

CRIMINAL LAW UPDATE

Summer Webinar
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John Rubin and Alyson Grine
UNC School of Government

Topics for Summer Webinar

- Evidence and Confrontation
- Stops
- Searches
- Crimes
- Pleadings
- Jury Selection
- Sentencing and Probation



EVIDENCE

Expert Testimony: S v. Davis, p. 15

- Did the State violate its discovery obligations by not providing summaries of experts' opinions and basis for opinions?
- Psychiatrist and therapist testified about characteristics of child sex abuse victims and impact on them.
 - *Terrible dreams but not able to speak about them*
 - *Unable to verbalize what happened to them.*
 - *Depression, insomnia, flashbacks, lack of trust, suicide attempts*

Standard

- Is it expert testimony? *Davis* quotes Evidence Rule 702:
 - "[W]hen an expert witness moves beyond reporting what he saw or experienced through his senses, and *turns to interpretation or assessment* 'to assist' the jury *based on his 'specialized knowledge,'* he is rendering an expert opinion."
- Requirements for expert testimony
 - *Party must provide discovery under G.S. 15A-905(c)*
 - *To be admissible, testimony must comply with Evidence Rule 702*

Impact of *Davis* on "Lay" Testimony

- Factual testimony by lay witnesses is ok
 - *Shorthand statements of fact*
 - *Instantaneous conclusions of the mind*
- "Skilled" lay observer testimony is ok
 - *S v. Hill, p. 23 (identification)*
- What of testimony based on specialized knowledge, training, and experience?
 - *S v. Godwin, p. 33*
 - *Officer must be qualified as expert to testify about HGN observations*



Does the testimony involve interpretation based on specialized knowledge, etc.?

- Nurse testifies about effect of valium amount based on her nursing experience
 - *S v. Smith*, 357 N.C. 604 (2003)
- Officer explains that cocaine was packaged for sale and money found on defendant was indicative of drug sales
 - *S v. Hargrave*, 198 N.C. App. 579 (2009)

Poll # 1

- 1) Valium effect is expert testimony
- 2) Packaging/money re: sale is expert testimony
- 3) Both 1 and 2 are expert testimony
- 4) Neither 1 nor 2 are expert testimony

Confrontation Clause: Primary Purpose Test



Anonymous caller to 911:
Possible dispute.
Black man with a gun
standing outside.

In a field. A black car.
Plaid shirt.

- McKiver, p. 21
 - No ongoing emergency
 - Statements testimonial

Poll # 2

Caller reports she's just been injured, perpetrator is armed, and she doesn't know where he is.

- 1) The statement is most likely non-testimonial because police are assisting with an ongoing emergency.
- 2) The statement is most likely testimonial because police are gathering past facts to use for prosecution.
- 3) The statement is most likely testimonial because it is formal.

Confrontation Clause: Primary Purpose Test

The Davis Rules:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.

Statements are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past facts potentially relevant to later criminal prosecution.

<http://benchbook.sog.unc.edu/>

Confrontation Clause: Primary Purpose Test

Child to Nurse at Child Advocacy Center:
D sexually abused me...



- *McLaughlin*, p. 22 (statement to non-LEO)
 - Primary purpose of conversation was to safeguard child's health
 - Not to create a substitute for trial testimony
 - Statements were not testimonial

Authentication: video

Foundation for admissibility of video recording:

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.

Snead (NCSC), p. 27

Authentication: social media

■ Ford, p. 25



Rule 901(b)(4): Distinctive characteristics



Rape Shield, Evidence Rule 412

- "[T]he sexual behavior of the complainant is irrelevant . . . unless:"
 - 1) Was between complainant and defendant
 - 2) Is evidence of specific instances of sexual behavior offered to show charged acts not committed by defendant
 - 3) Is evidence of distinctive pattern of sexual behavior to show consent
 - 4) Is evidence of sexual behavior offered as basis of expert opinion that complainant fantasized or invented charged acts

Otherwise Relevant Evidence

S v. Martin, 774 S.E.2d 330 (N.C. App. 2015)

- Defendant teacher claimed that complaining student fabricated story that he forced her to perform oral sex
 - He sought to introduce testimony that student had motive to falsely accuse him because he caught her performing oral sex with football players in locker room
 - Counsel conceded that evidence did not fall within any of four exceptions

Why admissible?

- "Where the State's case in any criminal trial is based largely on the credibility of a prosecuting witness, evidence tending to show that the witness had a motive to falsely accuse the defendant is **certainly relevant.**"
 - "The trial court should have looked beyond the four categories to determine **whether the evidence was, in fact, relevant** to show [the victim's] motive to falsely accuse Defendant."

Relevant Evidence

S v. Goins, p. 26

- Defendant high school wrestling coach sought to cross-examine complainant, whom he allegedly sexually assaulted when a student
 - *Complainant told police he was addicted to porn, had extramarital affair, and couldn't control himself because of what defendant had done to him*
 - *Defendant offered statements to show motive for complainant to lie to protect his marriage and military career*

STOPS

Extending Traffic Stops

Rodriguez v. US (2015)



A stop may not be extended beyond the time necessary to complete the mission of the stop, which is to address the traffic violation that warranted the stop, and attend to related safety concerns, absent RS.

Is reasonable suspicion to
extend a stop a lower standard
than reasonable suspicion to
stop initially?

“[A] traffic stop may not be
unnecessarily extended, absent
the reasonable suspicion
ordinarily demanded to justify
detaining an individual.”
S v. Castillo, p. 3

How should courts
judge “innocent”
factors?



"The articulated innocent factors collectively must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied."
S v. Bullock, p. 2

"Factors consistent with innocent travel, when taken together, can give rise to reasonable suspicion, even though some travelers exhibiting those factors will be innocent."
S v. Castillo, p. 3



Not Reasonable Suspicion

S v. Bedient, p. 3

1. Nervous
2. Didn't identify daughter as passenger immediately
3. Fidgeting
 - a. Consistent with meth use
4. Looked in odd place, such as sun visor, and fiddled with it
5. She had been at meth dealer's house last night

Reasonable Suspicion

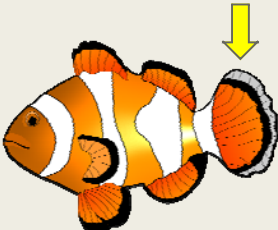
S v. Warren, p. 5

- High drug area
- Defendant had something in his mouth that he wasn't chewing
- Defendant denied being involved in drug activity "any longer"

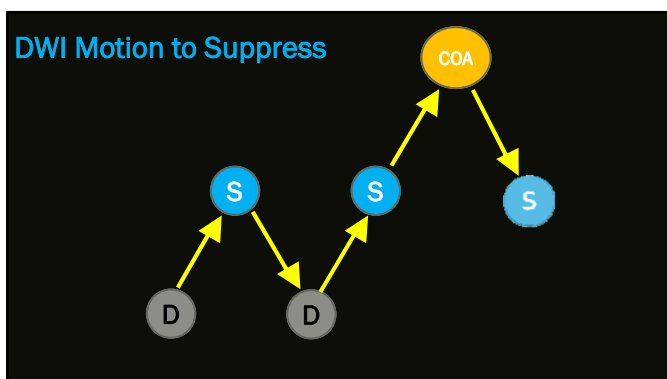
RS to Extend	No RS to Extend
Castillo, p. 3 -Smell mj on D -Former DWI based on mj -Bizarre travel plan -Masking odor -Extreme nervousness	Bullock (temp. stay), p. 2 -+85 (used for drug transport) -Missed exit -2 Cell phones -Rental vehicle not authorized to drive -Nervous. Hand trembling a little
Taseen-Johnson, p. 4 -Muddled answers -Extremely nervous -Gadget in car that belongs under hood	Bedient, p. 3 -Nervous -Association with drug dealer -Looked in visor
Warren (NCSC), p. 5 -High drug area -Something in mouth -No drug activity "any longer"	

Car Stops

■ Abrupt acceleration and fishtailing: **NO RS.**



James Johnson, p. 2
Temp. stay



Car Stops

- Pull up to a car and touch hands with passenger:
RS.



Travis, p. 4

SEARCHES

Warrantless Search: External Hard Drive



A consensual search is limited by and to the scope of the consent given.

Ladd, p. 6

Search Warrant



Allman, pp. 7-8

Curtilage

- OK to go up a driveway
 - No trespass sign not enough
(No evidence officers saw)
- Gate open
- D greeting
- Officer's stayed in public area

D did not revoke implied consent to approach home

SBM Hearings and Remands

- S v. Blue, S v. Morris, p. 39
 - *Belleau v. Wall*, 132 F. Supp. 3d 1085 (E.D. Wis. 2015),
rev'd, 811 F.3d 929 (7th Cir. 2016)
 - *S v. Bowditch*, 364 N.C. 335 (2010)

CRIMES

Crimes

- S v. Miller, p. 30
 - G.S. 90-95(d1)(1)c. makes it Class H felony to possess pseudoephedrine product if prior meth conviction
 - Statute as applied violates due process if no evidence that defendant was aware of statute



Possess Weapon Educational Property

- State must prove D
 - knowingly possessed weapon, and
 - knowingly entered educational property with weapon

Exemptions:

- Concealed handgun permit
- Handgun in closed compartment or container in locked vehicle



Huckelba (NCSC), p. 33

Elements of Larceny: S v. Jones, p. 31

- If someone mistakenly deposits \$120,000 instead of \$1,200.00 in your bank account, what should you do?



Other Crimes

- Williams, p. 27
- Garrett, p. 29
- Dale, p. 31

Unlawful entry of property operated as DV safe house not limited to building

Insufficient evidence of constructive possess. drugs

Disorderly conduct in public bldg. statute constitutional

Premises Restrictions for Sex Offenders

1. On the premises of any place intended primarily for the use, care, or supervision of minors
2. Within ~~300 feet of any location intended primarily for the use, care, or supervision of minors when the place is located on premises that are not intended primarily for the use, care, or supervision of minors~~
3. At any place ~~where minors gather for regularly scheduled educational, recreational, or social programs~~

G.S. 14-208.18

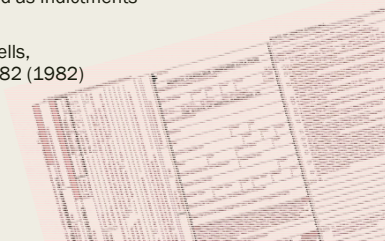
PLEADINGS

Are Indictment Rules Changing? So Say the Dissenting Opinions

- S v. Stith, p. 12
 - *Permissible to amend indictment to change Hydrocodone Schedule II to Hydrocodone Schedule III*
- S v. Spivey (NCSC), p. 13
 - *Injury to real property need not identify owner*
- S v. Ricks, p. 14
 - *Quantity of U.S. currency sufficient for false pretenses*

Citations

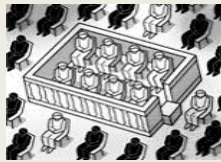
- D did not object to being tried on citation and citations not held to same standard as indictments
 - Allen, p. 12
 - *But see* S v. Wells, 59 N.C. App. 682 (1982)



JURY SELECTION

BATSON: Purposeful Discrimination

- *Foster v. Chatman* (USSC), p. 16
 - Prosecution's strikes of Black potential jurors
- *State v. Hurd* (NC COA), p. 17
 - Defense counsel's strike of White potential juror



SENTENCING AND PROBATION

S v. Singletary, p. 41

- Sex offense by adult against child under 14-27.7.4A, now 14-27.28
 - 300 month minimum under subsection (b)
 - Up to life if judge finds egregious aggravation under subsection (c)
- Egregious aggravation sentence unconstitutional
 - Trial judge cannot save by submitting special verdict to jury

Is It Absconding?

- | | |
|--|--|
| <ul style="list-style-type: none"> ■ Not absconding: S v. Jakeco Johnson, p. 41 <ul style="list-style-type: none"> - Probation officer told defendant to report for office visit next day - Also sent him electronic message ordering him to report - Defendant said he couldn't make it and didn't show | <ul style="list-style-type: none"> ■ Absconding: S v. Nicholas Johnson, p. 42 <ul style="list-style-type: none"> - Defendant moved from Nash to McDowell County without notifying probation officer - Did not contact probation officer for months - Didn't let probation officer know his whereabouts |
|--|--|

BONUS

Writs of Cert. and Guilty Pleas

- S v Biddix, p. 46
 - Written plea agreement states that State is "not seeking aggravating factors that may apply to this case"
- Dissent in Biddix
 - At the least, cert. is permissible re procedures for taking of guilty pleas
 - S v. Stubbs, 368 N.C. 40 (2015)

Strip Search



Collins, p. 7
