

Criminal Procedure

DWI Procedure

[State v. Miller](#), ___ N.C. App. ___, ___ S.E.2d ___ (May 17, 2016). The superior court erred by denying the State a de novo hearing from the district court's preliminary determination that the defendant's motion to suppress should be granted. At issue was whether G.S. 20-38.7(a) "requires more than a general objection by the State to the district court judge's findings of fact or an assertion of new facts or evidence in order to demonstrate a 'dispute about the findings of fact.'" The court held: "Neither the plain language of N.C. Gen. Stat. § 20-38.7(a) nor § 15A-1432(b) requires the State to set forth the specific findings of fact to which it objects in its notice of appeal to superior court."

Evidence

Confrontation Issues

[State v. McKiver](#), ___ N.C. App. ___, ___ S.E.2d ___ (May 17, 2016). In this felon in possession case, the court held that the defendant's confrontation rights were violated when the trial court admitted testimonial evidence of an anonymous 911 call and the 911 dispatcher's call back. The anonymous 911 caller stated that a black man was outside with a gun and that there was a possible dispute. When the dispatcher asked whether the person in question was pointing a gun at anyone, the caller responded "I don't know." The dispatcher also asked whether the caller heard anything, such as arguments, and the caller responded in the negative. When the dispatcher asked whether the caller wanted the dispatcher to stay on the line until police arrived the caller responded, "No, I'll be fine." The Officer Bramley, who responded to the scene, testified that when he arrived there he did not see a black man with a gun. Bramley contacted the 911 dispatcher and ask the dispatcher to initiate a call back to get a better description of the suspect. The dispatcher did that and reported that the caller stated that "it was in the field in a black car " and that "[s]omeone said he might have thrown the gun." Officers eventually found the gun in question approximately 10 feet away from the Mercedes. Meanwhile, Bramley asked the dispatcher whether the caller provided a description of the suspect, and the dispatcher replied, "Blackmail, light plaid shirt." Bramley connected this description to the defendant, who had seen upon his arrival. The court concluded:

Our review of the record demonstrates that the circumstances surrounding both the initial 911 call and the dispatcher's subsequent call back objectively indicate that no ongoing emergency existed. Indeed, even before ... officers arrived on the scene, the anonymous caller's statements during her initial 911 call—that she did not know whether the man with the gun was pointing his weapon at or even arguing with anyone; that she was inside and had moved away from the window to a position of relative safety; and that she did not feel the need to remain on the line with authorities until help could arrive—make clear that she was not facing any bona fide physical threat. Moreover, [Officer] Bramley [testified] that when he arrived ..., the scene was "pretty quiet" and "pretty calm." Although it was dark, ... officers had several moments to survey their surroundings, during which time Bramley encountered [the defendant] and determined that he was unarmed. While the identity and location of the man with the

gun were not yet known to the officers when Bramley requested the dispatcher to initiate a call back, our Supreme Court has made clear that this fact alone does not in and of itself create an ongoing emergency and there is no other evidence in the record of circumstances suggesting that an ongoing emergency existed at that time. We therefore conclude the statements made during the initial 911 call were testimonial in nature.

We reach the same conclusion regarding the statements elicited by the dispatcher's call back concerning what kind of shirt the caller saw the man with the gun wearing and the fact that someone saw the man drop the gun. Because these statements described past events rather than what was happening at the time and were not made under circumstances objectively indicating an ongoing emergency, we conclude that they were testimonial and therefore inadmissible. (quotation and citation omitted).

The court went on to reject the State's argument that this error was harmless.

Arrest, Search & Investigation

[*State v. Baskins*](#), ___ N.C. App. ___, ___ S.E.2d ___ (May 17, 2016). (1) The trial court's order denying the defendant's motion to suppress in this traffic stop case contained inadequate conclusions of law concerning the validity of the traffic stop. The trial court's sole conclusion of law is better characterized as a statement of law. A conclusion of law requires the exercise of judgment in making a determination or application of legal principles to the facts found. The court remanded for findings of fact and conclusions of law. (2) The court held that the defendant's statements, made during the stop were voluntary and not the result of any custodial interrogation. None of the officers asked or said anything to the defendant to elicit the statement in question. Rather, the defendant volunteered the statement in response to one officer in forming another that suspected heroin and had been recovered from a person in the vehicle.

Criminal Offenses

Weapons Offenses

[*State v. McKiver*](#), ___ N.C. App. ___, ___ S.E.2d ___ (May 17, 2016). The trial court did not err in denying the defendant's motion to dismiss the charge of felon in possession of a firearm. The court rejected the defendant's argument that there was insufficient evidence establishing that he had constructive possession of the weapon. The evidence showed, among other things, that an anonymous 911 caller saw a man wearing a plaid shirt and holding a gun in a black car beside a field; that someone saw that man dropped the gun; that an officer saw the defendant standing near a black Mercedes wearing a plaid shirt; that the defendant later returned to the scene and said that the car was his; and that officers found a firearm that had been reported stolen in the vacant lot approximately 10 feet from the Mercedes. This evidence was sufficient to support a reasonable juror in concluding that additional incriminating circumstances existed--beyond the defendant's mere presence at the scene and proximity to where the firearm was found--and thus to infer that he constructively possessed the firearm.