous request. (2) The court continued, holding that, in the face of this ambiguous statement, the interrogating officer was required to clarify the defendant’s desire to proceed without his mother before continuing with questioning. The officer’s failure to do so violated G.S. 7B-2101.

Criminal Offenses

Drug Crimes

[*State v. Williams*](#), ___ N.C. App. ___, ___ S.E.2d ___ (July 21, 2015). The trial court did not err by denying the defendant’s motion to dismiss a charge of maintaining a dwelling. The court first held that the evidence established that the defendant kept or maintained the dwelling where it showed that he resided there. Specifically, the defendant received mail addressed to him at the residence; his probation officer visited him there numerous times to conduct routine home contacts; the defendant’s personal effects were found in the residence, including a pay stub and protective gear from his employment; and the defendant placed a phone call from the Detention Center and informed the other party that officers had “come and searched his house.” Next, the court held that the evidence was sufficient to show that the residence was being used for keeping or selling drugs. In assessing this issue, the court looks at factors including the amount of drugs present and paraphernalia found. Here, a bag containing 39.7 grams of 4-methylethcathinone and methylone was found in a bedroom closet alongside another plastic bag containing “numerous little corner baggies.” A set of digital scales and \$460.00 in twenty dollar bills also were found.