

# Criminal Law Update

Brittany Bromell, UNC School of Government  
Associate Justice Richard Dietz, NC Supreme Court

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## S.L. 2023-6 (H 40) – PTR for rioting and looting

- New G.S. 15A-534.8, effective March 21, 2023
- PTR conditions must be determined by judge within first 24 hours
- After 24 hours, set by magistrate



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## S.L. 2023-8 (S 41) – Repeal of pistol purchase permits

- Repeals statutes regarding pistol purchase permits, effective March 29, 2023
- No more Class 2 misdemeanors for sale, gifting, transfer, purchase or receipt of pistol without permit
- No more permit revocation petitions



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## S.L. 2023-8 (S 41) – Repeal of pistol purchase permits

- Does NOT repeal G.S. 14-406:  
“Every dealer in pistols and other weapons ... shall keep an accurate record of all sales thereof, including the name, place of residence, date of sale, etc., of each person, firm, or corporation to whom or which such sales are made.”
- Does NOT repeal G.S. 14-408:  
“Any person, firm, or corporation violating any of the provisions of G.S. 14-406 shall be guilty of a Class 2 misdemeanor.”

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## S.L. 2023-45 (H 87) – Probation modifications

- New G.S. 15A-1344(b2), effective June 16, 2023
- DA may file a petition to reduce, terminate, extend, modify, or revoke probation.
- Petition must be based on the violation of a condition of probation.
- For extensions, indigent probationers entitled to counsel under G.S. 7A-451.

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## Remember the F-word!



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## Big picture

- State search and seizure doctrine is coextensive with the Fourth Amendment (except for one questionable exception)
- Search and seizure law is well-settled
- Search and seizure cases involve application of settled law to facts
- These cases help trial courts understand what fact finding is important and how to apply those facts in conclusions of law



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## Stopping an automobile

- *State v. Duncan*, No. COA-21-794, \_\_\_ N.C. App. \_\_\_ (Jan. 17, 2023)

State v. Duncan, p.6-7

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## Stopping an automobile

- *State v. Duncan*, No. COA-21-794, \_\_\_ N.C. App. \_\_\_ (Jan. 17, 2023)
- Law enforcement may stop an automobile when the officer has reasonable suspicion that the driver violated traffic or motor vehicle laws.
- All automobiles must have a license plate affixed to the rear of the vehicle that is openly visible.
- Running a license check on an automobile (without any reasonable suspicion of criminal activity) is permissible because drivers have no reasonable expectation of privacy in their license plates.
- Expired plates and a driver's suspended or canceled license create reasonable suspicion.

State v. Duncan, p.6-7

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## Seizing occupants of an automobile

- Officers may approach individuals on the street or in other public places and ask questions. This is not a seizure.
- When an officers uses physical force or a show of authority to compel an individual to continue the encounter, thus rendering the person unable to leave, this is a seizure.
- The same rules apply to automobiles.

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## Seizing occupants of an automobile

- *State v. Tabb*, 286 N.C. App. 353 (Nov. 1, 2022)
- Officers approached a car on foot and knocked on the window. The car was parked at night with its lights on and engine running in a parking lot of an apartment complex.
- This is not a seizure.
- *State v. Eagle*, 286 N.C. App. 80 (Oct. 18, 2022)
- An officer activated the blue lights and pulled her patrol car behind the defendant's car in a manner that blocked the defendant's exit path
- This is a seizure.

State v. Tabb, p.3 ; State v. Eagle, p.2

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## Looking inside an automobile

- *State v. Hunter*, 286 N.C. App. 114 (Oct. 18, 2022)

State v. Hunter, p.6

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## Looking inside an automobile

- *State v. Hunter*, 286 N.C. App. 114 (Oct. 18, 2022)
- When law enforcement officers are in a place they lawfully may be, they may seize contraband that is in plain sight and that the officers reasonably believe is connected to the commission of a crime.
- Shining a light inside a vehicle in a public area is not a search.
- The officer testified that he shined the flashlight into the vehicle to see the occupants and then recognized the plastic baggie with a white rock-like substance was cocaine based on his training and experience.
- The trial court found that officer's testimony to be credible.
- **Remember the F-word**

State v. Hunter, p.6

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## Automobile "frisks"

- *State v. Scott*, No. COA22-326, \_\_\_ N.C. App. \_\_\_ (Feb. 7, 2023)

State v. Scott, p.4

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## Automobile "frisks"

- *State v. Scott*, No. COA22-326, \_\_\_ N.C. App. \_\_\_ (Feb. 7, 2023)
- During an encounter, if an officer reasonably believes that a person may be armed and presently dangerous, the officer may frisk or pat-down the person for officer safety.
- Likewise, during a traffic stop, if the officer believes a person may be armed and presently dangerous, the officer may briefly search the accessible areas of the vehicle for officer safety.
- The officer had "caution data" while checking the defendant's ID indicating that the defendant was a validated gang member and previously had been charged with murder. The officer also testified that local gangs were in an ongoing "gang war."
- The trial court found the officer credible.
- **F-word**

State v. Scott, p.4

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## Automobile exception to the warrant requirement

- *State v. Parker*, 285 N.C. App. 610 (Oct. 4, 2022)



State v. Parker, p.5

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## Automobile exception to the warrant requirement

- *State v. Parker*, 285 N.C. App. 610 (Oct. 4, 2022)
- Law enforcement may search an automobile without a warrant if the officers have probable cause and the car is on a public roadway or in a public vehicular area.
- Why? Automobiles are easily moved and there is a reduced expectation of privacy in the contents of a car compared to a home.

The Court of Appeals analyzed whether the pavement next to the gas pump at a gas station open to the public was a “public vehicular area” under N.C.G.S. 20-4.01(32)



State v. Parker, p.5

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State v. Parker, p.5

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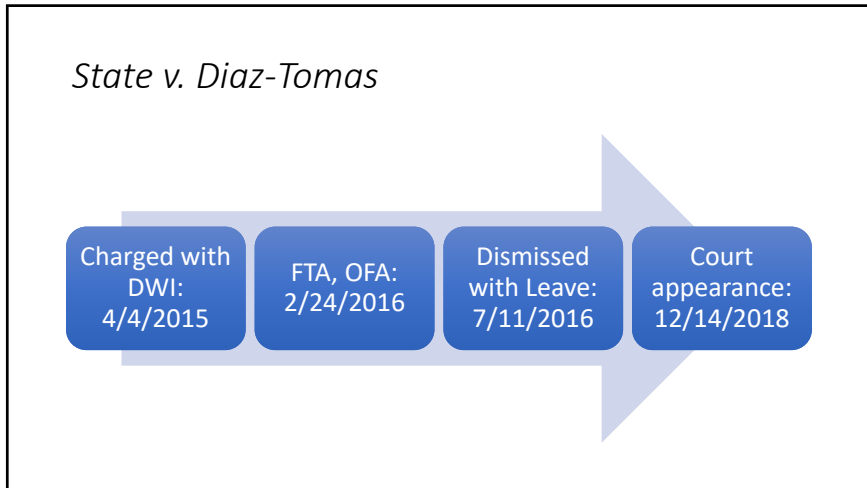
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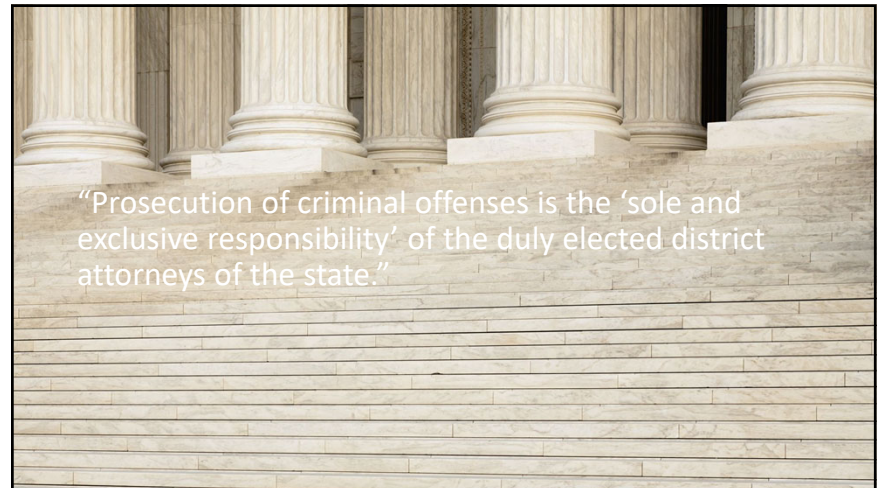
State v. Diaz-Tomas, p.7

- District Attorney holds exclusive discretionary power to reinstate criminal charges dismissed with leave.
- Trial court does not have authority to compel district attorney to reinstate charges dismissed with leave.

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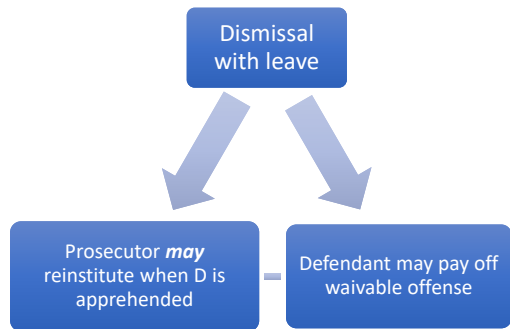


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G.S. 15A-932(d),(d1)



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What about G.S. 20-24.1(b1)?

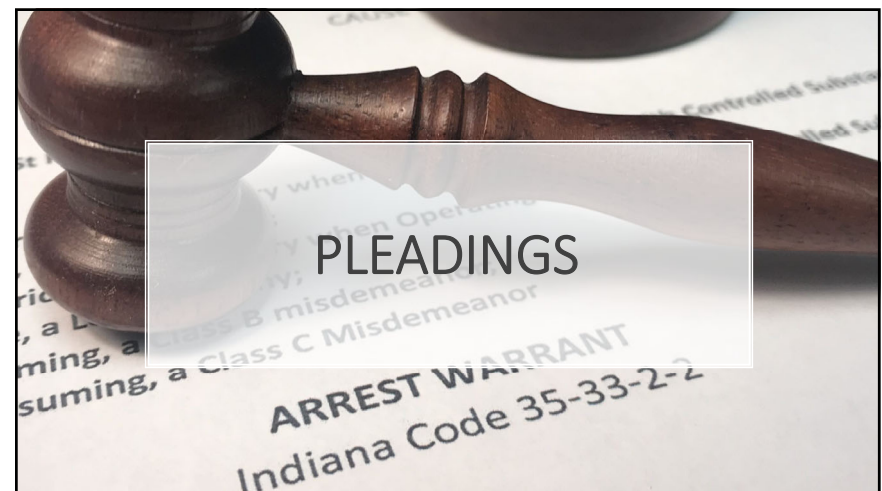
“A defendant must be afforded an opportunity for a trial or a hearing within a reasonable time of the defendant’s appearance. Upon motion of a defendant, the court must order that a hearing or a trial be heard within a reasonable time.”

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What about the right to a speedy trial and the right to due process?



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## State v. Reavis, p.11

“Where a statute indicates that a defendant’s actions must take place at a specific type of location to support criminal liability, a defendant’s actions having taken place at that type of location is an essential element of the offense.”



G.S. 14-277.2:

- Criminalizes possession of a firearm at “any parade, funeral procession, picket line, or demonstration **upon any private health care facility or upon any public place owned or under the control of the State ...**”

STATEMENT OF CHARGES:

- “40 East St, Pittsboro, NC 27312”
- “[h]ighway/[r]oad/[a]lley/[s]treet/[s]idewalk [.]”
- “on the protest side of the road”
- “20 yards from East Street,”

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## Pleading locations

- The precise address of a defendant’s conduct, primarily operates to apprise the defendant of the conduct of which she is accused. *See State v. Sellers*, 273 N.C. 641, 650 (1968)
- Indicating the **type** of location involved operates to supply an essential element of the offense.

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## Amending pleadings

A statement of charges, criminal summons, arrest warrant, citation or magistrate’s order may be amended at any time before or after final judgment as long as the amendment does not change the “nature of the offense charged.” G.S. 15A-922(f).

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## State v. Edwards, p.10

An indictment alleging ownership in an entity must indicate, if the owner is not a natural person, that the entity "is a corporation or otherwise a legal entity capable of owning property," UNLESS the entity's name itself imports an association or a corporation capable of owning property.



State v. Thornton, 251 N.C. 658 (1960).

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## State v. Edwards, p.10

"\_\_\_\_\_ County Schools" implies the actual ownership of "\_\_\_\_\_ County Board of Education," which under State law is a legal entity capable of owning property

Larceny indictments have been upheld where the name of the entity relates back or 'imports' an entity that can own property."

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### § 160A-79. Pleading and proving city ordinances.

(a) In all civil and criminal cases a city ordinance that has been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by both section number and caption. In all civil and criminal cases a city ordinance that has not been codified in a code of ordinances adopted and issued in compliance with G.S. 160A-77 must be pleaded by its caption. In both instances, it is not necessary to plead or allege the substance or effect of the ordinance unless the ordinance has no caption and has not been codified.

State v. Miller, p. 12

City ordinance was not properly pleaded where charging documents did not include the caption of the ordinance.

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## State v. McVay, p.13

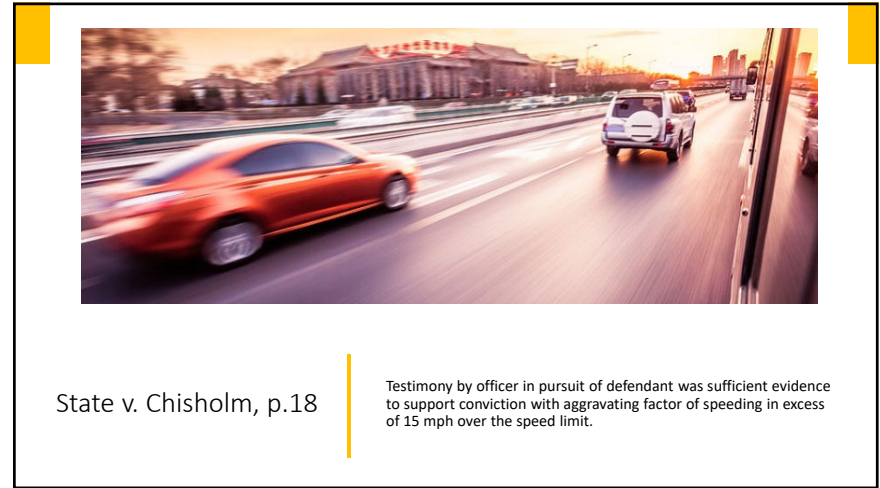
- Speeding to elude arrest requires, as an element, "a law enforcement officer who is in the lawful performance of his duties.
- However, specific description of lawful duty being performed by officer not necessary.



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State v. Chisholm, p.18

Testimony by officer in pursuit of defendant was sufficient evidence to support conviction with aggravating factor of speeding in excess of 15 mph over the speed limit.

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- "Any person of ordinary intelligence, who had a reasonable opportunity to observe a vehicle in motion and judge its speed may testify as to his estimation of the speed of that vehicle." State v. Barnhill, 166 N.C. App. 228 (2004)
- "Absolute accuracy ... is not required to make a witness competent to testify as to speed."
- "The observation must be for such a distance and over such a period of time as to enable the witness to do more than merely hazard a guess as to speed." Smith v. Stocks, 54 N.C. App. 393 (1981).
- When the witness is a law enforcement officer, "... excessive speed of a vehicle may be established by [the] law enforcement officer's opinion as to the vehicle's speed after observing it." State v. Royster, 224 N.C. App. 374, (2012).

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State v. Sisk,  
p.17

Larceny

- Take
- Personal property
- In the possession of another AND
- Carries it away
- Without consent of the possessor AND
- With the intent to deprive the possessor of its use permanently
- Knowing that he or she was not entitled to it

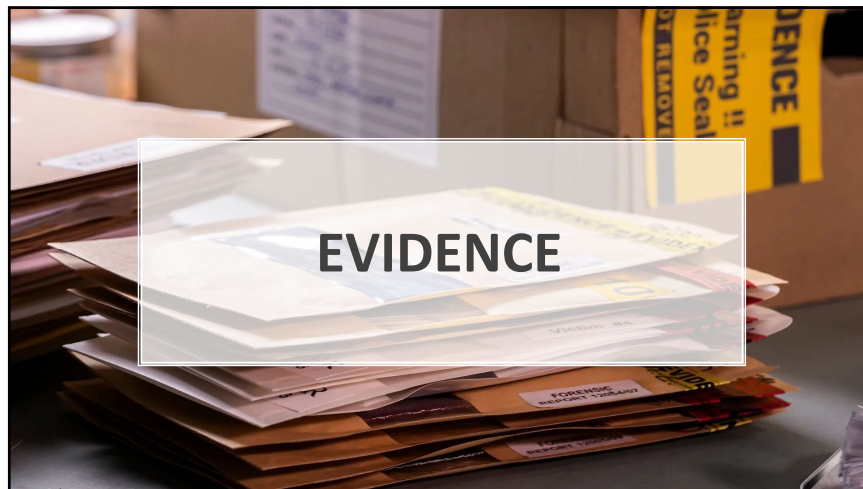
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State v. Guice,  
p.19

Communicating threats.

- Willfully threatens to physically injure the person ....;
- The threat is communicated to the other person ...;
- The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and
- The person threatened believes that the threat will be carried out.

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State v. Steele, p.13

Authentication under Rule 901 may be satisfied through the testimony of a witness who has knowledge of the matter, and who can testify that a matter is what it is claimed to be.

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State v.  
Jones, p.14



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## Video authentication

“Evidence that the recording process is reliable and that the video introduced at trial is the same video that was produced by the recording process is sufficient to authenticate the video and lay a proper foundation for its admission as substantive evidence.”

### Testimony:

- Surveillance video introduced at trial was the same video that officer had seen the night of the prior breaking and entering.
- To officer’s knowledge, the video surveillance system was working correctly that night.
- Footage the homeowner sent matched what the homeowner described had happened.

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## State v. Taylor, p.15

Evidence Rule 701 permits lay identification of a defendant on videotape if

- the testimony is based on the perceptions and knowledge of the witness,
- the testimony would be helpful to rather than invasive of the fact-finding function, and
- the helpfulness outweighs the possible prejudice to the defendant.



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## Relevant factors

- Witness's general level of familiarity with the defendant's appearance;
  - Witness's familiarity with the defendant's appearance at the time the surveillance video was taken or when the defendant was dressed in a manner similar to the individual depicted in the video;
  - Whether the defendant had disguised his appearance at the time of the offense; and
  - Whether the defendant had altered his appearance prior to trial.
- BONUS: The clarity of the surveillance image and completeness with which the subject is depicted

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## State v. Watson, p.16

- G.S. 20-139.1(c1)

- The results of a chemical analysis of blood or urine reported by the North Carolina State Crime Laboratory ... are admissible as evidence in all administrative hearings, and in any court, **without further authentication and without the testimony of the analyst.**

- The results can only be utilized in cases tried in district court if (1) the State gives the defendant proper notice of its intention to introduce the report into evidence, and (2) the defendant fails to properly object.



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