CRIMINAL CASE UPDATE:

NORTH CAROLINA SUPREME COURT &
UNITED STATES SUPREME COURT
(May 2022 – Oct. 2023)

Joseph L. Hyde, Assistant Professor

UNC SCHOOL OF GOVERNMENT

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Roadmap

I. Searches & seizures

II. Charging issues

III. Offenses & defenses

IV. Evidence issues

V. Counsel & competency

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Searches & seizures

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State v. Johnson, 385 N.C. 73 (2023).

- Upon timely motion, evidence must be suppressed if its exclusion is required by the federal or state constitution. N.C.G.S. § 15A-974(a)(1).
- Defendant here, charged with various drug offenses, filed a motion to suppress alleging selective enforcement based on his race.
- COA held trial court did not err by placing initial burden on Defendant, but Defendant failed to establish a prima facia case of equal protection violation. Over a dissent, NCSC affirmed per curiam the decision of the COA.

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State v. Julius, 892 S.E.2d 854 (2023).

- Officers were dispatched to scene of an accident. Driver had fled. Search of vehicle revealed forty grams of methamphetamine.
- Defendant passenger was charged with trafficking, filed motion to suppress. COA upheld the vehicle search as incident to arrest of (absent) driver.
- NCSC held: (1) search could not be justified as incident to arrest of absent driver; (2) automobile exception did not apply to immobile vehicle; and
- (3) remanded for consideration of exclusion.

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State v. Richardson, 385 N.C. 101 (2023).

- Miranda applies to custodial interrogation, i.e., questioning initiated *by law enforcement*.
- "A private citizen acting on his or her own authority cannot take a person into 'custody' for purposes of Miranda."
- The defendant here was forcibly detained by hospital staff until police arrived. NCSC found no violation of Miranda.

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Charging issues

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State v. Diaz-Tomas, 382 N.C. 640 (2022).

- Section 15A-932 states that a prosecutor may enter a dismissal with leave when a defendant fails to appear. The prosecutor may reinstitute the proceedings by filing written notice with the clerk.
- The prosecutor has exclusive and discretionary authority to reinstate charges that have been dismissed with leave, and "a district attorney cannot be compelled to reinstate the charges."

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State v. Elder, 383 N.C. 578 (2022).

III. And the jurors for the State upon their oath present that on or about the date(s) of offense shown and in the county named above the defendant named above unlawfully, willfully and feloniously did

kidnap Alice Harris, a person who had attained and the age of 16 years, by unlawfully confining, restraining and removing her from one place to another without her consent and for the purpose of facilitating the commission of a felony, first degree rape, by moving Alice Harris from the back bedroom to another bedroom and put her into a closet. Alice Harris was not released by the defendant and she was forcibly confined to a closet until she freed herself sometime after the defendant left.

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In the matter of: J.U., 384 N.C. 618 (2023).

JUVENILE PETITION
(DELINQUENT)

G.S. 7B-1501(7), -1801, -1802

3. The juvenile is a delinquent juvenile as defined by G.S. 7B-1501(7) in that on or about the date of the offense shown above and in the county named above, the juvenile did unlawfully, willfully ☐ and feloniously *(State facts supporting every element of alleged offense.)*

"the juvenile did unlawfully, willfully engage in sexual contact with [B.A.] by touching [her] vaginal area, against the victim[']s will for the purpose of sexual gratification."

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Offenses & defenses

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Counterman v. Colorado, 600 U.S. 66 (2023).

- True threats of violence are not protected speech under the First Amendment.
- Supreme Court here held:
  (1) in a true-threats case, the State must prove that the defendant had some understanding of his statements' threatening character, and
  (2) the mens rea requirement is satisfied by a showing of recklessness, that is, that the defendant consciously disregarded a substantial risk that his communications would be viewed as threatening violence.
- In North Carolina, a person is guilty of a Class 1 misdemeanor if he willfully threatens to injure another person. N.C.G.S. § 14-277.1.

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State v. Hicks, 385 N.C. 52 (2023).

- Evidence to support aggressor instruction is viewed most favorably to the State.
- The Supreme Court here held the trial court did not err by giving aggressor instruction when:
  - There was conflicting evidence as to whether the defendant acted as the aggressor; and
  - Although defendant testified to a violent attack, she did not exhibit obvious injuries; and
  - Although defendant testified that she shot the victim while trying to escape, the evidence showed he was shot in the back from at least six inches away.

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State v. Hooper, 382 N.C. 612 (2022).

- A request for an instruction constitutes an objection under Appellate Rule 10.
- After agreeing with proposed instructions, Defendant here requested an instruction on self-defense. Trial court refused. Defendant raised no objection. COA held Defendant invited any error in the instructions.
- NCSC concluded Defendant's request for an instruction preserved the issue.
  - Invited error depends on "affirmative request for a specific action."
  - Defendant's failure to comply with G.S. 15A-905(c) did not change result.

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Evidence issues

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Samia v. United States, 599 U.S. 635 (2023).

- Bruton held that a defendant's rights are violated by the admission of a non-testifying codefendant's confession.
- Here, SCOTUS found its precedents distinguish between confessions that directly implicate a defendant and those that do so only indirectly.
- Confession here was redacted to avoid naming Samia, satisfying Bruton's rule.

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State v. McKoy, 385 N.C. 88 (2023).

- Evidence of specific acts, unknown to the defendant, is inadmissible to show victim was the aggressor.
- "Opening the door" rule allows a party to present otherwise inadmissible evidence to explore, explain, or rebut evidence offered by other party.
- Trial court here did not err by excluding evidence from the victim's cell phone: photographs of the victim holding a firearm and violent text messages.

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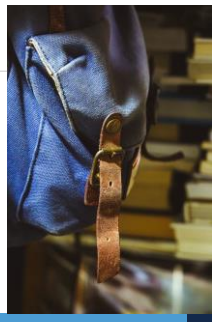
State v. Gibbs, 384 N.C. 654 (2023).



- Defendant was convicted of trafficking in opiates, PWISD a Schedule II controlled substance.
- COA reversed the conviction, holding the trial court erred in ruling the State's expert was qualified to testify that fentanyl is an opiate.
- In a per curiam opinion, NCSC declared that whether fentanyl is an opiate for purposes of trafficking statute is a question of law.

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Counsel & competency

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State v. Flow, 384 N.C. 528 (2023).

- On the sixth day of his trial, Defendant jumped off mezzanine in Gaston Co. jail, falling 16 feet to the floor.
- Due process and G.S. 15A-1002 may require trial court to conduct inquiry into defendant's capacity to proceed.
- NCSC concluded:
  - Trial court's inquiry here was statutorily sufficient.
  - Defendant's apparent suicide attempt did to show he lacked competency, and no further inquiry was required by due process.

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FORFEITURE OF COUNSEL

State v. Harvin, 382 N.C. 566 (2022).

- Defendant was charged with murder, attempted murder, attempted armed robbery, ADWIKSI.
- Trial court found Defendant had forfeited right to counsel by seeking withdrawal of two prior attorneys.
- NCSC distinguished between waiver and forfeiture, concluded Defendant did not engage in egregious misconduct so as to warrant forfeiture of counsel.

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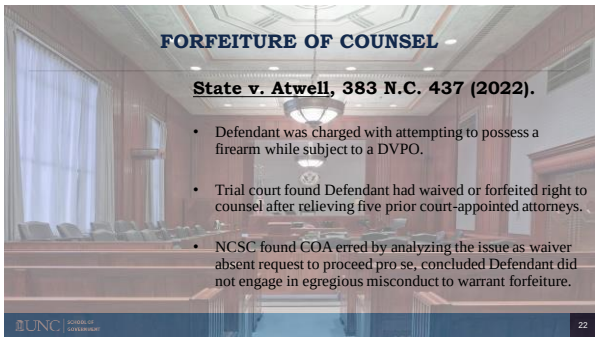

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