

Criminal Case Update

2015 Fall Conference

(Includes selected cases decided between June 11, 2015 and September 25, 2015)

The summaries are drawn from criminal case summaries prepared by Jessica Smith. To view all of the summaries, go to www.sog.unc.edu/programs/crimlaw/index.html. To obtain the summaries automatically by email, go to the above site and click on Criminal Law Listserv.

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Investigation Issues

Seizures

Reversing the court of appeals, the state supreme court held that an officer had reasonable suspicion for the stop based on defendant walking away from companion upon police officer's approach in area known from drug activity

[State v. Jackson](#), ___ N.C. ___, 772 S.E.2d 847 (June 11, 2015). Reversing the decision below, [State v. Jackson](#), ___ N.C. App. ___, 758 S.E.2d 39 (2014), the court held that an officer had reasonable suspicion for the stop. The stop occurred at approximately 9:00 pm in the vicinity of Kim's Mart. The officer knew that the immediate area had been the location of hundreds of drug investigations. Additionally, the officer personally had made drug arrests in the area and was aware that hand to hand drug transactions occurred there. On the evening in question the officer saw the defendant and another man standing outside of Kim's Mart. Upon spotting the officer in his patrol car, the two stopped talking and dispersed in opposite directions. In the officer's experience, this is typical behavior for individuals engaged in a drug transaction. The officer tried to follow the men, but lost them. When he returned to Kim's Mart they were standing 20 feet from their original location. When the officer pulled in, the men again separated and started walking in opposite directions. The defendant was stopped and as a result contraband was found. The court found these facts sufficient to create reasonable suspicion to justify the initial investigatory stop. The court noted that its conclusion was based on more than the defendant's presence in a high crime and high drug area.

Searches

(1) Court of appeals held, over a dissent, that no Fourth Amendment violation occurred when law enforcement officers obtained the defendant's cell site location information (CSLI) from his service provider, AT&T, without a warrant based on probable cause; (2) Even if Fourth Amendment was violated, good faith exception applies

[State v. Perry](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 15, 2015). In this drug case, no Fourth Amendment violation occurred when law enforcement officers obtained the defendant's cell site location information (CSLI) from his service provider, AT&T, without a warrant based on probable cause. The court noted that while courts have held that "real time" CSLI may be obtained only pursuant to a warrant supported by probable cause, the Stored Communications Act (SCA) allows for access to "historical" information upon a lesser showing. It continued: "The distinguishing characteristic separating historical records from "real-time" information is the former shows where the cell phone has been located at some point in the past, whereas the latter shows where the phone is presently located through the use of GPS or precision location data." The court concluded that the CSLI at issue was historical information:

[Officers] followed Defendant's historical travel by entering the coordinates of cell tower "pings" provided by AT&T into a Google Maps search engine to determine the physical location of the last tower "pinged." Defendant's cell phone was never contacted, "pinged," or its precise location directly tracked by the officers. The officers

did not interact with Defendant's cell phone, nor was any of the information received either directly from the cell phone or in "real time." All evidence shows the cell tower site location information provided by AT&T was historical stored third-party records and properly disclosed under the court's order as expressly provided in the SCA.

The court found it significant that an officer testified that there was a 5- to 7-minute delay in the CSLI that he received from AT&T. The court went on to conclude that retrieval of the "historical" information was not a search under the Fourth Amendment. Noting that the U.S. Supreme Court has not decided whether "historical" CSLI raises a Fourth Amendment issue, the question is one of first impression North Carolina. The court distinguished the U.S. Supreme Court's recent decision in *United States v. Jones*, 132 S. Ct. 945 (2012) (the government's installation of a GPS tracking device on a vehicle and its use of that device to monitor the vehicle's movements on public streets constitutes a "search" within the meaning of the Fourth Amendment) in three respects. First, unlike in *Jones*, here, there was no physical trespass on the defendant's property. Second, the tracking in question here was not "real-time" the court reiterated: "officers only received the coordinates of historical cell tower 'pings' after they had been recorded and stored by AT&T, a third party." Third, the trespass in *Jones* was not authorized by a warrant or a court order of any kind whereas here a court order was entered. And, "[m]ost importantly," *Jones* did not rely on the third-party doctrine. Citing decisions from the Third, Fifth and Eleventh Circuits, the court held that obtaining the CSLI did not constitute a search under the Fourth Amendment. The court distinguished the recent Fourth Circuit opinion in *United States v. Graham*, on grounds that in that case the government obtained the defendant's historical CSLI for an extended period of time. Here, only two days of information were at issue. The court rejected the *Graham* court's conclusion that the third-party doctrine did not apply to CSLI information because the defendants did not voluntarily disclose it to their service providers. The court continued, concluding that even if it were to find that a search warrant based on probable cause was required, the good faith exception would apply.

One judge concurred in the final disposition but disagreed with the majority's characterization of the information as historical rather than real-time. That judge "believe[d that] allowing the majority's characterization of the information provided by AT&T to law enforcement, based on the facts in this case, would effectively obliterate the distinction between 'historical' and 'real-time' cell site information." However, she agreed that the good faith exception applied.

Reversing the court of appeals, the state supreme court held that the trial court properly denied the defendant's motion to suppress in this drug case, finding that probable cause existed to justify search warrant authorizing a search of defendant's apartment.

[*State v. McKinney*](#), ___ N.C. ___, 775 S.E.2d 821 (Aug. 21, 2015). The search warrant application was based on the following evidence: an anonymous citizen reported observing suspected drug-related activity at and around the apartment; the officer then saw an individual named Foushee come to the apartment and leave after six minutes; Foushee was searched and, after he was found with marijuana and a large amount of cash, arrested; and a search of Foushee's phone revealed text messages between Foushee and an individual named Chad proposing a drug transaction. The court rejected the defendant's argument that the citizen's complaint was unreliable because it gave no indication when the citizen observed the events, that the complaint was only a "naked assertion" that the observed activities were narcotics related, and that the State failed to establish a nexus between Foushee's vehicle and defendant's apartment, finding none of these arguments persuasive, individually or collectively. The court held that "under the totality of circumstances, all the evidence described in the affidavit both

established a substantial nexus between the marijuana remnants recovered from Foushee's vehicle and defendant's residence, and also was sufficient to support the magistrate's finding of probable cause to search defendant's apartment."

Court held, over a dissent, that officer had reasonable suspicion to extend routine traffic stop to allow a police dog to perform a drug sniff outside the defendant's vehicle.

[State v. Warren](#), ___ N.C. App. ___, 775 S.E.2d 362 (Aug. 4, 2015). In this post-*Rodriguez* case, the court held, over a dissent, that the officer had reasonable suspicion to extend the scope and duration of a routine traffic stop to allow a police dog to perform a drug sniff outside the defendant's vehicle. The court noted that under *Rodriguez v. United States*, ___ U.S. ___, 191 L.Ed. 2d 492 (2015), an officer who lawfully stops a vehicle for a traffic violation but who otherwise does not have reasonable suspicion that any crime is afoot beyond a traffic violation may execute a dog sniff only if the check does not prolong the traffic stop. It further noted that earlier N.C. case law applying the de minimus rule to traffic stop extensions had been overruled by *Rodriguez*. The court continued, concluding that in this case the trial court's findings support the conclusion that the officer developed reasonable suspicion of illegal drug activity during the course of his investigation of the traffic offense and was therefore justified to prolong the traffic stop to execute the dog sniff. Specifically:

Defendant was observed and stopped "in an area [the officer] knew to be a high crime/high drug activity area[;]" that while writing the warning citation, the officer observed that Defendant "appeared to have something in his mouth which he was not chewing and which affected his speech[;]" that "during his six years of experience [the officer] who has specific training in narcotics detection, has made numerous 'drug stops' and has observed individuals attempt to hide drugs in their mouths and . . . swallow drugs to destroy evidence[;]" and that during their conversation Defendant denied being involved in drug activity "any longer."

Law enforcement officers exceeded the scope of search warrant for home when they searched a vehicle parked in the driveway but not owned or controlled by the home's resident

[State v. Lowe](#), ___ N.C. App. ___, 774 S.E.2d 893 (July 21, 2015), *temporary stay allowed*, ___ N.C. ___, 774 S.E.2d 840 (Aug. 11, 2015). Although a search warrant to search a home was supported by probable cause, law enforcement exceeded the scope of the warrant when they searched a vehicle parked in the driveway but not owned or controlled by the home's resident; the trial court thus erred by denying the defendant's motion to suppress. The affidavit supporting the warrant indicated that one Terrence Turner was selling, using and storing controlled substances at a home he occupied at 529 Ashebrook Dr. No vehicles were specified in the warrant. When executing the warrant officers found Turner inside the home, as well as two overnight guests, the defendant and his girlfriend, Margaret Doctors. Parked in the driveway was a rental car, which the officers learned was being leased by Doctors and operated by both her and the defendant. Although the officers knew that Turner had no connection to the vehicle, they searched it and found controlled substances inside. As a result the defendant was charged with drug offenses. Prior to trial he unsuccessfully moved to suppress, arguing that the warrant was not supported by probable cause and alternatively that the search of his vehicle exceeded the scope of the warrant. (1)

The court held that the warrant was supported by probable cause. The affidavit stated that after receiving information that Turner was involved in drug activity at the home the officer examined trash and found correspondence addressed to Turner at the home and a small amount of marijuana residue in a fast food bag. (2) The court agreed that the search of the defendant's vehicle exceeded the scope of the warrant issued to search Turner's home. Noting that the officers could have searched the vehicle if it belonged to Turner, the court further noted that they knew Turner had no connection to the car. The court stated that the issue presented, "whether the search of a vehicle rented and operated by an overnight guest at a residence described in a search warrant may be validly searched under the scope of that warrant," was one of first impression. The court rejected the State's argument that a warrant to search a home permitted a search of any vehicle found within the curtilage, reasoning: "The State's proffered rule would allow officers to search any vehicle within the curtilage of a business identified in a search warrant, or any car parked at a residence when a search is executed, without regard to the connection, if any, between the vehicle and the target of the search." (3) Finally, the court rejected the State's argument that the good faith exception should apply because police department policy allowed officers to search all vehicles within the curtilage of premises specified in a warrant. The court found the good faith exception "inappropriate" where the error, as here, is attributable to the police, not a judicial official who issued the warrant.

(1) Facial challenges under the Fourth Amendment are not categorically barred; (2) Provision of municipal code requiring motel owners to turn over hotel registry information to police is facially unconstitutional because it fails to provide hotel operators with an opportunity for precompliance review

[*Los Angeles v. Patel*](#), 576 U.S. ___, 135 S. Ct. 2443 (June 22, 2015). (1) In this case where a group of motel owners and a lodging association challenged a provision of the Los Angeles Municipal Code (LAMC) requiring motel owners to turn over to the police hotel registry information, the Court held that facial challenges under the Fourth Amendment are not categorically barred. With respect to the relevant LAMC provisions, §41.49 requires hotel operators to record information about their guests, including: the guest's name and address; the number of people in each guest's party; the make, model, and license plate number of any guest's vehicle parked on hotel property; the guest's date and time of arrival and scheduled departure date; the room number assigned to the guest; the rate charged and amount collected for the room; and the method of payment. Guests without reservations, those who pay for their rooms with cash, and any guests who rent a room for less than 12 hours must present photographic identification at the time of check-in, and hotel operators are required to record the number and expiration date of that document. For those guests who check in using an electronic kiosk, the hotel's records must also contain the guest's credit card information. This information can be maintained in either electronic or paper form, but it must be "kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent" thereto for a period of 90 days. LAMC section 41.49(3)(a) states, in pertinent part, that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection," provided that "[w]henver possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." A hotel operator's failure to make his or her guest records available for police inspection is a misdemeanor punishable by up to six months in jail and a \$1,000 fine. The respondents brought a facial challenge to §41.49(3)(a) on Fourth Amendment grounds, seeking declaratory and injunctive relief. As noted, the Court held that facial challenges under the Fourth Amendment are not barred. (2) Turning to the merits of the claim, the Court held that the challenged portion on the LAMC is facially

unconstitutional because it fails to provide hotel operators with an opportunity for precompliance review. The Court reasoned, in part:

[A]bsent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker. And, we see no reason why this minimal requirement is inapplicable here. While the Court has never attempted to prescribe the exact form an opportunity for precompliance review must take, the City does not even attempt to argue that §41.49(3)(a) affords hotel operators any opportunity whatsoever. Section 41.49(3)(a) is, therefore, facially invalid. (citations omitted)

Clarifying the scope of its holding, the Court continued, “As they often do, hotel operators remain free to consent to searches of their registries and police can compel them to turn them over if they have a proper administrative warrant—including one that was issued *ex parte*—or if some other exception to the warrant requirement applies, including exigent circumstances.” The Court went on to reject Justice Scalia’s suggestion that hotels are “closely regulated” and that the ordinance is facially valid under the more relaxed standard that applies to searches of that category of businesses.

Modifying and affirming court of appeals, state supreme court held that the district court exceeded its statutory authority by ordering a search of defendant’s person, vehicle, and residence for weapons pursuant to a Domestic Violence Order of Protection and that the search violated the defendant’s constitutional rights.

[*State v. Elder*](#), ___ N.C. ___, 773 S.E.2d 51 (June 11, 2015). Modifying and affirming the decision below, [*State v. Elder*](#), ___ N.C. App. ___, 753 S.E.2d 504 (2014), the supreme court held that the district court exceeded its statutory authority under G.S. 50B-3 by ordering a search of defendant’s person, vehicle, and residence pursuant to an *ex parte* civil Domestic Violence Order of Protection (“DVPO”) and that the ensuing search violated the defendant’s constitutional rights. Relying on G.S. 50B-3(a)(13) (authorizing the court to order “any additional prohibitions or requirements the court deems necessary to protect any party or any minor child”) the district court included in the DVPO a provision stating: “[a]ny Law Enforcement officer serving this Order shall search the Defendant’s person, vehicle and residence and seize any and all weapons found.” The district court made no findings or conclusions that probable cause existed to search the defendant’s property or that the defendant even owned or possessed a weapon. Following this mandate, the officer who served the order conducted a search as instructed. As a result of evidence found, the defendant was charged with drug crimes. The defendant unsuccessfully moved to suppress, was convicted and appealed. The supreme court concluded that the catch all provision in G.S. 50B-3 “does not authorize the court to order law enforcement, which is not a party to the civil DVPO, to proactively search defendant’s person, vehicle, or residence.” The court further concluded “by requiring officers to conduct a search of defendant’s home under sole authority of a civil DVPO without a warrant or probable cause, the district court’s order violated defendant’s constitutional rights” under the Fourth Amendment.

Broken window, unlocked front door, and unanswered knock did not create exigent circumstances justifying warrantless search of residence

[State v. Jordan](#), ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 4, 2015). In this drug case, the trial court erred in denying the defendant’s motion to suppress evidence obtained as a result of a warrantless search of her residence. According to the court: “The trial court’s findings that the officers observed a broken window, that the front door was unlocked, and that no one responded when the officers knocked on the door are insufficient to show that they had an objectively reasonable belief that a breaking and entering had *recently* taken place or *was still in progress*, such that there existed an urgent need to enter the property” and that the search was justified under the exigent circumstances exception to the warrant requirement. It continued:

In this case, the only circumstances justifying the officers’ entry into defendant’s residence were a broken window, an unlocked door, and the lack of response to the officers’ knock at the door. We hold that although these findings may be sufficient to give the officers a reasonable belief that an illegal entry had occurred *at some point*, they are insufficient to give the officers an objectively reasonable belief that a breaking and entering was in progress or had occurred recently.

Interrogation

Trial court erred by suppressing defendant’s statements without making specific findings related to whether his statements were voluntary and by failing to resolve the material conflict in evidence regarding whether police coercion occurred

[State v. Ingram](#), ___ N.C. App. ___, 774 S.E.2d 433 (July 7, 2015). On the State’s appeal from a trial court order granting the defendant’s motion to suppress, the court vacated and remanded for new findings of fact and if necessary, a new suppression hearing. After being shot by police, the defendant was taken to the hospital and given pain medication. He then waived his *Miranda* rights and made a statement to the police. He sought to suppress that statement, arguing that his *Miranda* waiver and statements were involuntarily. The court began by rejecting the State’s claim that the trial court erred by considering hearsay evidence in connection with the suppression motion and by relying on such evidence in making its findings of fact. The court noted that the trial court had “great discretion” to any relevant evidence at the suppression hearing. However, the court agreed with the State’s argument that the trial court erred by failing to resolve evidentiary issues before making its findings of fact. It explained:

[T]he trial court suppressed Defendant’s statements on the grounds Defendant was “in custody, in severe pain, and under the influence of a sufficiently large dosage of a strong narcotic medication[;]” however, the trial court failed to make any specific findings as to Defendant’s mental condition, understanding, or coherence—relevant considerations in a voluntariness analysis—at the time his *Miranda* rights were waived and his statements were made. The trial court found only that Defendant was in severe pain and under the influence of several narcotic pain medications. These factors are not all the trial court

should consider in determining whether his waiver of rights and statements were made voluntarily.

Furthermore, although the defendant moved to suppress on grounds that police officers allegedly coerced his *Miranda* waiver and statements by withholding pain medication, the trial court failed to resolve the material conflict in evidence regarding whether police coercion occurred.

Pretrial and Trial Procedure

Right to Counsel

(1) Trial court did not abuse its discretion by allowing withdrawal of counsel upon counsel's assertion that his withdrawal was mandatory in light of his professional considerations; (2) Trial court was not required to appoint substitute counsel; (3) Limited time for review did not render private counsel presumptively ineffective

[State v. Smith](#), ___ N.C. App. ___, 773 S.E.2d 114 (June 16, 2015). (1) Where appointed counsel moved, on the sixth day of a bribery trial, for mandatory withdrawal pursuant to Rule 1.16(a) of the N.C. Rules of Professional Conduct, the trial court did not abuse its discretion by allowing withdrawal upon counsel's citation of Comment 3 to Rule 1.16 as grounds for withdrawal. Comment 3 states in relevant part:

Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

In light of the Comment, the trial court did not abuse its discretion by accepting counsel's assertion that his withdrawal was mandatory in light of his professional considerations. (2) After allowing the withdrawal, the trial court was not required to appoint substitute counsel. Under G.S. 7A-450(b), appointment of substitute counsel at the request of either an indigent defendant or original counsel is constitutionally required only when it appears that representation by original counsel could deprive the defendant of his or her right to effective assistance. The statute also provides that substitute counsel is required and must be appointed when the defendant shows good cause, such as a conflict of interest or a complete breakdown in communications. Here, counsel's representation did not fail to afford the defendant his constitutional right to counsel nor did the defendant show good cause for the appointment of substitute counsel. Nothing in the record suggests a complete breakdown in communications or a conflict of interest. Indeed, the court noted, "there was no indication that [counsel]'s work was in any way deficient. Rather, [his] withdrawal was caused by [defendant] himself demanding that [counsel] engage in unprofessional conduct. (3) The court rejected the defendant's argument that private counsel retained after this incident was presumptively ineffective given the limited time he had to review the case. The defendant noted that his new counsel entered the case on the seventh day of trial and requested only a four-hour recess to meet to prepare. Given the status of the trial and the limited work to be done, the court rejected the defendant's argument. The court also rejected the defendant's argument that new counsel rendered deficient performance by failing to request a longer or an additional continuance.

Pleadings

Reversing the court of appeals, the state supreme court held that an information charging injury to personal property owned by NCSU was not fatally flawed

[*State v. Ellis*](#), ___ N.C. ___, ___ S.E.2d ___ (Sept. 25, 2015). Reversing the opinion below, *State v. Ellis*, ___ N.C. App. ___, 763 S.E.2d 574 (Oct. 7, 2014), the court held that an information charging injury to personal property was not fatally flawed. The information alleged the victims as: “North Carolina State University (NCSU) and NCSU High Voltage Distribution.” The court noted that the defendant did not dispute that North Carolina State University is expressly authorized to own property by statute, G.S. 116-3, “and is, for that reason, an entity inherently capable of owning property.” Rather, the defendant argued that the information was defective because “NCSU High Voltage Distribution” was not alleged to be an entity capable of owning property. The court held: “Assuming, without deciding, that the ... information did not adequately allege that ‘NCSU High Voltage Distribution’ was an entity capable of owning property, that fact does not render the relevant count facially defective.” In so holding the court rejected the defendant’s argument that when a criminal pleading charging injury to personal property lists two entities as property owners, both must be adequately alleged to be capable of owning property. The court continued:

[A] criminal pleading purporting to charge the commission of a property-related crime like injury to personal property is not facially invalid as long as that criminal pleading adequately alleges the existence of at least one victim that was capable of owning property, even if the same criminal pleading lists additional victims who were not alleged to have been capable of owning property as well.

Court of Appeals decision that indictment alleging obtaining property by false pretenses was not fatally defective stands as supreme court justices equally divided

[*State v. Pendergraft*](#), ___ N.C. ___, ___ S.E.2d ___ (Sept. 25, 2015) (per curiam). Because the participating Justices were equally divided, the decision below, *State v. Pendergraft*, ___ N.C. App. ___, 767 S.E.2d 674 (Dec. 31, 2014), was left undisturbed and without precedential value. In the decision below the court of appeals had held, over a dissent, that an indictment alleging obtaining property by false pretenses was not fatally defective. After the defendant filed false documents purporting to give him a property interest in a home, he was found to be occupying the premises and arrested. The court of appeals rejected the defendant’s argument that the indictment was deficient because it failed to allege that he made a false representation. The indictment alleged that the false pretense consisted of the following: “The defendant moved into the house ... with the intent to fraudulently convert the property to his own, when in fact the defendant knew that his actions to convert the property to his own were fraudulent.” Acknowledging that the indictment did not explicitly charge the defendant with having made any particular false representation, the court of appeals found that it “sufficiently apprise[d] the defendant about the nature of the false representation that he allegedly made,” namely that he falsely represented that he owned the property as part of an attempt to fraudulently obtain ownership or possession of it. The court of appeals also rejected the defendant’s argument that the indictment was defective in that it failed to allege the existence of a causal connection between any

false representation by him and the attempt to obtain property, finding the charging language sufficient to imply causation.

(1) Defendant waived issue of fatal variance by not raising it at trial; (2) Counsel provided ineffective assistance by failing to move to dismiss; (3) False pretenses indictments not fatally defective

[*State v. Holanek*](#), ___ N.C. App. ___, 776 S.E.2d 225 (Aug. 18, 2015). (1) In a case involving charges of obtaining property by false pretenses arising out of alleged insurance fraud, the defendant waived the issue of fatal variance by failing to raise it at trial. (2) Counsel rendered ineffective assistance by failing to move to dismiss on grounds of fatal variance. The indictment alleged that the defendant submitted fraudulent invoices for pet boarding services by Meadowsweet Pet Boarding which caused the insurance company to issue payment to her in the amount of \$11,395.00. The evidence at trial, however, showed that the document at issue was a valid estimate for future services, not an invoice. Additionally, the document was sent to the insurance company three days after the company issued a check to the defendant. Therefore the insurance company's payment could not have been triggered by the defendant's submission of the document. Additionally, the State's evidence showed that it was not the written estimate that falsely led the insurance company to believe that the defendant's pets remained at Meadowsweet long after they had been removed from that facility, but rather the defendant's oral representations made later. (3) The court rejected the defendant's argument that false pretenses indictments pertaining to moving expenses were fatally defective because they did not allege the exact misrepresentation with sufficient precision. The indictments were legally sufficient: each alleged both the essential elements of the offense and the ultimate facts constituting those elements by stating that the defendant obtained money from the insurance company through a false representation made by submitting a fraudulent invoice which was intended to, and did, deceive the insurance company.

Reversing court of appeals, state supreme court held that larceny indictment was not fatally flawed for failing to allege that church could own property and that State presented sufficient evidence of defendant's intent to commit larceny

[*State v. Campbell*](#), ___ N.C. ___, 772 S.E.2d 440 (June 11, 2015). Reversing the decision below, [*State v. Campbell*](#), ___ N.C. App. ___, 759 S.E.2d. 380 (2014), the court held that a larceny indictment was not fatally flawed even though it failed to specifically allege that a church, the co-owner of the property at issue, was an entity capable of owning property. The indictment named the victim as Manna Baptist Church. The supreme court held: "[A]lleging ownership of property in an entity identified as a church or other place of religious worship, like identifying an entity as a 'company' or 'incorporated,' signifies an entity capable of owning property, and the line of cases from the Court of Appeals that has held otherwise is overruled."

The court further held that the State presented sufficient evidence of the defendant's intent to commit larceny in a place of worship to support his conviction for felonious breaking or entering that facility. The evidence showed that the defendant unlawfully broke and entered the church; he did not have permission to be there and could not remember what he did while there; and the church's pastor found the defendant's wallet near the place where some of the missing items previously had been stored.

Other Procedural Issues

Reversing court of appeals, state supreme court held that a new suppression hearing was required as the judge who signed the order suppressing evidence was not the judge who held the hearing

[*State v. Bartlett*](#), ___ N.C. ___, ___ S.E.2d ___ (Sept. 25, 2015). The court reversed the decision below, *State v. Bartlett*, ___ N.C. App. ___, 752 S.E.2d 237 (Dec. 17, 2013), and held that a new suppression hearing was required. At the close of the suppression hearing, the superior court judge orally granted the defendant's motion and asked counsel to prepare a written order. However, that judge did not sign the proposed order before his term ended. The defendant presented the proposed order to a second superior court judge, who signed it, over the State's objection, and without conducting a hearing. The order specifically found that the defendant's expert was credible, gave weight to the expert's testimony, and used the expert's testimony to conclude that no probable cause existed to support defendant's arrest. The State appealed, contending that the second judge was without authority to sign the order. The court of appeals found it unnecessary to reach the State's contention because that court considered the first judge's oral ruling to be sufficient. Reviewing the law, the Supreme Court clarified, "our cases require findings of fact only when there is a material conflict in the evidence and allow the trial court to make these findings either orally or in writing." It added that to the extent that cases such as *State v. Williams*, 195 N.C. App. 554 (2009), "suggest otherwise, they are disavowed." Turning to the case at hand, the court concluded that at the suppression hearing in this case, disagreement between the parties' expert witnesses created a material conflict in the evidence. Thus, a finding of fact, whether written or oral, was required. Here, however, the first judge made no such finding. The court noted that while he did attempt to explain his rationale for granting the motion, "we cannot construe any of his statements as a definitive finding of fact that resolved the material conflict in the evidence." Having found the oral ruling was inadequate, the Court considered whether the second judge had authority to resolve the evidentiary conflict in his written order even though he did not conduct the suppression hearing. It held that he did not, reasoning that G.S. 15A-977 contemplates that the same trial judge who hears the evidence must also find the facts. The court rejected the defendant's argument that G.S. 15A-1224(b) authorized the second judge to sign the order, concluding that provision applies only to criminal trials, not suppression hearings.

Defendant's failure to notify State of his intent to appeal suppression ruling and to timely file notice of intent to appeal barred court's review of suppression issue pursuant to certiorari petition

[*State v. Harris*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 15, 2015). In a case where the defendant pled guilty pursuant to a plea agreement without notifying the State of his intent to appeal the suppression ruling and failed to timely file a notice of intent to appeal, the court dismissed the defendant's untimely appeal and his petition for writ of certiorari. Acknowledging *State v. Davis*, ___ N.C. App. ___, 763 S.E.2d 585, 589 (2014), a recent case that allowed, with no analysis, a writ in this very circumstance, the court found itself bound to follow an earlier opinion, *State v. Pimental*, 153 N.C. App. 69, 77 (2002), which requires dismissal of the defendant's efforts to seek review of the suppression issue.

Evidence

Confrontation Clause

DMV records related to the revocation of defendant's driver's license were non-testimonial

[*State v. Clark*](#), ___ N.C. App. ___, 775 S.E.2d 28 (July 7, 2015). In this driving while license revoked case, the court held that DMV records were non-testimonial. The documents at issue included a copy of the defendant's driving record certified by the DMV Commissioner; two orders indefinitely suspending his drivers' license; and a document attached to the suspension orders and signed by a DMV employee and the DMV Commissioner. In this last document, the DMV employee certified that the suspension orders were mailed to the defendant on the dates as stated in the orders, and the DMV Commissioner certified that the orders were accurate copies of the records on file with DMV. The court held that the records, which were created by the DMV during the routine administration of its affairs and in compliance with its statutory obligations to maintain records of drivers' license revocations and to provide notice to motorists whose driving privileges have been revoked, were non-testimonial.

Statements by child abuse victim to preschool teachers, who were required to report suspected abuse, were non-testimonial

[*Ohio v. Clark*](#), 576 U.S. ___, 135 S. Ct. 2173 (June 18, 2015). In this child abuse case the Court held that statement by the victim, L.P., to his preschool teachers were non-testimonial. In the lunchroom, one of L.P.'s teachers, Ramona Whitley, observed that L.P.'s left eye was bloodshot. She asked him "[w]hat happened," and he initially said nothing. Eventually, however, he told the teacher that he "fell." When they moved into the brighter lights of a classroom, Whitley noticed "[r]ed marks, like whips of some sort," on L.P.'s face. She notified the lead teacher, Debra Jones, who asked L.P., "Who did this? What happened to you?" According to Jones, L.P. "seemed kind of bewildered" and "said something like, Dee, Dee." Jones asked L.P. whether Dee is "big or little;" L.P. responded that "Dee is big." Jones then brought L.P. to her supervisor, who lifted the boy's shirt, revealing more injuries. Whitley called a child abuse hotline to alert authorities about the suspected abuse. The defendant, who went by the nickname Dee, was charged in connection with the incident. At trial, the State introduced L.P.'s statements to his teachers as evidence of the defendant's guilt, but L.P. did not testify. The defendant was convicted and appealed. The Ohio Supreme Court held that L.P.'s statements were testimonial because the primary purpose of the teachers' questioning was not to deal with an emergency but rather to gather evidence potentially relevant to a subsequent criminal prosecution. That court noted that Ohio has a "mandatory reporting" law that requires certain professionals, including preschool teachers, to report suspected child abuse to government authorities. In the Ohio court's view, the teachers acted as agents of the State under the mandatory reporting law and obtained facts relevant to past criminal conduct. The Supreme Court granted review and reversed. It held:

In this case, we consider statements made to preschool teachers, not the police. We are therefore presented with the question we have repeatedly reserved: whether statements to persons other than law enforcement officers are subject to the Confrontation Clause. Because at least some statements to individuals who are not law enforcement officers could conceivably raise confrontation concerns, we decline to

adopt a categorical rule excluding them from the Sixth Amendment's reach. Nevertheless, such statements are much less likely to be testimonial than statements to law enforcement officers. And considering all the relevant circumstances here, L.P.'s statements clearly were not made with the primary purpose of creating evidence for [the defendant's] prosecution. Thus, their introduction at trial did not violate the Confrontation Clause.

The Court reasoned that L.P.'s statements occurred in the context of an ongoing emergency involving suspected child abuse. The Court continued, concluding that "[t]here is no indication that the primary purpose of the conversation was to gather evidence for [the defendant]'s prosecution. On the contrary, it is clear that the first objective was to protect L.P." In the Court's view, "L.P.'s age fortifies our conclusion that the statements in question were not testimonial." It added: "Statements by very young children will rarely, if ever, implicate the Confrontation Clause." The Court continued, noting that as a historical matter, there is strong evidence that statements made in similar circumstances were admissible at common law. The Court noted, "although we decline to adopt a rule that statements to individuals who are not law enforcement officers are categorically outside the Sixth Amendment, the fact that L.P. was speaking to his teachers remains highly relevant." The Court rejected the defendant's argument that Ohio's mandatory reporting statutes made L.P.'s statements testimonial, concluding: "mandatory reporting statutes alone cannot convert a conversation between a concerned teacher and her student into a law enforcement mission aimed primarily at gathering evidence for a prosecution."

Expert Opinion Testimony

(1) Trial court did not abuse its discretion by permitting field technician for Forensic Tests for Alcohol Branch of DHHS to qualify and testify as expert on retrograde extrapolation; (2) Trial court erred by allowing a law enforcement officer to testify as to defendant's blood alcohol level based on results of HGN, but error did not arise to level of plain error

State v. Turbyfill, ___ N.C. App. ___, 776 S.E.2d 249 (Sept. 1, 2015). (1) In this DWI case, the trial court did not abuse its discretion by allowing the State's witness, a field technician in the Forensic Tests for Alcohol Branch of the NC DHHS, who demonstrated specialized knowledge, experience, and training in blood alcohol physiology, pharmacology, and related research on retrograde extrapolation to be qualified and testify as an expert under amended Rule 702. (2) The trial court erred by allowing a law enforcement officer to testify as to the defendant's blood alcohol level testimony; however, based on the other evidence in the case the error did not rise to the level of plain error. The court noted that Rule 702(a1) provides:

A witness, qualified under subsection (a) ... and with proper foundation, may give expert testimony solely on the issue of impairment and not on the issue of specific alcohol concentration level relating to the following:

(1) The results of a Horizontal Gaze Nystagmus (HGN) Test when the test is administered by a person who has successfully completed training in HGN.

At trial, the officer's testimony violated Rule 702(a1) on the issue of the defendant's specific alcohol concentration level as it related to the results of the HGN Test.

Trial court did not err by permitting expert medical witness in child sexual assault case to testify that the victim's delay in reporting anal penetration was consistent with the general behavior of children who have been sexually abused in that manner

[State v. Purcell](#), ___ N.C. App. ___, 774 S.E.2d 392 (July 7, 2015). In this child sexual assault case, no error occurred when the State's expert medical witness testified that the victim's delay in reporting anal penetration was a characteristic consistent with the general behavior of children who have been sexually abused in that manner. The court rejected the defendant's argument that the expert impermissibly opined on the victim's credibility. As conceded by the State, the trial court erred when it sentenced the defendant under a statute enacted after his offenses were committed. The court remanded for resentencing.

Trial court did not err by permitting medical doctor who examined victim in child sexual abuse case to explain why no signs of sexual abuse appeared in the examination and that the cutting behavior exhibited by the victim was common in abused children

[State v. Chavez](#), ___ N.C. App. ___, 773 S.E.2d 108 (June 16, 2015). In this child sexual abuse case, no error occurred when the medical doctor who examined the victim explained the victim's normal examination, stating that 95% of children examined for sexual abuse have normal exams and explaining that "it's more of a surprise when we do find something." The doctor further testified that a normal exam with little to no signs of penetrating injury could be explained by the "stretchy" nature of the hymen tissue and its ability to heal quickly. For example, she explained, deep tears to the hymen can often heal within three to four months, while superficial tears can heal within a few days to a few weeks. Nor was it error for the doctor to testify that she was made aware of the victim's "cutting behavior" through the victim's medical history and that cutting behavior was significant to the doctor because "cutting, unfortunately, is a very common behavior seen in children who have been abused and frequently sexually abused." The doctor never testified that the victim in fact had been abused.

Lay Opinions

Trial court did not abuse its discretion by allowing the investigating detective to testify that while investigating the case, he took screen shots of anything that appeared to be evidence of cyberbullying.

[State v. Bishop](#), ___ N.C. App. ___, 774 S.E.2d 337 (June 16, 2015), *review allowed*, ___ N.C. ___, 775 S.E.2d 843 (Aug. 20, 2015). In this cyberbullying case that was based on electronic messages, the trial court did not abuse its discretion by allowing the investigating detective to testify that while investigating the case, he took screen shots of anything that appeared to be evidence of cyberbullying. The defendant argued that the detective's testimony was inadmissible opinion testimony regarding the defendant's guilt. The detective testified at trial as a lay witness about what he found on Facebook and about the course of his investigation. When asked how he searched for electronic comments concerning the victim, he explained that he examined the suspects' online pages and "[w]henver I found anything that appeared to have been to me cyber-bullying I took a screen shot of it." He added that "[i]f it appeared evidentiary, I took a screen shot of it." This testimony was not proffered as an opinion of the

defendant's guilt; it was rationally based on the detective's perception and was helpful in presenting to the jury a clear understanding of his investigative process and thus admissible under Rule 701.

Rape Shield

Trial court committed reversible error by concluding that the defendant's evidence was per se inadmissible under the Rape Shield Rule as evidence may have been admissible to show the victim's motive to falsely accuse the defendant

[State v. Martin](#), ___ N.C. App. ___, 774 S.E.2d 330 (June 16, 2015). In this sexual offense with a student case, the trial court committed reversible error by concluding that the defendant's evidence was per se inadmissible under the Rape Shield Rule. The case involved charges that the defendant, a substitute teacher, had the victim perform oral sex on him after he caught her in the boys' locker room. At trial the defendant sought to introduce evidence that when he found the victim in the locker room, she was performing oral sex on football players to show that the victim had a motive to falsely accuse him of sexual assault. After an in camera hearing the trial court concluded that the evidence was per se inadmissible because it did not fit under the Rape Shield Rule's four exceptions. Citing case law, the court determined that "that there may be circumstances where evidence which touches on the sexual behavior of the complainant may be admissible even though it does not fall within one of the categories in the Rape Shield Statute." Here, the defendant's defense was that he did not engage in any sexual behavior with the victim but that she fabricated the story to hide the fact that he caught her performing oral sex on the football players in the locker room. The court continued:

Where the State's case in any criminal trial is based largely on the credibility of a prosecuting witness, evidence tending to show that the witness had a motive to falsely accuse the defendant is certainly relevant. The motive or bias of the prosecuting witness is an issue that is common to criminal prosecutions in general and is not specific to only those crimes involving a type of sexual assault.

The trial court erred by concluding that the evidence was inadmissible per se because it did not fall within one of the four categories in the Rape Shield Statute. Here, the trial court should have looked beyond the four categories to determine whether the evidence was, in fact, relevant to show [the victim]'s motive to falsely accuse Defendant and, if so, conducted a balancing test of the probative and prejudicial value of the evidence under Rule 403 or was otherwise inadmissible on some other basis (e.g., hearsay). (footnote omitted).

Trial court committed reversible error in determining that evidence about the victim watching a pornographic video and making prior allegations of sexual assault was barred by Rape Shield Statute

[State v. Rorie](#), ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 18, 2015), *temporary stay allowed*, ___ N.C. ___, ___ S.E.2d ___ (Sep. 8, 2015). (1) In this child sex case, evidence that the victim was discovered watching a pornographic video, offered by the defendant to show the victim's sexual knowledge, is not evidence of sexual activity barred by the Rape Shield Statute. (2) Evidence offered by the defendant of the child victim's prior allegations and inconsistent statements about sexual assaults committed by others who

were living in the house were not barred by the Rape Shield Statute, and the trial court erred by excluding this evidence. False accusations do not fall within the scope of the Rape Shield Statute and may be admissible to attack the victim's credibility. The court was careful however not to "hold the statements necessarily should have been admitted into evidence at trial;" it indicated that whether the victim's "prior allegations and inconsistent statements come into the evidence at trial should be determined on retrial subject to a proper Rule 403 analysis."

Other Evidence Issues

Reversing the court of appeals, the state supreme court held that the court of appeals erred by awarding the defendant a new trial on first-degree murder charges based upon the admission of evidence related to a civil actions establishing that he killed the victim

[State v. Young](#), ___ N.C. ___, 775 S.E.2d 291 (Aug. 21, 2015). In this murder case the court held that the court of appeals erred by concluding that the trial court committed reversible error in allowing into evidence certain materials from civil actions. The relevant materials included a default judgment and complaint in a wrongful death suit stating that the defendant killed the victim and a child custody complaint that included statements that the defendant had killed his wife. The court of appeals had held that admission of this evidence violated G.S. 1-149 ("[n]o pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in it") and Rule 403. The court held that the defendant did not preserve his challenge to the admission of the child custody complaint on any grounds. It further held that the defendant failed to preserve his G.S. 1-149 objection as to the wrongful death evidence and that his Rule 403 objection as to this evidence lacked merit. As to the G.S. 1-149 issue, the court found it dispositive that the defendant failed to object at trial to the admission of the challenged evidence on these grounds and concluded that the court of appeals erred by finding that the statutory language was mandatory and allowed for review absent an objection. On the 403 issue as to the wrongful death evidence, the court rejected the court of appeals' reasoning that substantial prejudice resulting from this evidence "irreparably diminished" defendant's presumption of innocence and "vastly outweighed [its] probative value." Instead, the court found that evidence concerning the defendant's response to the wrongful death and declaratory judgment action had material probative value. Although the evidence posed a significant risk of unfair prejudice, the trial court "explicitly instructed the jury concerning the manner in which civil cases are heard and decided, the effect that a failure to respond has on the civil plaintiff's ability to obtain the requested relief, and the fact that '[t]he entry of a civil judgment is not a determination of guilt by any court that the named defendant has committed any criminal offense.'"

Crimes

Cyberbullying

Cyberbullying statute targets conduct, not speech, which falls outside the purview of the First Amendment

[State v. Bishop](#), ___ N.C. App. ___, 774 S.E.2d 337 (June 16, 2015), *review allowed*, ___ N.C. ___, 775 S.E.2d 843 (Aug. 20, 2015). (1) The court upheld a provision of the cyberbullying statute, G.S. 14-458.1(a)(1)(d), rejecting the defendant's argument that the provision is an overbroad criminalization of protected speech. G.S. 14-458.1(a)(1)(d) makes it unlawful for any person to use a computer or computer network to, with the intent to intimidate or torment a minor, post or encourage others to post on the Internet private, personal, or sexual information pertaining to a minor. (2) Because the defendant failed to preserve the issue, the court declined to address the defendant's argument that the statute was unconstitutionally vague. (3) Because the defendant's motion to dismiss for insufficient evidence was made on other grounds, the court declined to consider the defendant's argument on appeal that insufficient evidence was presented to show he posted private, personal, or sexual information pertaining to the victim. (4) The trial court did not err by admitting into evidence the defendant's Facebook posts that, among other things, stated that "there's no empirical evidence that your Jesus ever existed." The comments were relevant to show the defendant's intent to intimidate or torment the victim, as well as the chain of events causing the victim's mother to contact the police.

Hunting Without a License

Defendant was not entitled to instruction on legal justification on grounds that he was engaged in religious hunting ceremony

[State v. Oxendine](#), ___ N.C. App. ___, 775 S.E.2d 19 (July 7, 2015). (1) In this hunting without a license case, the trial court did not err by denying defendant Oxendine's request to instruct the jury on legal justification. The defendant argued that he was exempt under G.S. 113-276 from the requirement of a hunting license because he had been engaged in a Native American religious hunting ceremony. That statute applies to "member[s] of an Indian tribe recognized under Chapter 71A of the General Statutes." Although the defendant argued that he is "an enrolled member of the Haudenosaunee Confederacy of the Tuscarora Nation," he is not a member of a Native American tribe recognized under Chapter 71A. Additionally the defendant did not show that he was hunting on tribal land, as required by the statute. (2) The evidence was sufficient to convict defendant Pedro of hunting without a license. Based on the facts presented, the court rejected the defendant's argument that the State's evidence was insufficient to show that he "was preparing to immediately kill a dove."

Larceny

Trial court erred by sentencing defendant for felony larceny and felony possession of stolen goods based on same items

[*State v. Hardy*](#), ___ N.C. App. ___, 774 S.E.2d 410 (July 7, 2015). The trial court erred by sentencing the defendant for both felony larceny and felony possession of stolen goods when both convictions were based on the same items.

Sentencing and Probation

Trial court erred in revoking defendant's probation for absconding where evidence did not support that conclusion

[*State v. Williams*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Sept. 15, 2015). Under Justice Reinvestment Act (JRA) changes, the trial court erred by revoking the defendant's probation. After reviewing the requirements of the JRA, the court noted that the trial judge did not check the box on the judgment form indicating that it had made a finding that the defendant violated the statutory absconding provision, G.S. 15A-1343(b)(3a). The court further concluded that the "evidence and law does not support a conclusion that he absconded." The allegation that the defendant absconded by not reporting as instructed, not providing a valid address, leaving the state without permission, knowingly avoiding the probation officer; and not making his true whereabouts known, was viewed by the court as "simply a re-alleging" of the technical violations of failing to report, changing addresses without permission, and leaving the jurisdiction. See Jamie Markham, [What Absconding Isn't](#), North Carolina Criminal Law Blog (September 29, 2015).

Defendant's stipulations that he had been convicted of carrying a concealed weapon in Michigan and that the offense was classified as a felony there were sufficient to support the default classification of the offense as a Class I felony

[*State v. Edgar*](#), ___ N.C. App. ___, ___ S.E.2d ___ (Aug. 18, 2015). The trial court correctly calculated the defendant's PRL. The defendant argued that the trial court erred by basing its PRL calculation on an ineffective stipulation. The defendant's only prior conviction was one in Michigan for carrying a concealed weapon, which he contended is substantially similar to the NC Class 2 misdemeanor offense of carrying a concealed weapon. The court concluded that the defendant did not make any stipulation as to the similarity of the Michigan offense to NC offense. Instead, the prior conviction was classified as a Class I felony, the default classification for an out-of-state felony. Thus, defendant's stipulations in the PRL worksheet that he had been convicted of carrying a concealed weapon in Michigan and that the offense was classified as a felony in Michigan, were sufficient to support the default classification of the offense as a Class I felony.

Trial court did not err in felony violation of DVPO case by sentencing defendant in aggravated range for taking advantage of a position of trust

[*State v. Edgerton*](#), ___ N.C. App. ___, 774 S.E.2d 927 (Aug. 4, 2015). In this violation of a domestic violence protective order (DVPO) case, the trial court did not err by sentencing the defendant within the aggravated range based in part on the G.S. 15A-1340.16(d)(15) statutory aggravating factor (the “defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense”). The defendant argued that because a personal relationship between the parties is a prerequisite to obtaining a DVPO, the abuse of a position of trust or confidence aggravating factor cannot be used aggravate a sentence imposed for a DVPO violation offense. The court concluded that imposing an aggravated sentence did not violate the rule that evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation.

Because the trial court lacked jurisdiction to extend defendant’s period of probation in 2009, the trial court lacked jurisdiction to revoke the defendant’s probation in 2013

[*State v. Hoskins*](#), ___ N.C. App. ___, 775 S.E.2d 15 (July 7, 2015). (1) In this case which came to the court on a certiorari petition to review the trial court’s 2013 probation revocation, the court concluded that it had jurisdiction to consider the defendant’s claim that the trial court lacked jurisdiction to extend her probation in 2009. (2) The trial court lacked jurisdiction to extend the defendant’s probation in 2009. The defendant’s original period of probation expired on 27 June 2010. On 18 February 2009, 16 months before the date probation was set to end, the trial court extended the defendant’s probation. Under G.S. 15A-1343.2(d), the trial court lacked statutory authority to order a three-year extension more than six months before the expiration of the original period of probation. Also the trial court lacked statutory authority under G.S. 15A-1344(d), because the defendant’s extended period of probation exceeded five years. Because the trial court lacked jurisdiction to extend probation in 2009, the trial court lacked jurisdiction to revoke the defendant’s probation in 2013.

Post Conviction

Prisoners challenging Oklahoma’s lethal injection protocol failed to establish a likelihood of success on the merits of their claim that the protocol violates the Eighth Amendment as (1) they failed to identify a method of execution that entails a lesser risk of pain and (2) the district court did not commit clear error in determining that the first drug in the protocol was highly likely to render a person unable to feel pain

[*Glossip v. Gross*](#), 576 U.S. ___, 135 S. Ct. 2726 (June 29, 2015). In this case, challenging Oklahoma’s lethal injection protocol, the Court affirmed the denial of the prisoner’s application for a preliminary injunction. The prisoners, all sentenced to death in Oklahoma, filed an action in federal court, arguing that the method of execution used by the Oklahoma violates the Eighth Amendment because it creates an unacceptable risk of severe pain. They argued that midazolam, the first drug employed in the State’s three-drug protocol, fails to render a person insensate to pain. After holding an evidentiary hearing, the District Court denied the prisoner’s application for a preliminary injunction, finding that they had failed to prove that midazolam is ineffective. The Tenth Circuit affirmed, as did the Supreme Court, for two

independent reasons. First, the Court concluded that the prisoners failed to identify a known and available method of execution that entails a lesser risk of pain. Second, the Court concluded that the District Court did not commit clear error when it found that the prisoners failed to establish that Oklahoma's use of a massive dose of midazolam in its execution protocol entails a substantial risk of severe pain.

Louisiana court's rejection of a death-row inmate's claim that he was intellectually disabled and thus could not be executed was unreasonable; the inmate was therefore entitled to have his claim considered on the merits in federal court

[*Brumfield v. Cain*](#), 576 U.S. __ (June 18, 2015). Because the Louisiana state court's decision rejecting the defendant's *Atkins* claim without affording him an evidentiary hearing was based on an unreasonable determination of the facts, the defendant was entitled to have his claim considered on the merits in federal court. After the defendant was convicted, the U.S. Supreme Court held, in *Atkins*, that "in light of . . . 'evolving standards of decency,'" the Eighth Amendment "'places a substantive restriction on the State's power to take the life' of a mentally retarded offender." The Court however left "to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." The Louisiana Supreme Court later held that "a diagnosis of mental retardation has three distinct components: (1) subaverage intelligence, as measured by objective standardized IQ tests; (2) significant impairment in several areas of adaptive skills; and (3) manifestations of this neuro-psychological disorder in the developmental stage." That court further held that an *Atkins* evidentiary hearing is required when an inmate has put forward sufficient evidence to raise a "reasonable ground" to believe him to be intellectually disabled. In a post-conviction motion in the case at bar, the defendant sought an *Atkins* hearing. Without holding an evidentiary hearing or granting funds to conduct additional investigation, the state trial court dismissed the defendant's petition. After losing in state court, the defendant pursued federal habeas relief. The defendant won at the federal district court but the Fifth Circuit reversed. The U.S. Supreme Court granted review and held that the state court's decision denying his *Atkins* claim was premised on an "unreasonable determination of the facts." In reaching this decision, the Court focused on the two underlying factual determinations on which the trial court's decision was premised: that the defendant's IQ score of 75 was inconsistent with a diagnosis of intellectual disability and that he had presented no evidence of adaptive impairment. The Court held that both of the state court's critical factual determinations were unreasonable.