

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

NO. COA13-485
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

STATE OF NORTH CAROLINA

v.

Surry County
No. 10 CRS 054325

MICHAEL LOUIS SAMOLINSKI,
Defendant.

Appeal by defendant from order entered 29 November 2012 and judgment entered 12 September 2012 by Judge A. Moses Massey in Superior Court, Surry County. Heard in the Court of Appeals 5 November 2013.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Tammera S. Hill, for the State.

The Dummit Law Firm, by Brian P. Simpson, for defendant-appellant.

STROUD, Judge.

Defendant appeals from order denying defendant's motion to suppress and judgment convicting him of impaired driving. "Impaired driving . . . is a misdemeanor." N.C. Gen. Stat. § 20-138.1(d) (2009).

North Carolina requires the State to prove jurisdiction beyond a reasonable doubt in a

criminal case. Exclusive, original jurisdiction of all misdemeanors lies in the District Court Division of the General Court of Justice. . . .

. . . .
[W]hen the record is silent and the appellate court is unable to determine whether the court below had jurisdiction, the appeal should be dismissed. In [*State v. Felmet*, 302 N.C. 173, 273 S.E.2d 708 (1981)], we concluded the record was silent as to jurisdiction when the defendant was tried in superior court upon a warrant charging misdemeanor trespass because the record did not indicate whether the defendant had been tried in district court. We, therefore, held the Court of Appeals properly dismissed the appeal.

State v. Petersilie, 334 N.C. 169, 175-76, 432 S.E.2d 832, 835-36 (1993) (citations and quotation marks omitted). As the record before us is silent as to "whether the defendant had been tried in district court[,]" we dismiss. *Id* at 175, 432 S.E.2d at 836.

DISMISSED.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).