Criminal Procedure
>   **Indictment Issues**

State v. Chamberlain, __ N.C. App. __, __ S.E.2d __ (Feb. 4, 2014). No double jeopardy violation occurs when the State retries a defendant on a charging instrument alleging the correct offense date after a first charge was dismissed due to a fatal variance.

>   **Sentencing**
>   **Eighth Amendment Issues**

State v. Stubbs, __ N.C. App. __, __ S.E.2d __ (Feb. 4, 2014). Over a dissent, the court held that the trial court erred by concluding that the defendant's sentence of life in prison with the possibility of parole violated of the Eighth Amendment. In 1973, the 17-year-old defendant was charged with first-degree burglary and other offenses. After he turned 18, he defendant pleaded guilty to second-degree burglary and another charge. On the second-degree burglary conviction, he was sentenced to an active term for "his natural life." In 2011 the defendant filed a MAR challenging his life sentence, asserting, among other things, a violation of the Eighth Amendment. The trial court granted relief and the State appealed. The court began by noting that the defendant had properly asserted a claim in his MAR under G.S. 15A-1415(b)(8) (sentence invalid as a matter of law) and (b)(4) (unconstitutional sentence). On the substance of the Eighth Amendment claim, the court noted that under the statutes in effect at that time, prisoners with life sentences were eligible to have their cases considered for parole after serving 10 years. Although the record was not clear how often the defendant was considered for parole, it was clear that in 2008, after serving over 35 years, he was paroled. After he was convicted in 2010 of driving while impaired, his parole was revoked and his life sentence reinstated. Against this background, the court concluded that the "defendant's outstanding sentence of life in prison with possibility of parole for second-degree burglary, though severe, is not cruel or unusual in the constitutional sense." The dissenting judge believed that the court lacked jurisdiction to consider the State's appeal.

>   **Prior Record Level**

State v. Sanders, __ N.C. App. __, __ S.E.2d __ (Feb. 4, 2014). (1) Because the defendant presented no relevant Tennessee authority on point, the court concluded that it must assume that the State presented the correct versions of Tennessee statutes to the trial court when offering Tennessee convictions for purposes of prior record level. (2) The trial court did not err by finding the Tennessee offense of theft substantially similar to the North Carolina offense of misdemeanor larceny for purposes of prior record level points. The court rejected the defendant's argument that the out-of-state crime did not require an intent to permanently deprive. (3) Over a dissent, the court held that the trial court erred by finding the Tennessee offense of domestic assault substantially similar to the North Carolina offense of assault on a female. Among other things, the out-of-state crime is gender-neutral and applies to several categories of victims with special relationships with the defendant, whereas the in-state offense only applies to assaults on female victims.

DWI Sentencing Issues

State v. Geisslercrain, __ N.C. App. __, __ S.E.2d __ (Feb. 4, 2014). (1) Where the trial court sentenced the defendant in the presumptive range, the defendant's claim of *Blakely* error with regard to a judge-determined aggravating factor must fail. (2) Although the State failed to provide notice that it intended to seek aggravating factors as required by G.S. 20-179(a1)(1), the defendant was not prejudiced by the error where the trial court sentenced the defendant in the presumptive range.

Probation

State v. Lee, __ N.C. App. __, __ S.E.2d __ (Feb. 4, 2014). (1) A Sampson County superior court judge had jurisdiction to revoke the defendant's probation where the evidence showed that the defendant resided in that county. (2) A probation violation report provided the defendant with adequate notice that the State intended to revoke his probation on the basis of a new criminal offense. The report alleged that the defendant violated the condition that he commit no criminal offense in that he had several new pending charges which were specifically identified. The report further stated that "If the defendant is convicted of any of the charges it will be a violation of his current probation." (3) The trial court's failure to check a box on the "Judgment and Commitment Upon Revocation of Probation—Felony," AOC Form CR-607, was clerical and the court remanded for correction of the judgment.

Arrest Search and Investigation
    Vehicle Checkpoints

State v. White, __ N.C. App. __, __ S.E.2d __ (Feb. 4, 2014). The trial court did not err by granting the defendant's motion to suppress evidence obtained as a result of a vehicle checkpoint. Specifically, the trial court did not err by concluding that a lack of a written policy in full force and effect at the time of the defendant's stop at the checkpoint constituted a substantial violation of G.S. 20-16.3A (requiring a written policy providing guidelines for checkpoints). The court also rejected the State's argument that a substantial violation of G.S. 20-16.3A could not support suppression; the State had argued that evidence only can be suppressed if there is a Constitutional violation or a substantial violation of Chapter 15A.

Criminal Offenses
    Motor Vehicle Offenses

State v. Geisslercrain, __ N.C. App. __, __ S.E.2d __ (Feb. 4, 2014). The evidence was sufficient to establish reckless driving under G.S. 20-140(b) (driving "without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property"). The evidence showed that the defendant was intoxicated; all four tires of her vehicle went off the road; distinctive marks on the road indicated that the defendant lost control of the vehicle; the defendant's vehicle overturned twice; and the vehicle traveled 131 feet from the point it went off the road before it flipped, and another 108 feet after it flipped.