Criminal Procedure

Motions to Dismiss

State v. McCrary, ___ N.C. ___, ___ S.E.2d ___ (Dec. 18, 2015). In a per curiam opinion, the supreme court affirmed the decision below, *State v. McCrary*, __ N.C. App. __, 764 S.E.2d 477 (2014), to the extent it affirmed the trial court's denial of the defendant's motion to dismiss. In this DWI case, the court of appeals had rejected the defendant's argument that the trial court erred by denying his motion to dismiss, which was predicated on a flagrant violation of his constitutional rights in connection with a warrantless blood draw. Because the defendant's motion failed to detail irreparable damage to the preparation of his case and made no such argument on appeal, the court of appeals concluded that the only appropriate action by the trial court under the circumstances was to consider suppression of the evidence as a remedy for any constitutional violation. Noting that the trial court did not have the benefit of the United States Supreme Court's decision in *Missouri v. McNeely*, ___ U.S. ___, 133 S. Ct. 1552 (2013), in addition to affirming that portion of the court of appeals opinion affirming the trial court's denial of defendant's motion to dismiss, the supreme court remanded to the court of appeals "with instructions to that court to vacate the portion of the trial court's 18 March 2013 order denying defendant's motion to suppress and further remand to the trial court for (1) additional findings and conclusions—and, if necessary—a new hearing on whether the totality of the events underlying defendant's motion to suppress gave rise to exigent circumstances, and (2) thereafter to reconsider, if necessary, the judgments and commitments entered by the trial court on 21 March 2013."

Arrest, Search & Investigation

State v. Leak, ___ N.C. ___, ___ S.E.2d ___ (Dec. 18, 2015). The supreme court vacated the decision below, *State v. Leak*, ___ N.C. App. ___, 773 S.E.2d 340 (2015), and ordered that the court of appeals remand to the trial court for reconsideration of the defendant's motion to suppress in light of *Rodriguez v. United States*, ___ U.S. ___, 135 S. Ct. 1609 (2015). The court of appeals had held that the defendant's Fourth Amendment rights were violated when an officer, who had approached the defendant's legally parked car without reasonable suspicion, took the defendant's driver's license to his patrol vehicle. The court of appeals concluded that until the officer took the license, the encounter was consensual and no reasonable suspicion was required: "[the officer] required no particular justification to approach defendant and ask whether he required assistance, or to ask defendant to voluntarily consent to allowing [the officer] to examine his driver's license and registration." However, the court of appeals concluded that the officer's conduct of taking the defendant's license to his patrol car to investigate its status constituted a seizure that was not justified by reasonable suspicion. Citing *Rodriguez* (police may not extend a completed vehicle stop for a dog sniff, absent reasonable suspicion), the court of appeals rejected the suggestion that no violation occurred because any seizure was "de minimus" in nature.

Criminal Offenses

Weapons Offenses

State v. Huckelba, ___ N.C. ___, ___ S.E.2d ___ (Dec. 18, 2015). In a per curiam decision and for the reasons stated in the dissenting opinion below, the supreme court reversed *State v. Huckelba*, ___ N.C. App. ___, 771 S.E.2d 809 (2015). Deciding an issue of first impression, the court of appeals had held that to be guilty of possessing or carrying weapons on educational property under G.S. 14-269.2(b) the State must prove that the defendant "both knowingly possessed or carried a prohibited weapon and knowingly entered educational property with that weapon" and the trial court committed reversible error by failing to so instruct the jury. The dissenting judge concluded that "even accepting that a conviction … requires that a defendant is knowingly on educational property and knowingly in possession of a firearm" any error in the trial court's instructions to the jury in this respect did not rise to the level of plain error, noting evidence indicating that the defendant knew she was on educational property.

Drug Offenses

State v. Winkler, ___ N.C. ___, ___ S.E.2d ___ (Dec. 18, 2015). On appeal in this drug case from an unpublished opinion by the court of appeals, the supreme court held that there was sufficient evidence to support a conviction for conspiracy to traffic in opium. Specifically, the court pointed to evidence, detailed in the opinion, that the defendant agreed with another individual to traffic in opium by transportation. The court rejected the defendant's argument that the evidence showed only a "the mere existence of a relationship between two individuals" and not an unlawful conspiracy.

Capital Law

State v. Robinson, ___ N.C. ___, ___ S.E.2d ___ (Dec. 18, 2015). In this capital case, before the supreme court on certiorari from an order of the trial court granting the defendant relief on his Racial Justice Act (RJA) motion for appropriate relief (MAR), the court vacated and remanded to the trial court. The supreme court determined that the trial court abused its discretion by denying the State's motion to continue, made after receiving the final version of the defendant's statistical study supporting his MAR approximately one month before the hearing on the motion began. The court reasoned:

> The breadth of respondent's study placed petitioner in the position of defending the peremptory challenges that the State of North Carolina had exercised in capital prosecutions over a twenty-year period. Petitioner had very limited time, however, between the delivery of respondent's study and the hearing date. Continuing this matter to give petitioner more time would have done no harm to respondent, whose remedy under the Act was a life sentence without the possibility of parole.

It concluded: "Without adequate time to gather evidence and address respondent's study, petitioner did not have a full and fair opportunity to defend this proceeding." The court continued:

> On remand, the trial court should address petitioner's constitutional and statutory challenges pertaining to the Act. In any new hearing on the merits, the trial court may, in the interest of justice, consider additional statistical studies presented by the parties. The trial court may also, in its discretion, appoint an expert under N.C. R. Evid. 706 to

> conduct a quantitative and qualitative study, unless such a study has already been commissioned pursuant to this Court's Order in *State v. Augustine*, ___ N.C. ___, ___ S.E.2d ___ (2015) (139PA13), in which case the trial court may consider that study. If the trial court appoints an expert under Rule 706, the Court hereby orders the Administrative Office of the Courts to make funds available for that purpose.

State v. Augustine, ___ N.C. ___, ___ S.E.2d ___ (Dec. 18, 2015). In this second RJA case the supreme court held that "the error recognized in this Court's Order in [*Robinson* (summarized immediately above)], infected the trial court's decision, including its use of issue preclusion, in these cases." The court vacated the trial court's order granting the defendant's RJA MAR and remanded with parallel instructions. It also concluded that the trial court erred when it joined the three cases for an evidentiary hearing.