An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-971

Filed: 5 March 2019

Pitt County, No. 14CRS3508

STATE OF NORTH CAROLINA

v.

ANGELA KRISTINE KESLER, Defendant.

Appeal by the State from order entered 11 December 2017 by Judge Jeffrey B. Foster in Pitt County Superior Court. Heard in the Court of Appeals 29 January 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

The Robinson Law Firm, P.A., by Leslie S. Robinson for Defendant-Appellee.

INMAN, Judge.

The State appeals from an order dismissing its prosecution of Angela Kristine Kesler ("Defendant") for lack of subject matter jurisdiction. After careful review of the record and applicable law, we affirm in part, reverse in part, and remand.

Factual and Procedural Background

Resolution of this appeal is controlled by this Court's decision in *State v. Baker*, __ N.C. App. __, __ S.E.2d __ (Dec. 18, 2018) (No. COA18-527). As in *Baker*, the State's appeal arises from an impaired driving prosecution involving the same prosecutor and defense attorney and the same procedural posture. Because this appeal involves a different defendant and different facts underlying the impaired driving prosecution, we briefly recite the factual and procedural history below.

Defendant was arrested and charged with impaired driving and failure to maintain lane control by uniform citation on 21 September 2014 in Pitt County. A grand jury returned a presentment and indictment on those charges in superior court on 27 February 2017. The parties stipulated that the submission and return of the presentment and indictment against Defendant "proceeded in an identical fashion" as the procedure performed in *Baker*. On 3 July 2017, Defendant filed a motion to dismiss, mirroring the argument in *Baker* that the presentment and indictment were invalid and did not convey subject matter jurisdiction over the action to the Pitt County Superior Court. Defendant's motion came on for hearing on 11 December 2017 and, following the arguments of counsel, the trial court granted the motion. The trial court entered its written order dismissing the action on 11 December 2017, and the State timely appealed.

Analysis

As noted *supra*, the legal issue on appeal in this case is identical to that resolved by our decision in *Baker*. Consistent with that opinion, we affirm the trial court's determinations that it lacked subject matter jurisdiction and that the prosecution violated Sections 7A-271 and 15A-641 of our General Statutes and Article I, Section 22 of the North Carolina Constitution without addressing the prejudice of that constitutional violation. Also for the reasons set forth in *Baker*, we reverse the trial court's determinations that Defendant's constitutional rights under Article I, Sections 19 and 23 of the North Carolina Constitution were violated. Finally, because, like in *Baker*, the State at no point indicated that it had dismissed or discontinued the district court action and the superior court never obtained subject matter jurisdiction over the prosecution,[1] we reverse the dismissal of the case and remand for entry of an order transferring the case back to district court.

AFFIRMED IN PART; REVERSED IN PART; REMANDED FOR FURTHER PROCEEDINGS.

Judges BRYANT and DAVIS concur.

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[1] Defendant argues that the State's actions amount to a *nolle prosequi* insofar as they constitute the functional equivalent of a dismissal. *See State v. Hickey*, 317 N.C. 457, 464 n.3, 346 S.E.2d 646, 651 n.3 (1986) ("A *nolle prosequi* was formerly used by a solicitor [now district attorney] to announce that he did not wish to proceed further with a particular prosecution and would not at that time prosecute the defendant on that charge." (citations omitted) (brackets in original)). Defendant cites two published cases for this proposition. The first, *State v. Courtney*, 25 N.C. App. 351, 213 S.E.2d 403 (1975), sets forth the definition of *nolle prosequi* in the context of purported violations of the defendant's right to a speedy trial where the State expressly entered a *nolle prosequi* on the record; it is therefore inapposite as to the substantive law. The second case, *State v. Cole*, __ N.C. App. __, __ S.E.2d __ (Nov. 20, 2018) (No. COA18-286), was held inapposite in *Baker* for reasons that are no less applicable here.

Report per Rule 30(e).