

## **Criminal Procedure Jurisdiction**

[State v. Armstrong](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E. 2d \_\_\_ (June 21, 2016). In a case in which the defendant was originally charged with habitual impaired driving, driving while license revoked and speeding, the superior court did not have subject matter jurisdiction to try the misdemeanor or the infraction where the State dismissed the felony DWI charge before trial. The case came on for trial in superior court about one month after the State dismissed the felony DWI charge. Without the felony offense, the misdemeanor fell under none of the exceptions in G.S. 7A-271(a) giving jurisdiction to the superior court, and the infraction fell under none of the exceptions in subsection (d) of that provision. Under G.S. 7A-271(c), once the felony was dismissed before trial, the court should have transferred the two remaining charges to the district court.

### **Indictment Issues**

[State v. Lineberger](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 21, 2016). An indictment charging breaking or entering a vehicle was not defective where it listed ownership of the vehicle in the names of two victims in the disjunctive: George E. Jones or Elizabeth T. Jones. The court characterized the defendant's argument as "a needlessly hyper-technical reading of indictments" and noted that the use of the disjunctive with respect to the alleged victims had no impact on defendant's ability to defend his case.

### **Jury Argument**

[State v. Martin](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 21, 2016). Although the prosecutor improperly argued to the jury in this armed robbery case that it did not matter whether a shotgun in question was loaded for purposes of determining whether it was a dangerous weapon, the defendant was not prejudiced by this argument where the trial judge properly instructed the jury on this element.

### **Sentencing**

[State v. Williams](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 21, 2016). Where the trial court enhanced a DWI sentence based solely on the defendant's prior convictions, the defendant's Sixth Amendment rights were not violated. At sentencing, the trial court found the existence of two grossly aggravating factors, i.e., that defendant had two or more convictions involving impaired driving within seven years before the date of the offense. (1) The court rejected the defendant's argument that the State violated the notice provision for aggravating factors in G.S. 20-179(a1)(1), holding that provision only applied to cases appealed to superior court (the case in question was initiated in superior court by indictment). (2) The court also rejected the defendant's argument that the State's failure to comply with the statutory notice provision violated his constitutional rights under *Blakely* (any factor other than prior conviction that elevates the sentence beyond the statutory maximum must be submitted to the jury and proved beyond a reasonable doubt). The court reasoned that because the defendant's sentence was aggravated only because of prior convictions, *Blakely* did not apply.

[\*State v. Spence\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 21, 2016). (1) On remand, the trial court properly conducted a de novo sentencing hearing. (2) The trial court made clerical errors in sentencing. It made a clerical error when it stated that it was arresting judgment on convictions vacated by the court of appeals; in context it was clear that the trial court meant to state that it was vacating those convictions. The trial court also erred by mentioning that it was arresting another conviction when that conviction had not in fact been vacated by the appellate court. The court remanded for correction of these errors.

### **Post-Conviction**

[\*State v. Sandy\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 21, 2016). Invoking Rule 2 of the NC Rules of Appellate Procedure, the court considered emails outside of the record and granted the defendants' MAR, finding both a *Brady* violation and a *Napue* (failure to correct false testimony) violation. Specifically, the State failed to provide critical impeachment evidence regarding its star witness which would have supported the defendants' assertion that the witness was a drug dealer. Likewise, the State failed to correct testimony by the witness that he was not a drug dealer. The emails in question related to an ongoing investigation of the witness revealing that he was in fact involved with drugs.

### **Arrest, Search & Investigation**

#### **Search Warrants**

[\*State v. Brown\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 21, 2016). Because an affidavit failed to specify when an informant witnessed the defendant's allegedly criminal activities, there was insufficient evidence establishing probable cause to support issuance of the search warrant. In the affidavit, the officer stated that he received a counterfeit \$100 bill from an informant who claimed it had been obtained from the defendant's home. At the suppression hearing, the officer testified that what he meant to state in the affidavit was that the informant had obtained the bill within the last 48 hours. It was error for the trial court to consider this additional testimony from the officer that was outside of the facts recited in the affidavit. Considering the content of the affidavit, the court held that without any indication of when the informant received the bill, the affidavit failed on grounds of staleness.

#### **Arrest**

[\*State v. Williams\*](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 21, 2016). An officer had probable cause to arrest the defendant for DWI. The officer responded to a call involving operation of a golf cart and serious injury to an individual. The defendant admitted to the officer that he was the driver of the golf cart. The defendant had "very red and glassy" eyes and "a strong odor of alcohol coming from his breath." The defendant's clothes were bloody, and he was very talkative, repeating himself several times. The defendant's mannerisms were "fairly slow" and the defendant placed a hand on the deputy's patrol car to maintain his balance. The defendant stated that he had "6 beers since noon" and he submitted to an Alco-Sensor test, which was positive for alcohol.

## **Criminal Offenses**

### **Stealing Evidence**

[State v. Dove](#), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (June 21, 2016). The evidence was insufficient to support a conviction for altering, stealing, or destroying criminal evidence under G.S. 14-221. The charges were based on the defendant's alleged theft of money obtained from the controlled sale of illegal drugs. The money in question was not evidence as defined by the statute: "any article or document in the possession of a law-enforcement officer or officer of the General Court of Justice."