Criminal Procedure

Indictment Issues

State v. Bryant, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 17, 2015). An indictment charging discharging a firearm into an occupied dwelling was not defective. The indictment alleged that the defendant "discharge[d] a firearm to wit: a pistol into an apartment 1727 Clemson Court, Kannapolis, NC at the time the apartment was occupied by Michael Fezza" and that the defendant violated G.S. 14-34. The defendant was convicted of discharging a weapon into an occupied dwelling in violation of G.S. 14-34.1. The court rejected the defendant's argument that the term "apartment," as used in the indictment, was not synonymous with the term "dwelling," the term used in the statute. On this issue the court stated: "We refuse to subject defendant's … indictment to hyper technical scrutiny with respect to form." Next, the court held that although the indictment incorrectly referenced G.S. 14-34 instead of G.S. 14-34.1(b), the error was not a fatal defect.

Counsel Issues

State v. Warren, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 17, 2015). (1) Because the defendant had ample time to investigate, prepare, and present his defense and had failed to show that he received ineffective assistance of counsel by the trial court's denial of his motion to continue, the trial court did not err by denying defense counsel's motion to withdraw on this ground. (2) With respect to the defendant's assertion that the trial court's denial of the motion to withdraw resulted in him receiving ineffective assistance of counsel in other respects, the court found the record insufficient address the ineffectiveness issues and dismissed these grounds without prejudice to the defendant's right to assert them in a motion for appropriate relief.

DWI Procedure

State v. Hutton, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 17, 2015). In this DWI case where the district court judge entered a preliminary determination that the results of the defendant's blood alcohol test should be suppressed but the superior court reversed the preliminary determination on the State's appeal and remanded to the district court for further proceedings, the defendant had no right of appeal to the court of appeals. Because the district court did not enter a final judgment pursuant to G.S. 20-38.6(f) denying the motion to suppress, the defendant could not seek review of the ruling on that motion. Although the court found it had authority to grant certiorari, it declined to do so.

Evidence

Admission of Arrest Warrant

State v. Bryant, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 17, 2015). Although the trial court violated G.S. 15A-1221(b) by admitting an arrest warrant into evidence, the error did not constitute plain error.

Criminal Offenses

Discharging a Barreled Weapon

State v. Bryant, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 17, 2015). In a discharging a barreled weapon into occupied property case, the trial court did not err by instructing the jury that because the crime was a general intent crime, the State need not prove that the defendant intentionally discharged the firearm into occupied property, and that it needed only prove that he intentionally discharged the firearm.

Sex Offenders

State v. Fryou, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 17, 2015). (1) In a case involving charges under G.S. 14-208.18(a) (sex offender being present at a location used by minors, here a church preschool), where the State was required to prove (in part) that the defendant was required to register as a sex offender and was so required because of a conviction for an offense where the victim was less than 16 years old, the age of the victim was a factual question to which the defendant could stipulate. (2) The trial court did not err by denying the defendant's motion to dismiss, which had asserted that the State failed to produce substantial evidence that the defendant knew that a preschool existed on the church premises. The evidence showed that the church advertised the preschool with flyers throughout the community, on its website, and with signs around the church. Additionally, the entrance to the church office, where defendant met with the pastor, was also the entrance to the nursery and had a sign explicitly stating the word "nursery." The court rejected the defendant's argument that the State was required to show that he should have known children were actually on the premises at the exact time when he was there. It reasoned: "[T]he actual presence of children on the premises is not an element of the crime, and the State needed only to demonstrate that defendant was 'knowingly' '[w]ithin 300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors' whether the minors were or were not actually present at the time." (3) The court rejected the defendant's facial overbreadth challenge to the statute reasoning that because his argument was not based on First Amendment rights, he lacked standing to assert the challenge. (4) The court rejected the defendant's argument that G.S. 14-208.18(a) was unconstitutionally vague as applied to him, stating: "[G.S.] 14-208.18(a)(2) may be many things, but it is not vague."

Drug Crimes

State v. Warren, ___ N.C. App. ___, ___ S.E.2d ___ (Nov. 17, 2015). The trial court properly determined that a charge of conspiracy to manufacture methamphetamine was a Class C felony. The court rejected the defendant's argument that G.S. 14-2.4(a) required punishment as a Class D felony ("Unless a different classification is expressly stated, a person who is convicted of a conspiracy to commit a felony is guilty of a felony that is one class lower than the felony he or she conspired to commit[.]"). Here, G.S. 90-98 requires that conviction for conspiracy to manufacture methamphetamine is punished at the same level as manufacture of methamphetamine.