

Non-DWI Motor Vehicle Issues

Court, Per Curiam and Without Opinion, Affirms Court of Appeals Ruling That There Was Sufficient Evidence of Defendant's Knowledge That His License Was Revoked to Support Conviction of Driving While License Revoked

State v. Coltrane, 362 N.C. 284, 658 S.E.2d 656 (11 April 2008), affirming, 184 N.C. App. 140, 645 S.E.2d 793 (19 June 2007).

The court, per curiam and without an opinion, affirmed the ruling by the North Carolina Court of Appeals that there was sufficient evidence of the defendant's knowledge that his license was revoked to support his conviction of driving while license revoked. The state produced a signed certificate of an employee of the Division of Motor Vehicles (DMV) stating that the employee deposited the notice of revocation in the United States mail in a postage paid envelope, addressed to the address shown by DMV records as the defendant's address. The court of appeals ruled that this certification constituted the giving of notice under G.S. 20-48(a). Therefore, the state raised a prima facie presumption of receipt, and the defendant was obligated to rebut the presumption. The defendant chose not to present any evidence at trial and the presumption was clearly not rebutted. The court concluded that the state met its burden on the element of knowledge. [Author's note: The current version of G.S. 20-48(a) was not applicable to this case, but the result would be the same (that is, sufficient evidence of knowledge).]

(2) Sufficient Evidence to Convict Passenger of Giving False Information (Orally Telling Officer That She Was the Driver) in Report of Reportable Accident Under G.S. 20-279.31(b)(1)

State v. Hernandez, 188 N.C. App. 193, 655 S.E.2d 426 (15 January 2008).

The male defendant and the female defendant were in a vehicle that was involved in an accident in which the vehicle hit a ditch and landed about thirty to forty feet in a bean field. Two officers arrived at the scene when no one was in the vehicle. Officer A saw that the steering wheel air bag had deployed and blood was on the air bag. He noticed that the male defendant had blood near his nose and on his shirt. Officer B saw that the female defendant had a fabric burn extending from her right shoulder to her collarbone. In addition, the driver's seat was pushed back too far for the female defendant to drive the vehicle. The female defendant later told the officer at the hospital that she was the driver of the vehicle. The male defendant took the Intoxilyzer and his BAC was 0.26. The male defendant was convicted of DWI. The female defendant was convicted under G.S. 20-279.31(b)(1) of giving false information in a report of a reportable

accident. (2) The court ruled that there was sufficient evidence to convict the female defendant of giving false information (orally telling officer that she was the driver) in a report of a reportable accident under G.S. 20-279.31(b)(1). The court rejected the female defendant's argument that the statute requires a written report and thus her oral statement to the officer did not constitute a report. The court also ruled that the identity of the driver is required to be included in a reportable accident report.

Trial Judge Erred by Allowing Defendant to Represent Himself at Trial for Speeding in Excess of 15 M.P.H. (Class 2 Misdemeanor) Without Complying With G.S. 15A-1242

State v. Taylor, 187 N.C. App. 291, 652 S.E.2d 741 (20 November 2007). The defendant was convicted of two charges of speeding in excess of 15 m.p.h. and appealed to superior court for trial de novo. The court ruled that the superior court trial judge erred by allowing the defendant to represent himself at trial without fully complying with G.S. 15A-1242 (defendant's waiver of right to counsel). Although the trial judge properly informed the defendant of a maximum 60-day imprisonment for a Class 2 misdemeanor, the judge failed to properly inform the defendant that he was also subject to a maximum \$1,000.00 fine for each charge. The court noted that under G.S. 7A-451(a)(1) an indigent defendant is entitled to appointment of counsel for any case in which imprisonment or a fine of \$500.00 or more is likely to be adjudged. Because the sentencing options in this case were limited to community service and a fine, the possibility of such a fine was likely in this case, especially given that total maximum possible fine was \$2,000.00 for the two charges. The defendant would have been entitled to appointment of counsel if it had been determined that he was indigent.

Defendant Was Not Entitled to Defense of Duress in Second-Degree Vehicular Murder Trial

State v. Brown, 182 N.C. App. 115, 646 S.E.2d 775 (6 March 2007). The defendant was convicted of second-degree murder and other offenses (willful speed competition, reckless driving, and driving left of center) as a result of a collision of his vehicle (vehicle A) with another vehicle (vehicle B) as they sped together on a highway, and vehicle B crashed into the decedent's vehicle (vehicle C), which was traveling in the opposite direction from vehicles A and B. The court ruled that the defendant was not entitled to a jury instruction on the defense of duress. The defendant did not have a well-grounded apprehension of death or serious bodily harm. Also, he had a reasonable opportunity to avoid his conduct without undue exposure to death or serious bodily harm: he had ample opportunity

to either maintain a safe speed or to pull over off the highway. (See the court's discussion of the facts in its opinion.)

Motor Vehicles--Felony Fleeing By Motor Vehicle To Elude Arrest--Instruction

State v Wood, 174 NCA 790 (2005)

The trial court did not commit plain error by instructing the jury on the charge of felony fleeing by motor vehicle to elude arrest, because: 1) defendant failed to cite to any case law or statute that requires the trial court to define the terms of "reckless driving," "negligent driving," and "driving with license revoked" during its jury instruction; 2) the trial court charged the jury using the language of the pattern jury instruction which stated it had to find at least two of the three aggravating factors set out in the bill of indictment were present in order to convict defendant of felonious speeding to elude arrest; 3) while defendant was not specifically charged with either reckless driving under N.C.G.S. § 20-140 or driving while her license was revoked under N.C.G.S. § 20-28, substantial evidence was presented which tended to show defendant had struck an officer's vehicle and caused more than \$1,000 in damage; and 4) evidence was presented that tended to show defendant's driving was erratic, she accelerated to hit an officer's vehicle, and the jury found her speeding twelve miles per hour over the limit.

1. Motor Vehicles--Misdemeanor Death By Vehicle--Sufficiency Of Indictment

State v Hall, 173 NCA 735 (2005)

The trial court did not err in a misdemeanor death by vehicle case by concluding that the warrant issued in this case was not fatally defective even though it did not allege that the primary towing attachment on defendant's truck was a ball hitch, because: 1) the magistrate's order charging defendant with the offense of misdemeanor death by vehicle provided that the charge was based on defendant's failure to secure the trailer to his vehicle with safety chains or cables as required by N.C.G.S. § 20-123(b); and 2) the order was sufficient to apprise defendant of the charge against him and allow him to prepare a defense against the charge as he was directed to N.C.G.S. § 20-123 which provided the circumstances under which safety chains or cables were required.

2. Motor Vehicles--Driving While License Revoked--Motion To Dismiss

State v Cruz, 173 NCA 689 (2005)

The trial court erred by denying defendant's motion to dismiss the charge

of driving while license revoked, because although the evidence supporting defendant's driving was sufficient, there was insufficient evidence that defendant knew his license was revoked when there was no evidence that an official notice was actually mailed to defendant's address as required by N.C.G.S. § 20-48.

Courts–Jurisdiction–District Court–Driver’s License Reinstatement

State v. Benbow 169 NCA 613 (2005)

The district court did not have jurisdiction to exempt defendant from the ignition interlock requirement where defendant was seeking reinstatement of her driver’s license after having it revoked for driving with an alcohol concentration of 0.16. Although defendant had obtained an exemption for her limited driving privilege because medical conditions prevented her use of the device, N.C.G.S. § 20-17.8 does not provide any exceptions to the requirement for license reinstatement.

Illinois v. Lidster, January 13, 2004,

Distinguishing *City of Indianapolis v. Edwards*, Court Rules That Brief, Information-Seeking Vehicle Checkpoint Established At Same Time and Location of Unsolved Fatal Hit-and-Run That Occurred About One Week Earlier Did Not Violate Fourth Amendment just after midnight, Saturday, August 23, 1997, an unknown motorist struck and killed a bicyclist in an Illinois community. About one week later at about the same time of night and at about the same place, law enforcement officers established a highway checkpoint designed to obtain from motorists more information about the unsolved hit-and-run. The checkpoint involved stopping each vehicle for 10 to 15 seconds, asking the occupants whether they had seen anything happen the prior weekend, and handing each driver a flyer describing the case and asking for assistance in identifying the vehicle and driver. When the defendant stopped his vehicle at the checkpoint, an officer smelled alcohol on his breath that eventually led to his conviction for driving under the influence of alcohol. The defendant argued that the checkpoint violated the Fourth Amendment. Distinguishing *City of Indianapolis v. Edwards*, 531 U.S.32, 121 S. Ct. 447, 148 L. Ed. 2d 333 (2000) (checkpoint whose primary purpose was to detect illegal drugs violated Fourth Amendment), the Court ruled that the brief, information-seeking vehicle checkpoint did not violate the Fourth Amendment. The Court noted that, unlike in *Edwards*, the primary purpose of the checkpoint in this case was not to determine whether a vehicle's occupants were committing a crime, but to ask them, as members of the public, for their help in providing information about a crime in all likelihood committed by others. The checkpoint was neither presumptively constitutional or unconstitutional. Instead, its

reasonableness is to be judged by the individual circumstances in this case, using the Fourth Amendment standard of examining the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty. The court then examined these circumstances and ruled that the checkpoint did not violate the Fourth Amendment. 1) The relevant public concern was grave, a fatal hit-and-run. The checkpoint's objective was to find the perpetrator of this specific crime, not of some unknown crimes. 2) The checkpoint significantly advanced this grave public concern. The court approvingly noted the checkpoint's similar time and place with the commission of the crime, and that the officers used the checkpoint to obtain information from drivers, some of whom might well have been in the vicinity of the crime when it occurred. 3) Most importantly, the checkpoint interfered only minimally with Fourth Amendment privacy rights—a few minutes waiting in line at the checkpoint, contact with officers for a few seconds, and the officers' simple request for information and the distribution of a flyer. All vehicles were stopped systematically, and there was no allegation that the officers acted in a discriminatory or otherwise unlawful manner.

Homicide—second-degree murder—officer's death during high speed chase—malice

State v. Bethea, 167 NCA 215 (2004)

The trial court correctly denied defendant's motion to dismiss a second-degree murder charge for insufficient evidence of malice in the death of an officer in an automobile accident while he was chasing defendant at high speed. While prior second degree murders from automobile accidents have involved impaired driving, defendant's conduct here was equally reckless and wanton.

Searches And Seizures—Traffic Stop—Speed Of Vehicle—Personal Observation Of Officer—Probable Cause**

Illinois v. Lidster, January 13, 2004,

The trial court erred by suppressing DWI evidence seized as a result of a speeding stop on the grounds that the officer had no speed detection device nor training in estimating speed and could not articulate objective criteria on which to base his opinion of the vehicles's speed. The officer had an unobstructed view of the vehicle and ample opportunity to observe its progress, and his observation of its speed, the sound of its racing engine, and the car bouncing as it passed through an intersection furnished a sufficient blend of circumstances to establish a fair probability that defendant was speeding.

Homicide–second-degree murder–officer’s death in high speed chase–proximate cause

State v. Bethea, 167 NCA 215 (2004)

There was sufficient evidence of proximate cause in a second-degree murder case arising from the death of an officer in an automobile accident while he was chasing defendant at high speed. A reasonable mind might conclude that defendant’s reckless flight and wanton violation of the traffic laws caused or directly contributed to the victim’s death.

Homicide-second-degree murder–death of officer in car chase--requested instructions–insulating negligence

State v. Bethea, 167 NCA 215 (2004)

The court gave in substance all but one of the instructions on proximate cause requested by a second-degree murder defendant prosecuted for the death of an officer who was chasing defendant at high speed. There was no error in not giving an instruction on insulating negligence because contributory negligence has no place in criminal law and no reasonable person could conclude that the officers’ actions intervened to be the cause of death.

Homicide–felony murder–motorist’s death during flight from robbery–driving at the speed limit–not a break in circumstances

State v. Doyle, 161 NCA 247 (2003)

Defendant’s driving at the speed limit for a time between an armed robbery and the beginning of a high speed chase did not separate the subsequent death of a motorist from the robbery and flight. Escape need not be accomplished at high speeds; defendant presented no evidence that he was diverted from his chosen route and his motion to dismiss a first-degree felony murder charge was correctly denied.

Homicide–felony murder–motorist’s death during high speed chase–insulating negligence–use of stop sticks foreseeable

State v. Doyle, 161 NCA 247 (2003)

Defendant’s requested special instructions on insulating negligence were correctly denied in a felony murder prosecution for the death of a motorist which occurred as defendant avoided stop sticks (devices used by police to puncture automobile tires) while fleeing from an armed robbery. The use of stop sticks was reasonably foreseeable.

Homicide; Assault– traffic offense–culpable negligence–alcohol not involved

State v. Wade, 161 NCA 686 (2003)

There was sufficient evidence of culpable negligence to support defendant’s convictions on charges of assault and involuntary manslaughter arising from a traffic accident in which alcohol was not involved. There is precedent for recognizing that the operation of a vehicle can lead to involuntary manslaughter even without alcohol, and, although

this may be the first such holding in the absence of alcohol, defendant's actions were also sufficient for assault with a deadly weapon inflicting serious injury.

2. Motor Vehicles--Obtaining Property By False Pretense--Driver's License

State v. May 159 NCA 159 (2003)

The trial court did not commit plain error in an obtaining property by false pretense case by entering judgment on the false pretense charge involving a driver's license, because an officer's testimony directly supported the indictment's allegation that defendant misrepresented both his identity and his name to an officer in order to procure a driver's license issued to defendant's alias.

1. Evidence--Expert Testimony--Highway Patrol Trooper--Accident Investigation

State v. Holland 150 NCA 457 (2002)

The trial court did not abuse its discretion in an involuntary manslaughter prosecution by allowing a Highway Patrol trooper to testify as an expert in accident reconstruction where the witness had been a trooper for 16 years and had both formal training and experience in accident investigation and reconstruction. N.C.G.S. § 8C-1, Rule 702.

2. Evidence--Expert Testimony--Accident Reconstruction--Sufficiently Reliable

State v. Holland 150 NCA 457 (2002)

A Highway Patrol trooper's testimony in reconstructing an accident in an involuntary manslaughter prosecution established a sufficient level of reliability to support the trial court's discretionary admission of his expert testimony.

1. Homicide--First-Degree Murder--Felony Murder Rule--Assault With Deadly Weapon Inflicting Serious Injury--Operation Of Motor Vehicle To Elude Arrest

State v. Woodard, 146 N.C. App. 75 (2001)

The trial court erred by allowing the underlying felonies of assault with a deadly weapon inflicting serious injury and operation of a motor vehicle to

elude arrest to support the State's application of the felony murder rule and defendant's subsequent conviction of first-degree murder, because: 1) our Supreme Court has already held that it is improper to base a first-degree murder charge on the underlying felony of assault with a deadly weapon inflicting serious injury; and 2) felonious operation of a motor vehicle to elude arrest under N.C.G.S. § 20-141.5 does not provide an intent requirement for the aggravating factors necessary to raise the violation from a misdemeanor to a felony, and culpable negligence cannot serve as the basis for intent in a first-degree murder conviction.

Homicide--first-degree murder--felony murder rule--assault with deadly weapon inflicting serious injury--operation of motor vehicle to elude arrest

State v. Woodard, 146 N.C. App. 75 (2001)

The trial court erred by allowing the underlying felonies of assault with a deadly weapon inflicting serious injury and operation of a motor vehicle to elude arrest to support the State's application of the felony murder rule and defendant's subsequent conviction of first-degree murder, because: (1) our Supreme Court has already held that it is improper to base a first-degree murder charge on the underlying felony of assault with a deadly weapon inflicting serious injury; and (2) felonious operation of a motor vehicle to elude arrest under N.C.G.S. § 20-141.5 does not provide an intent requirement for the aggravating factors necessary to raise the violation from a misdemeanor to a felony, and culpable negligence cannot serve as the basis for intent in a first-degree murder conviction.

2.Motor Vehicles--Felonious Speeding To Elude Arrest--Not Required To Prove All Three Aggravating Factors Listed In Conjunctive In Indictment *See Farb's notes*****

State v. Funchess, 141 N.C. App. 302, (Ct. App. 2000) 2000

The State was not required to prove all three aggravating factors listed in the conjunctive in the indictment were present in order to obtain a conviction for felonious speeding to elude arrest under N.C.G.S. § 20-141.5(b), because the statute only required proof of two or more of the factors.

Homicide--second-degree murder--motion to dismiss--sufficiency of evidence--malice

State v. Mcallister, 138 N.C. App. 252 (2000)

The trial court did not err by denying defendant's motion to dismiss the charge of second-degree murder because: (1) the State need not show that defendant intended to kill in order to establish malice, but instead may meet its burden by showing that defendant had the intent to perform the act of driving in such a reckless manner as reflects knowledge that injury

or death would likely result; and (2) the evidence reveals malice since defendant drove while impaired by alcohol and at a time when his license was in a state of permanent revocation, he was previously convicted in 1991 for driving while impaired, and he had a 1997 conviction for driving while impaired that was on appeal.

Homicide - malice - instructions - second-degree murder - automobile accident – attitudinal circumstances

State v. Rich, 351 N.C. 386 (2000)

The trial court did not err in a prosecution for second-degree murder by instructing the jury that malice may be present if only one of the attitudinal circumstances constituting malice - wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, a mind regardless of social duty and deliberately bent on mischief - is found to exist. The attitudinal circumstances listed by the trial court in the instruction serve only as descriptive words or phrases and do not constitute elements of malice so that the State need not prove each and every one of those attitudinal examples of malice in order for the jury to infer malice.

1. Criminal Law § 67 (NCI4th Rev.) - Jurisdiction - Speeding - Dismissal In District Court - No Superior Court Jurisdiction

State v. Phillips, 127 N.C. App. 391 (1997)

The superior court erred in exercising jurisdiction over defendant's speeding offense where the record revealed that the State had taken a voluntary dismissal on the speeding charge in the district court and there was no evidence that the dismissal was granted pursuant to a plea arrangement with defendant. N.C.G.S. § 15A-1431.

2. Automobiles And Other Vehicles 46 - Opinion Of Speed - Investigating Officer - Not Witness To Accident - Properly Excluded

Hicks v. Reavis, 78 N.C. App. 315 (1985)

The trial court did not err in an action arising from an automobile collision by excluding the testimony of a highway patrolman regarding the speed of defendants' car where the patrolman had not witnessed the accident but had based his opinion on his investigation of the accident scene. N.C.G.S. 8C- 1, Rule 702.