

Criminal Procedure

Sentencing

[State v. Edgerton](#), ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 4, 2015). In this violation of a domestic violence protective order (DVPO) case, the trial court did not err by sentencing the defendant within the aggravated range based in part on the G.S. 15A-1340.16(d)(15) statutory aggravating factor (the “defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense”). The defendant argued that because a personal relationship between the parties is a prerequisite to obtaining a DVPO, the abuse of a position of trust or confidence aggravating factor cannot be used aggravate a sentence imposed for a DVPO violation offense. The court concluded that imposing an aggravated sentence did not violate the rule that evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation.

Motions for Appropriate Relief

[State v. Thomsen](#), ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 4, 2015). (1) Over a dissent the court held that it had jurisdiction to review the trial court’s sua sponte MAR (granting the defendant relief) by way of a writ of certiorari filed by the State. (2) The trial court abused its discretion in making certain findings of fact supporting its sua sponte MAR, which was grounded on the Eighth Amendment. The court found, in part, that the trial court’s factual findings were irrelevant to the sentencing issue, “wholly unsupported by the facts in the record” or “unsupported by reason.” (3) The trial court erred by concluding that the defendant’s 300-month minimum, 420-month maximum sentence for statutory rape and statutory sex offense violated the Eighth Amendment. The court concluded: “A 300-month sentence is not grossly disproportionate to the two crimes to which Defendant pled guilty. Furthermore, Defendant’s 300-month sentence ... is less than or equal to the sentences of many other offenders of the same crime in this jurisdiction.”

Arrest, Search and Investigation

Warrantless Search—Exigent Circumstances

[State v. Jordan](#), ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 4, 2015). In this drug case, the trial court erred in denying the defendant’s motion to suppress evidence obtained as a result of a warrantless search of her residence. According to the court: “The trial court’s findings that the officers observed a broken window, that the front door was unlocked, and that no one responded when the officers knocked on the door are insufficient to show that they had an objectively reasonable belief that a breaking and entering had *recently* taken place or *was still in progress*, such that there existed an urgent need to enter the property” and that the search was justified under the exigent circumstances exception to the warrant requirement. It continued:

In this case, the only circumstances justifying the officers’ entry into defendant’s residence were a broken window, an unlocked door, and the lack of response to the officers’ knock at the door. We hold that although these findings may be sufficient to give the officers a reasonable belief that an illegal entry had occurred *at some point*,

they are insufficient to give the officers an objectively reasonable belief that a breaking and entering was in progress or had occurred recently.

Traffic Stops

[State v. Warren](#), ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 4, 2015). In this post-*Rodriguez* case, the court held, over a dissent, that the officer had reasonable suspicion to extend the scope and duration of a routine traffic stop to allow a police dog to perform a drug sniff outside the defendant's vehicle. The court noted that under *Rodriguez v. United States*, ___ U.S. ___, 131 L.Ed. 2d 492 (2015), an officer who lawfully stops a vehicle for a traffic violation but who otherwise does not have reasonable suspicion that any crime is afoot beyond a traffic violation may execute a dog sniff only if the check does not prolong the traffic stop. It further noted that earlier N.C. case law applying the de minimus rule to traffic stop extensions had been overruled by *Rodriguez*. The court continued, concluding that in this case the trial court's findings support the conclusion that the officer developed reasonable suspicion of illegal drug activity during the course of his investigation of the traffic offense and was therefore justified to prolong the traffic stop to execute the dog sniff. Specifically:

Defendant was observed and stopped "in an area [the officer] knew to be a high crime/high drug activity area[;]" that while writing the warning citation, the officer observed that Defendant "appeared to have something in his mouth which he was not chewing and which affected his speech[;]" that "during his six years of experience [the officer] who has specific training in narcotics detection, has made numerous 'drug stops' and has observed individuals attempt to hide drugs in their mouths and . . . swallow drugs to destroy evidence[;]" and that during their conversation Defendant denied being involved in drug activity "any longer."