

Criminal Procedure

Pleas

[State v. McGill](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 18, 2016). (1) In this robbery case, the trial court did not err by denying the defendant’s motion to withdraw his guilty plea. Shortly after the jury was empaneled, the defendant decided to enter into a plea arrangement with the State. In exchange for his guilty plea, the defendant received a PJC, apparently so that he could provide the State with information concerning an unrelated criminal case in exchange for a potentially more lenient sentence. After entry of the plea and prior to sentencing, the State determined not to use the defendant as a witness in the other case. The defendant moved to withdraw his guilty plea, asserting that his trial counsel provided incomplete or erroneous advice concerning habitual felon sentencing which resulted in his misunderstanding the consequences of his plea and also conspired with the State to “trick” him into pleading guilty. Analyzing the case under the *State v. Handy*, 326 N.C. 532 (1990), “any fair and just reason” standard for withdrawal of a plea before sentencing, the court held that the trial court did not err by denying the defendant’s motion. It noted, in part, that the defendant did not assert legal innocence; that the State’s case was not weak; and that the defendant waited nine days to file his motion to withdraw his plea after the chance of receiving a more lenient sentence evaporated, suggesting “a well thought out and calculated tactical decision.” Citing the record, which “plainly and unambiguously” showed that the defendant was fully informed of the consequences of his plea, the court rejected the defendant’s contention that he was operating under a misapprehension of the law regarding habitual felon sentencing due to trial counsel’s incorrect legal advice, which he claimed was intentionally provided pursuant to a broad but undefined conspiracy between court appointed attorneys and the State to trick defendants into entering unfavorable pleas. (2) There was a sufficient factual basis to support the defendant’s guilty plea to robbery charges. The defendant stipulated that a factual basis existed to support his guilty plea and then stipulated to the State’s summary of the factual basis which it provided to the trial court. After the State entered its summary into the record, the trial court asked the defendant if he had any additions or corrections and he responded in the negative.

Experts

[State v. Thompson](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 18, 2016). The trial court did not abuse its discretion by denying the defendant’s motion seeking funds to hire an expert to retest DNA samples in this rape and kidnapping case. Prior to trial, the defendant retained an expert to review DNA testing done by the State’s DNA expert. Although the defendant’s expert criticized certain procedures used in the State’s expert and took issue with some of her characterizations of the degree of similarity between the various samples, he did not dispute the ultimate results of that DNA analysis. After this expert submitted his report, the defendant moved for funding to hire another expert to retest the DNA samples. The trial court denied the motion, noting in part that the defendant’s prior expert did not recommend the use of a new, more accurate testing procedure unavailable at the time of the State’s DNA test.

Sex Offenders

[*In Re Timberlake*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 18, 2016). The trial court lacked jurisdiction to reconsider the petitioner’s request to terminate sex offender registration where the State failed to oppose termination at the initial hearing and did not appeal the initial order. At the initial hearing the trial court granted the defendant’s motion to terminate registration. At that hearing, the assistant district attorney representing the State chose not to put on any evidence or argue in opposition to termination. At a rehearing on the matter, held after an assistant attorney general representing the North Carolina Division of Criminal Information wrote to the judge suggesting that the judge had incorrectly concluded that termination of registration complies with the Jacob Wetterling Act, the judge reversed course and denied petition. It was this amended order that was at issue on appeal. The court found that the letter submitted to the trial judge by the assistant attorney general did not vest the trial court with jurisdiction to review the termination order for errors of law.

[*State v. Moore*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 18, 2016). The court reversed and remanded the trial court’s order imposing lifetime SBM. The trial court erred by finding that the defendant was a recidivist where the only evidence presented by the State was the oral statement of the prosecutor that the defendant had obtained reportable offenses in 1989 and 2006. The State conceded that neither witness testimony nor documentary evidence was presented to establish the defendant’s prior criminal history and that statements by the lawyers constituted the only basis to find that the defendant had been convicted of the two offenses. The court held: “Something more than unsworn statements, which are unsupported by any documentation, is required as evidence under the statute to allow the trial court to impose lifetime SBM.” The court also rejected the notion that defense counsel’s statements to the court constituted a stipulation to the two prior convictions.

Arrest, Search & Investigation

Search Warrants

[*State v. Parson*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 18, 2016). (1) In this methamphetamine trafficking case, the trial court erred by denying the defendant’s motion to suppress evidence seized during execution of a search warrant. Noting that a factual showing sufficient to support probable cause “requires a truthful showing of facts,” the court rejected the defendant’s argument that a statement in the affidavit supporting the search warrant was made in reckless disregard for the truth. However, the court went on to find that the application for the search warrant and attached affidavit insufficiently connected the address in question to the objects sought. It noted that none of the allegations in the affidavit specifically refer to the address in question and none establish the required nexus between the objects sought (evidence of a methamphetamine lab) and the place to be searched. The court noted that the defendant’s refusal of an officer’s request to search the property cannot establish probable cause to search. (2) Although federal law recognizes a good-faith exception to the exclusionary rule where evidence is suppressed pursuant to the federal Constitution, no good faith exception exists for violations of the North Carolina Constitution.

Juvenile Interrogation

[*State v. Watson*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 18, 2016). In this robbery case, the court rejected the defendant’s argument that the trial court erred by denying his motion to suppress statements to a police officer during an interrogation outside of the presence of his parent. Notwithstanding an issue about how the Juvenile Waiver of Rights Form was completed, the court held that because the defendant was advised of his right to have a parent present pursuant to G.S. 7B-2101 and failed to invoke that right, it was waived.

Evidence

Confrontation Issues

[*State v. Thompson*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Oct. 18, 2016). In this kidnapping and rape case, the defendant’s confrontation rights were not violated when the trial court admitted, for the purposes of corroboration, statements made by deceased victims to law enforcement personnel. The statements were admitted to corroborate statements made by the victims to medical personnel. The court rejected the defendant’s argument that because the statements contained additional information not included in the victims’ statements to medical personnel, they exceeded the proper scope of corroborative evidence and were admitted for substantive purposes. The court noted in part, “the mere fact that a corroborative statement contains additional facts not included in the statement that is being corroborated does not render the corroborative statement inadmissible.”