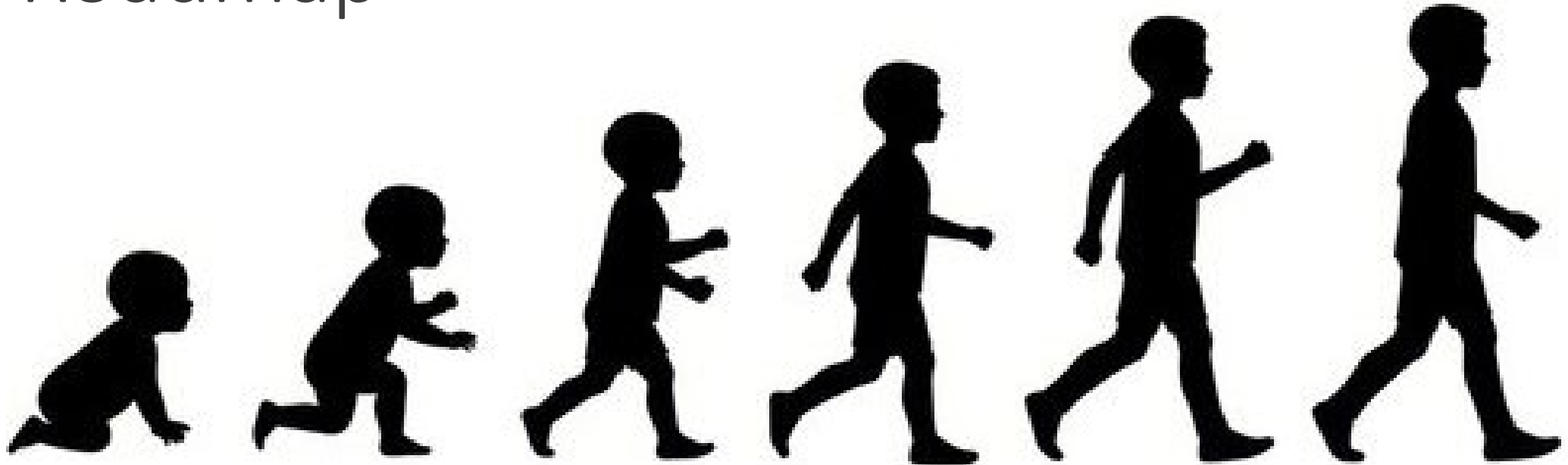




Criminal Law Case Update

BRITTANY BROMELL, UNC SCHOOL OF GOVERNMENT

Roadmap



Legislation

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and Seizures

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Procedure

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Sentencing



LEGISLATION

Immigration Detainers



May 14, 2025 [Brittany Bromell](#)

Print

An immigration detainer is one of the key tools that Immigration and Customs Enforcement (ICE) uses to apprehend individuals who come in contact with local and state law enforcement agencies. Sometimes, after a defendant has been

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID: _____
Event #: _____

File No: _____
Date: _____

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

Name of Alien: _____

Date of Birth: _____ Citizenship: _____ Sex: _____

What are they and how do they work?

State of the Law

Before December 1, 2024:

- No state requirement to cooperate with ICE
- Could choose whether to honor or not honor detainer requests
- Localities could decide whether to participate in federal “287(g)” program

Beginning on December 1, 2024:

- Compulsory cooperation with ICE
- No effect on 287(g) participation

Changes to G.S. 162-62

Once detainer and warrant are issued, custodial agency must take person before a judicial official.

If the person appearing before the judicial official is determined to be the person subject to the detainer and administrative warrant, the judicial official must issue an order directing the person to be held in custody until either:

- 48 hours passes from the time of receipt of the detainer and administrative warrant;
- ICE takes custody of the person; or
- ICE rescinds the detainer.

Your role:

“If the person appearing before the judicial official is determined to be the person subject to the detainer and administrative warrant...”

May consider any helpful information EXCEPT consulate documents or “community documents.”
G.S. 15A-311(a).

Changes on the Horizon

House Bill 318

- Adjust the start time for the 48-hour clock
- Creates new special rules for pretrial release

If passed, would take effect on
October 1, 2025



SEARCHES AND SEIZURES

Searches and Seizures

State v. Peters, p. 4

- Trial court's finding that defendant consented to the search of her vehicle did not clearly extend to search of her wallet outside the vehicle.

State v. Johnson, p. 4-5

- Officers observing dogs in distress from defendant's driveway did not represent unreasonable search of defendant's property.







CRIMINAL OFFENSES



State v. Watlington,
p. 20-21

Unit of prosecution for hit and run under G.S. 20-166 is “the number of crashes from which the defendant fled” NOT the number of victims injured.

An accessory after the fact can be punished for each felony the principal committed.

Units of prosecution for other offenses

State v. Wilson, p. 22

- The “single-taking rule” precludes conviction and sentencing for multiple **larceny** charges arising out of a single continuous act or transaction.

State v. Lancaster, p. 22

- Two separate outbursts of profanity in the same hearing justified two counts of direct **criminal contempt**.

Victim 1

Injuries suffered:

- Pain in her head, nose, lip, legs, and feet;
- bruising and swelling to her left arm;
- bruising around her cheekbones;
- bruising and swelling behind left ear and left thigh;
- bleeding near her nose ring and earrings;
- lacerations on her scalp, upper lip, right shin; and
- a fingernail torn off.

Treatment on scene and at hospital involved bandages, ice packs, ibuprofen, and Tylenol.

Pain lasted 1-2 weeks, the bruising took 2-4 weeks to heal, and she had scarring on her leg and head.

Victim 2

Suffered bullet graze wound to the inner thigh

Self-treated at home; never attended a hospital for treatment

Treatment involved 800 milligrams of ibuprofen and cleaning it with hydrogen peroxide daily.

Missed about a month at work

Physical Injury

- Includes cuts, scrapes, bruises, or other physical injury which does not constitute serious injury. G.S. 14-34.7(c).

Serious [Physical] Injury

- Physical injury that causes great pain and suffering, including serious mental injury. G.S. 14-318.4(d)(2).

Serious Bodily Injury

- Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization. G.S. 14-318.4(d)(1); G.S. 14-32.4; G.S. 14-233(d).

Serious [Physical] Injury

Factors to consider: pain, loss of blood, hospitalization, and time lost from work.

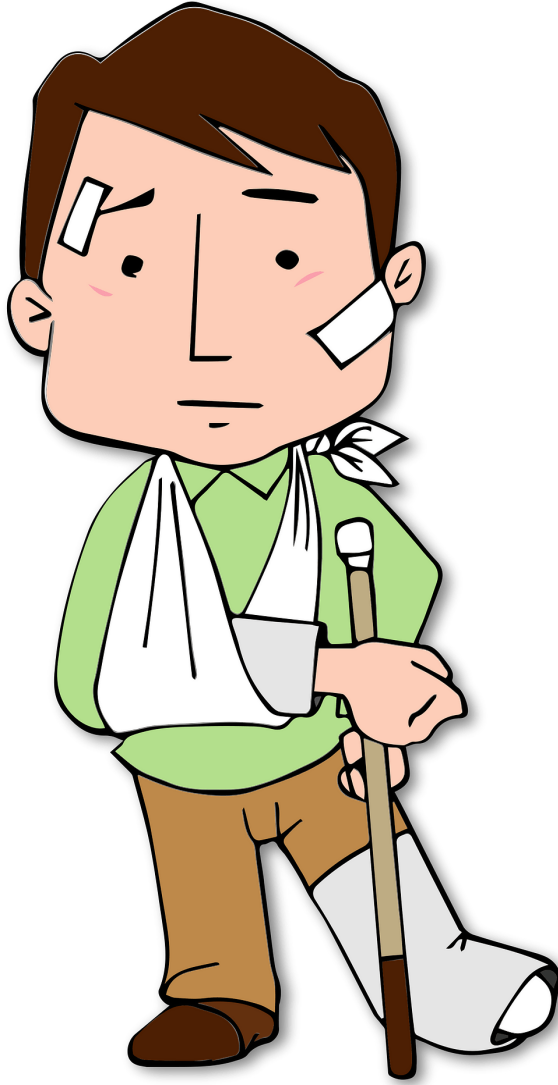
- *State v. Owens*, 65 N.C. App. 107 (1983); *State v. Romero*, 164 N.C. App. 169 (2004).

Does not require hospitalization or even immediate medical attention. In cases involving child abuse, no requirement that a child be unable to attend school or engage in play.

- *State v. Williams*, 154 N.C. App. 176 (2002).

Fact dependent, so whether an injury is “serious” is generally a question for the [factfinder].

- *State v. Romero*, 164 N.C. App. 169 (2004); *State v. Ezell*, 159 N.C. App. 103 (2003).



State v. Reaves, p. 17

- Rejecting the argument that a serious injury, at a minimum, requires medical attention that goes beyond a cursory examination.

State v. Maloye, (June 4, 2025)

- Sufficient evidence of a “serious injury” where a bullet wound caused pain, difficulty walking, and inability to work for a month.



EVIDENCE



Marijuana v. Hemp

State v. Dobson, 293 N.C. App. 450 (2024)

- “[T]he legalization of hemp did not eliminate the significance of ‘the odor of marijuana’ for purposes of a motion to suppress.”

State v. Little, COA23-410 (2024)

- [T]he odor and sight of what the officers reasonably believed to be marijuana gave them probable cause to search.”

State v. Rowdy, COA24-64 (2024)

- “[T]he odor of marijuana, alone, is sufficient to establish probable cause to search a vehicle.”



State v. Ruffin, p. 18

Testimony from police officer and forensic expert that substance appeared to be marijuana was properly admitted and supported defendant's convictions, despite lack of testing confirming substance was not hemp.

Smith v. Arizona, 602 U.S. 779 (2024)

- When a testifying expert relies on a testimonial forensic report of another, the defendant's right to confront and cross-examine his accuser(s) is violated, because the underlying forensic report is offered for the truth of the matter asserted (and is therefore hearsay).

Substitute Analyst Testimony

State of NC law pre-*Smith* (*State v. Ortiz-Zape*, 367 N.C. 1 (2013)):

- N.C. R. Evid. 703: an expert is allowed to rely on otherwise inadmissible information when it is used to form the basis of the expert's opinion.
- If a substitute analyst offers independent opinion based on the forensic report of another, no CC problem → underlying report is being used only for the basis of the testifying expert's opinion, not for its truth.
- Defendant is only entitled to cross-examine the testifying expert and not the person who performed the testing.

Substitute Analyst Testimony

Smith rule: Confrontation Clause is not implicated unless the out-of-court statement offered against a defendant is both **hearsay** and **testimonial**.

State v. Clark, p. 15

- Original report was hearsay.
 - Substitute analyst relied on statements in original report containing info about the substance being tested, methods followed, and purported results.
- Statements in original report were testimonial.
 - Forensic reports “created solely for an evidentiary purpose, made in aid of a police investigation” are testimonial as a matter of law. *State v. Craven*, 367 N.C. 51, 57 (2013).

Substitute Analyst Testimony



CRIMINAL PROCEDURE

“Judge A presided over a suppression hearing in December 2024, just before her term expired at the end of the year. Judge A announced her ruling in open court and directed the prevailing party to prepare an order containing findings of fact and conclusions of law. Judge A did not sign the order before her term expired. May Judge B enter an order containing findings of fact and memorializing Judge A’s ruling?”

What happens when the original judge is no longer available?

February 20, 2025 [Shea Denning](#)



State v. Fearn finds second judge lacked authority to enter order when hearing was held by first judge

March 6, 2025 [Shea Denning](#)



State v. Fearn, p. 11

Second trial judge did not have authority to enter order denying motion to dismiss when hearing was held and ruling was rendered by previous trial judge who retired before entry of the order.

- June 2008 – Police report filed
- January 2019 – charges brought
- January 2020 – MTD hearing, Judge A presiding
- October 2020 – Judge A retires
- September 2021 – Order on MTD ruling filed, signed by Judge B

*State v. Fearn*s, p. 11



PLEAS AND SENTENCING

Pleas and Sentencing

State v. Curtis, p. 12

- Trial court's failure to consider stipulated mitigating factor justified remand for resentencing.

State v. Latta, p. 12

- Trial court erred by not informing defendant he could withdraw his plea when the court imposed a sentence greater than the plea agreement.

State v. Lacure, (Dec. 31, 2024)

- Imposition of special sentencing condition preventing educational or vocational classes while imprisoned was error.