

Case Summaries – N.C. Court of Appeals (9/17/2019)

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This post provides summaries of the criminal cases (and one juvenile case) decided by the court of appeals on September 17, 2019.

A detailed anonymous tip regarding bad driving may provide reasonable suspicion of impaired driving. A DRE may testify about a driver's impairment based on information obtained from other officers.

[State v. Neal](#), __ N.C. App. __, __ S.E.2d __ (Sept. 17, 2019) (Hampson, J.). An anonymous person contacted law enforcement to report that a small green vehicle with license plate RCW-042 was in a specific area, had run several vehicles off the road, had struck a vehicle, and was attempting to leave the scene. Deputies went to the area and immediately stopped a vehicle matching the description given by the caller. The defendant was driving the vehicle. She was unsteady on her feet and appeared to be severely impaired. A trooper arrived and administered SFSTs, which the trooper terminated because the defendant could not complete them safely. A subsequent blood test revealed multiple drugs in the defendant's system. The defendant was charged with impaired driving, was convicted in district court and in superior court, and appealed. (1) The defendant argued that the stop was not supported by reasonable suspicion as it was based on an anonymous tip and was not corroborated by any observation of bad driving. The court of appeals disagreed, noting some tension between prior North Carolina case law emphasizing the need to corroborate anonymous tips and *Navarette v. California*, 572 U.S. 393 (2014), which found reasonable suspicion of impaired driving based on an anonymous caller's report that a vehicle had nearly run the caller off the road. The court stated that it "need not resolve the apparent tension between our previous case law and *Navarette*" because the tip in this case involved a very timely report of multiple driving incidents and so was sufficiently reliable to provide reasonable suspicion. (2) The defendant argued that the superior court judge erred by allowing a DRE who was not involved in the stop to testify that in her opinion, based on her conversation with the trooper and her review of his report, the defendant was impaired by a central nervous system depressant and a narcotic analgesic. The reviewing court found no error, noting that N.C. R. Evid. 702(a1)(2) allows DREs to offer opinions regarding impairment.

A judge who denies a motion to suppress without explaining why fails to provide adequate conclusions of law. A search warrant was not supported by probable cause where it was based on a reliable informant's claims of having purchased drugs from the defendant at some point in the past plus a middleman's recent purchase of drugs from "the general area of defendant's home."

[State v. Williams](#), __ N.C. App. __, __ S.E.2d __ (Sept. 17, 2019) (Stroud, J.; Bryant, J., dissenting). Officers obtained a search warrant to search the defendant's house. They executed the warrant, found drugs, and charged the defendant with drug offenses. The defendant moved to suppress, arguing that the warrant contained material misrepresentations and did not provide probable cause to support the issuance of the warrant. A superior court judge denied the motion, and the defendant was convicted and appealed. The court of appeals reversed. (1) The trial judge did not set forth adequate conclusions of law. Although formal findings of fact are not required when the evidence regarding a motion to suppress is not in conflict, a judge must still provide conclusions of law, i.e., must explain the reason for the judge's ruling. In this case, the defendant made multiple challenges to the warrant and the trial judge merely denied the motion without further explanation. (2) The warrant was not supported by probable cause. The application was based on information from a confidential and reliable informant. The informant claimed to have

purchased drugs from the defendant in the past, but reported that the defendant had become more cautious recently and now would sell drugs only through a specific middleman. The informant reported that she had recently picked up the middleman, dropped the middleman off in “the general area of defendant’s home” and picked him up shortly thereafter in possession of drugs. The court of appeals concluded that this did not provide probable cause as the middleman was of unknown reliability and no one had observed him entering the defendant’s home. The dissenting judge would have found that the informant’s history of purchasing drugs from the defendant, plus what amounted to an imperfectly controlled purchase by the middleman, provided probable cause.

Trial judge’s denial of defendant’s request to replace appointed counsel with retained counsel was structural error where trial judge analyzed the issue as a matter of effective assistance rather than the defendant’s right to the counsel of his choice.

[State v. Goodwin](#), __ N.C. App. __, __ S.E.2d __ (Sept. 17, 2019) (Murphy, J.). The defendant was charged with drug offenses. A lawyer was appointed to represent him. Immediately before trial, the defendant stated that he wanted to hire a lawyer instead and could afford to do so. A superior court judge determined that appointed counsel was providing effective assistance and denied the defendant’s request to retain counsel. The court of appeals found this to be structural error, as the issue was not whether the defendant was receiving effective assistance or was at an absolute impasse with his attorney, but whether he should be allowed the attorney of his choice. The court stated that “when a trial court is faced with a Defendant’s request to substitute his court appointed counsel for the private counsel of his choosing, it may only deny that request if granting it would cause significant prejudice or a disruption in the orderly process of justice.” The court noted that a last-minute request to change lawyers may cause such prejudice or disruption, but the trial judge did not make any such finding in this case as a result of analyzing the issue under the incorrect standard.

A search warrant based on information from a confidential and reliable informant should not be evaluated under the anonymous tip standard.

[State v. Caddell](#), __ N.C. App. __, __ S.E.2d __ (Sept. 17, 2019) (Hampson, J.). A confidential informant who had provided reliable information in the past told officers that the defendant was selling drugs from his home. The officers had the informant conduct a controlled buy, then obtained a search warrant for the residence. They executed the warrant, found drugs, and charged the defendant with drug trafficking and other offenses. The defendant moved to suppress, a judge denied the motion, and the defendant entered an *Alford* plea and appealed. On appeal, he argued that the search warrant should have been analyzed under the anonymous tip standard and was not supported by probable cause. The court of appeals ruled that the anonymous tip standard did not apply as the lead officer “met with [the informant] both before and after the controlled purchase and had worked with [the informant] previously.” Furthermore, the controlled buy corroborated the informant’s claims, so the warrant was supported by probable cause.

An indictment for larceny of motor vehicle parts must allege more than \$1,000 in damage to a single vehicle.

[State v. Stephenson](#), __ N.C. App. __, __ S.E.2d __ (Sept. 17, 2019) (Young, J.). The defendant stole fuel injectors from a salvage yard. Among other issues: (1) The defendant’s indictment for larceny of motor vehicle parts in violation of G.S. 14-72.8 was insufficient. The statute requires that “the cost of repairing the motor vehicle is one thousand dollars . . . or more,” but the indictment alleged only that the total value of all the injectors taken from an unspecified number of vehicles was \$10,500. The court of appeals construed the statute to require at least \$1,000 in damage to a single motor vehicle. (2) A detective testified that he contacted an auto parts company in Maryland and learned that the defendant had sold the company 147 fuel injectors for nearly \$10,000. This testimony was not hearsay as it was admitted “to describe [the detective’s] investigation,” not to prove that the defendant stole anything.

Speaking into an amplified microphone constitutes “operating . . . sound amplification equipment.” Where a defendant was arrested at a demonstration outside an abortion clinic, a probation condition requiring him to stay 1,500 feet away from the clinic was reasonably related to his rehabilitation.

[State v. Pavkovic](#), __ N.C. App. __, __ S.E.2d __ (Sept. 17, 2019) (Arrowood, J.). The defendant was speaking at an anti-abortion event outside an abortion clinic in Charlotte. He was using an amplified microphone and was sitting at the table where the amplification controls were located. Officers measured his amplified voice at more than 80 decibels and approached him to cite him for violating the city’s noise ordinance. The defendant refused to produce identification, so the officers arrested him and charged him with resisting, delaying, and obstructing a law enforcement officer as well as the noise ordinance violation. At a bench trial in superior court, a judge convicted the defendant of R/D/O and dismissed the noise ordinance violation because, although the judge concluded that the defendant had violated the ordinance, the city “had discretion to decide which enforcement penalties it would levy against a violator of the noise ordinance, but . . . failed to do so.” The judge sentenced the defendant to probation, one condition of which was that the defendant stay at least 1,500 feet away from the abortion clinic where the event took place. The defendant appealed. Among other issues: (1) The defendant’s conduct was covered by the ordinance, so the officers’ initial stop was valid. The ordinance applies, in part, to persons “operating . . . sound amplification equipment.” The defendant contended that simply speaking into a microphone does not amount to “operating” any “amplification equipment.” The court of appeals viewed that construction as “unduly narrow” and found that the “plain meaning” of the ordinance was that speaking into an amplified microphone, while sitting at a table with the amplification controls present, was covered. (2) The probation condition is reasonably related to the defendant’s rehabilitation as required by statute, in part because it reduces the likelihood that he will commit a similar offense again.

A juvenile petition alleging that a juvenile wrote “bomb incoming” on a school bathroom wall did not allege that the juvenile made a false “report” of mass violence on educational property.

[In the Matter of D.W.L.B.](#), __ N.C. App. __, __ S.E.2d __ (Sept. 17, 2019) (Dillon, J.). Circumstantial evidence indicated that a juvenile wrote “BOMB INCOMING” in a school bathroom. Officers obtained a juvenile petition charging the juvenile with making a false report of mass violence on educational property in violation of G.S. 14-277.5. The petition alleged in pertinent part that the juvenile did “make a report by writing a note on the boy’s bathroom wall . . . stating ‘bomb incoming.’” The court of appeals held the petition to the same standard as a criminal indictment and found it to be defective for failing to allege that the juvenile made “a report.” The petition literally asserted that the juvenile made a report, but the court found that the described conduct clearly failed to constitute a report within the meaning of the statute. The message was not directed at anyone in particular, and a person who saw it would not likely view it as a warning of an imminent event.