

Criminal Procedure

Competency to Stand Trial

[*State v. Mobley*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). In this drug trafficking case, the trial court erred by failing to appoint an expert to investigate the defendant's competency to stand trial. Prior to the start of trial, defense counsel expressed concern about the defendant having fallen asleep in the courtroom. The trial court conducted a discussion with the defendant and defense counsel and ruled that the defendant was competent to proceed to trial. The colloquy revealed, among other things, that the defendant was having difficulty hearing and understanding the judge and that the defendant took over 25 medications daily in connection with a heart condition and being diagnosed as a bipolar schizophrenic. Defense counsel related never having seen the defendant so lethargic. Although the defendant seemed to understand the charges against him and possible sentences he might receive, he had little memory of meeting with counsel prior to trial. After the trial began, defense counsel informed the court that the defendant was sleeping during the trial. The court concluded that the evidence indicated a significant possibility at the time of trial that the defendant was incompetent, requiring the trial court to appoint an expert to ascertain whether the defendant was competent to proceed to trial. The court noted that its holding was based on "long-standing legal principles" and that it "should not be interpreted as articulating a new rule or standard." It was careful to state that the trial court is not required to order a competency evaluation in every case where a criminal defendant is drowsy or suffers from mental or physical illness.

Speedy Trial

[*State v. Evans*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). No violation of the defendant's speedy trial right occurred. The court began by finding that the delay of two years and 10 months was extensive enough to trigger consideration of the other speedy trial factors. Rejecting the defendant's argument to the contrary, the court held that with respect to the second factor--reason for the delay--the defendant has the burden of producing evidence establishing a prima facie case that the delay resulted from the neglect or willfulness of the State. Once that showing is made, the burden shifts to the State to rebut the defendant's evidence. Here, the defendant failed to make the prima facie showing. The court noted that between the time of arrest and trial, the defendant was represented by five different attorneys, each of whom needed time to become familiar with the case and that a significant portion of the delay resulted from delays at the State Crime Lab. With respect to the third factor--the defendant's assertion of a speedy trial right--the court noted that the defendant asserted his right in a timely pro se motion, later adopted by counsel. Turning to the last factor--prejudice--the court noted that the defendant's primary claims of prejudice were supported by his own testimony and no other evidence. Conceding that the trial court did not find his testimony credible, the defendant argued that the trial court failed to give adequate consideration to the prejudice inherent in pretrial incarceration. The court was unpersuaded, noting that during the time that he was incarcerated on the present charges he also was incarcerated on unrelated felony charges. Balancing the factors, the court found no speedy trial violation.

Arraignment

[*State v. Silva*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). In this habitual impaired driving and driving while license revoked case, the trial court did not commit reversible error when it failed to formally arraign the defendant pursuant to G.S. 15A-928(c).

Arrest, Search & Investigation

Vehicle Searches

[*State v. Burton*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). Addressing the defendant's ineffective assistance of counsel claim in this cocaine case, the court rejected the defendant's claim that counsel was ineffective by failing to object to the admission of cocaine found during an officer's warrantless search of the defendant's vehicle; the court rejected the defendant's claim that the State was required to prove that the defendant's car was "readily mobile" in order for the automobile exception to the warrant requirement to apply. An officer searched the vehicle after smelling a strong odor of marijuana and seeing an individual sitting in the passenger seat with marijuana on his lap. The cocaine was found during a subsequent search of the vehicle. The vehicle was parked on the street when the search occurred and no evidence was presented suggesting that it was incapable of movement.

Stops

[*State v. Evans*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). Reasonable suspicion supported the stop. An officer patrolling a "known drug corridor" at 4 am observed the defendant's car stopped in the lane of traffic. An unidentified pedestrian approached the defendant's car and leaned in the window. The officer found these actions to be indicative of a drug transaction and thus conducted the stop.

Confessions

[*State v. Burton*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). Addressing the defendant's ineffective assistance of counsel claim in this cocaine case, the court rejected the defendant's claim that counsel was ineffective by failing to object to the admission of his statement to an officer that the cocaine in question belonged to him and not a passenger in the vehicle; the court rejected the defendant's argument that the statements were obtained in violation of his Fifth Amendment rights because the officer failed to advise him of his *Miranda* rights before reading the warrants to him and the passenger in each other's presence. After the two were arrested and taken to the county detention center the officer read the arrest warrants to the defendant and the passenger in each other's presence. After the officer finished reading the charges, the defendant told the officer that the passenger shouldn't be charged because the cocaine belonged to the defendant. The court concluded that the defendant's admission is properly classified as a spontaneous statement, not the product of an interrogation.

[*State v. Johnson*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). Although the trial court erred by concluding that the defendant's confession was voluntary, the error was harmless beyond a reasonable doubt. The defendant was asked to voluntarily show up at the police department for an interview in connection with a murder, after previously having denied ever having had contact with the murder victim. Approximately 20 minutes into the interview the defendant was shown a DNA analysis, indicating that his DNA was retrieved from under the victim's fingernails. At this point, a reasonable person would have believed that he was under arrest and the officer should have given *Miranda* warnings. The court noted that the detectives continued to reinforce the position that the defendant was not free to leave through their subsequent and continuing interrogation. They continued to challenge the defendant for over four hours until he was finally told that he was under arrest and given *Miranda* warnings. He subsequently confessed. The entirety of the interrogation, from when the defendant first should have been *Mirandized*, up until his inculpatory statements, rendered the inculpatory statements involuntary

even though the defendant never confessed before being *Mirandized*. Finding these circumstances coercive, the court concluded:

Defendant was questioned for hours after he should have been *Mirandized* and, throughout this questioning, the detectives repeatedly told Defendant they knew he was lying; that they had DNA proof of Defendant's guilt; that only a guilty person would have known [the victim] was shot in the back of the neck; that this could be a capital case, and that Defendant's treatment would depend on his cooperation; that the district attorney's office would usually work with those who cooperated; that Detective Ward would consider testifying on Defendant's behalf; that Defendant would feel better if he confessed and did right by God and his children; and that Defendant should get the "best seat on the bus" by giving statements against the two other men involved. It is also clear that the detectives decided to arrest Defendant at the time they did in order to shake him up and, in Detective Ward's words: "I felt in my heart like the only thing that's going to make you understand that this isn't going to go away is to charge you with murder. So I charged you with murder."

The court however went on to find that the State proved that the error was harmless beyond a reasonable doubt in light of the overwhelming evidence of guilt.

Criminal Offenses

Conspiracy

[*State v. Greene*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). The evidence was sufficient to support a charge of conspiracy to possess stolen goods, a pistol. After the defendant took the pistols and the items from the victims' purses, the pistol was found in the field near a residence. The defendant's alleged accomplice later arrived at the residence and admitted to officers that he was working with the defendant. This occurred after the defendant called the alleged accomplice from jail. From this evidence a jury could reasonably infer that the accomplice conspired with the defendant to possess the pistol.

Larceny

[*State v. Greene*](#), ___ N.C. App. ___, ___ S.E.2d. ___ (Jan. 17, 2017). (1) The evidence was insufficient to support convictions of felony larceny from the person. Items were stolen from the victim's purses while they were sleeping in a hospital waiting room. At the time the items were stolen, the purses were not attached to or touching the victims. The court rejected the State's argument that the purses were under their owners' protection because hospital surveillance cameras operated in the waiting room. The court noted: "Video surveillance systems may make a photographic record of the taking, but they are no substitute for 'the awareness of the victim of the theft at the time of the taking.'" The court noted that the State's theory would convert any larceny committed in areas monitored by video to larceny from the person. (2) The court rejected the defendant's argument that one of the larceny convictions had to be arrested because both occurred as part of a single continuous transaction. The court reasoned that where the takings were from two separate victims, the evidence supported to convictions.