

Criminal Procedure

Indictment Issues

[State v. Brice](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). The indictment charging the defendant with habitual misdemeanor larceny failed to comply with G.S. 15A-928 with respect to alleging the required prior convictions and thus was defective. A single indictment charged the defendant with habitual misdemeanor larceny and listed the defendant's prior convictions; the prior convictions were not alleged in a separate count. The court rejected the State's argument that the error did not warrant reversal unless the defendant was prejudiced.

Jury Argument

[State v. Bohannon](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). The trial court did not err by failing to intervene ex mero motu during the State's closing argument in this child abuse case. The court rejected the defendant's argument that the prosecutor misrepresented the proof that was required with respect to the element of serious bodily injury.

Sentencing

Prior Record Level

[State v. Crook](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). The trial court erred by including a prior record level point under G.S. 15A-1340.14(b)(7) where the State did not provide the defendant with notice of intent to prove the existence of the point as required by the statute.

Arrest, Search, and Investigation

Vehicle Stops

[State v. Crandell](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). Reasonable suspicion supported the stop of the defendant's vehicle. The vehicle was stopped after the defendant left premises known as "Blazing Saddles." Based on his experience making almost two dozen arrests in connection with drug activity at Blazing Saddles and other officers' experiences at that location, the officer in question was aware of a steady pattern the people involved in drug transactions visit Blazing Saddles when the gate was down and staying for approximately two minutes. The defendant followed this exact pattern: he visited Blazing Saddles when the gate was down and stayed approximately two minutes. The court distinguished these facts from those where the defendant was simply observed in a high drug area, noting that Blazing Saddles was a "notorious" location for selling drugs and dealing in stolen property. It was an abandoned, partially burned building with no electricity, and there was no apparent legal reason for anyone to go there at all, unlike neighborhoods in high drug or crime areas where people live and naturally would be present.

[State v. Sawyers](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). (1) A stop of the defendant's vehicle was justified by reasonable suspicion. While on patrol in the early morning, the officer saw the

defendant walking down the street. Directly behind him was another male, who appeared to be dragging a drugged or intoxicated female. The defendant and the other male placed the female in the defendant's vehicle. The two then entered the vehicle and left the scene. The officer was unsure whether the female was being kidnapped or was in danger. Given these circumstances, the officer had reasonable suspicion that the defendant was involved in criminal activity. (2) Additionally, and for reasons discussed in the opinion, the court held that the stop was justified under the community caretaking exception.

Interrogation & Confession

[State v. Crook](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). (1) Because the defendant was handcuffed and placed under arrest, the trial court erred by concluding that the defendant was not in custody when he made a statement to the officer. (2) The defendant was subject to an interrogation when, after handcuffing the defendant, placing him under arrest, and conducting a pat down, the officer asked, "Do you have anything else on you?" The defendant, who was in front of a doorway to a motel room, stated, "I have weed in the room." (3) The court rejected the State's argument that the public safety exception established in *New York v. Quarles*, 467 U.S. 649 (1984) applied. The court found the facts of the case at hand "noticeably distinguishable" from those in *Quarles*, noting that the defendant was not suspected of carrying a gun or other weapon; rather, he was sitting on the ground in handcuffs and already had been patted down.

[State v. Portillo](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). (1) The defendant was not in custody when he gave statements to officers at the hospital. The victim was killed in a robbery perpetrated by the defendant and his accomplice. The defendant was shot during the incident and brought to the hospital. He sought to suppress statements made to police officers at the hospital, arguing that they were elicited during a custodial interrogation for which he had not been given his *Miranda* warnings. There was no evidence that the defendant knew a guard was present when the interview was conducted; the defendant was interrogated in an open area of the ICU where other patients, nurses, and doctors were situated and he had no legitimate reason to believe that he was in police custody; none of the officers who were guarding him spoke with him about the case prior to the interview; the detectives who did so wore plain clothes; and there was no evidence that the defendant's movements were restricted by anything other than the injuries he had sustained and the medical equipment connected to him. Additionally, based on the evidence, the court rejected the defendant's argument that the interrogation was custodial because he was under the influence of pain and other medication that could have affected his comprehension. It also rejected the defendant's argument that he was in custody because the detectives arrived at the hospital with the intention of arresting him. Although they may have had this intention, it was not made known to the defendant and thus has no bearing on whether the interview was custodial. (2) Where there was no evidence that the defendant's first statement, given in the hospital, was coerced, there was no support for his contention that his second statement was tainted by the first. (3) The court rejected the defendant's argument that his inculpatory statements resulted from substantial violations of Chapter 15A requiring suppression.

DWI & Breath Tests

[*State v. Sawyers*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). The trial court did not err by denying the defendant's motion to suppress the results of his breath test. The defendant argued that he was deprived of a reasonable opportunity to arrange to have a witness observe his breath test. Specifically, he asserted that officers deprived him of access to his cell phone address book, which in turn impeded his ability to contact a witness in a timely manner. However, the defendant did not challenge the trial court's finding of fact that he was in fact allowed to retrieve phone numbers from his phone and make phone calls.

Evidence

Authentication

[*State v. Fleming*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). (1) The trial court properly admitted a videotape of a detective's interview with the defendant for illustrative purposes. The detective testified that the video was a fair and accurate description of the interview. This met the requirements for authentication of a video used for illustrative purposes. (2) Citing the North Carolina Supreme Court's recent decision in *State v. Snead*, the court held that a store surveillance video of a theft was properly authenticated. The State's witness testified that the surveillance video system was functioning properly at the time and that the video introduced at trial was unedited.

Opening the Door

[*State v. Portillo*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). Because the defendant's self-serving, exculpatory statement was separate and apart from inculpatory statements he made on other days and that were admitted at trial, the State did not open the door for its admission.

Criminal Offenses

Conspiracy

[*State v. Fleming*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). The State presented insufficient evidence to show that the defendant entered into an agreement to commit common law robbery. The mere fact that the crime the defendant allegedly conspired with others to commit took place does not, without more, prove the existence of a conspiracy. Lacking here was evidence that the defendant conspired to take the property by violence or fear. In fact, his accomplice's use of violence or fear was unknown to the defendant until after the robbery was completed.

Child Abuse

[*State v. Bohannon*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). Because subarachnoid hemorrhaging constitutes "serious bodily injury," the evidence was sufficient to convict the defendant of felonious child-abuse inflicting serious bodily injury under G.S. 14-318.4(a3). The court rejected the

defendant's argument that since the child did not actually suffer acute consequences from the hemorrhages, his brain injury never presented a substantial risk of death. Among other things, a medical expert testified that bleeding on the brain could lead to a number of issues including developmental delays and even "acute illness and death." Citing this and other evidence, the court concluded that there was sufficient evidence that the child's brain injury created a substantial risk of death.

Drug Offenses

[*State v. Dulin*](#), ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016). (1) Because there was sufficient evidence that the defendant possessed drug paraphernalia, the trial court did not err by denying his motion to dismiss. The paraphernalia was found in plain view in a common living area of a home over which the defendant exercised nonexclusive control. The court found that following constituted "other incriminating circumstances" necessary to prove constructive possession: the defendant spent hours at the house on the day of the search; the defendant admitted that he had a "blunt" in the black truck parked in front of the house and the police found marijuana in the truck's console; the police found marijuana in the house behind a photograph of the defendant; and several people visited the house while the defendant was there, including a man who shook hands with defendant "as if they were passing an item back and forth." Of these facts, the most significant was that marijuana was found in a picture frame behind a photograph of the defendant. (2) Because there was insufficient evidence that the defendant constructively possessed marijuana found in an uncovered fishing boat located in the yard of a home occupied by multiple people, including the defendant, the trial court erred by denying his motion to dismiss the drug possession charge. The boat was located roughly 70 feet from the side of the house, in a non-fenced area of the yard. There was no evidence that the defendant had any ownership interest in or possession of the boat and the defendant was never seen near the boat.