EMERGING ISSUES IN NORTH CAROLINA CRIMINAL LAW

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1. Duration and Extension of Traffic Stops after Rodriguez

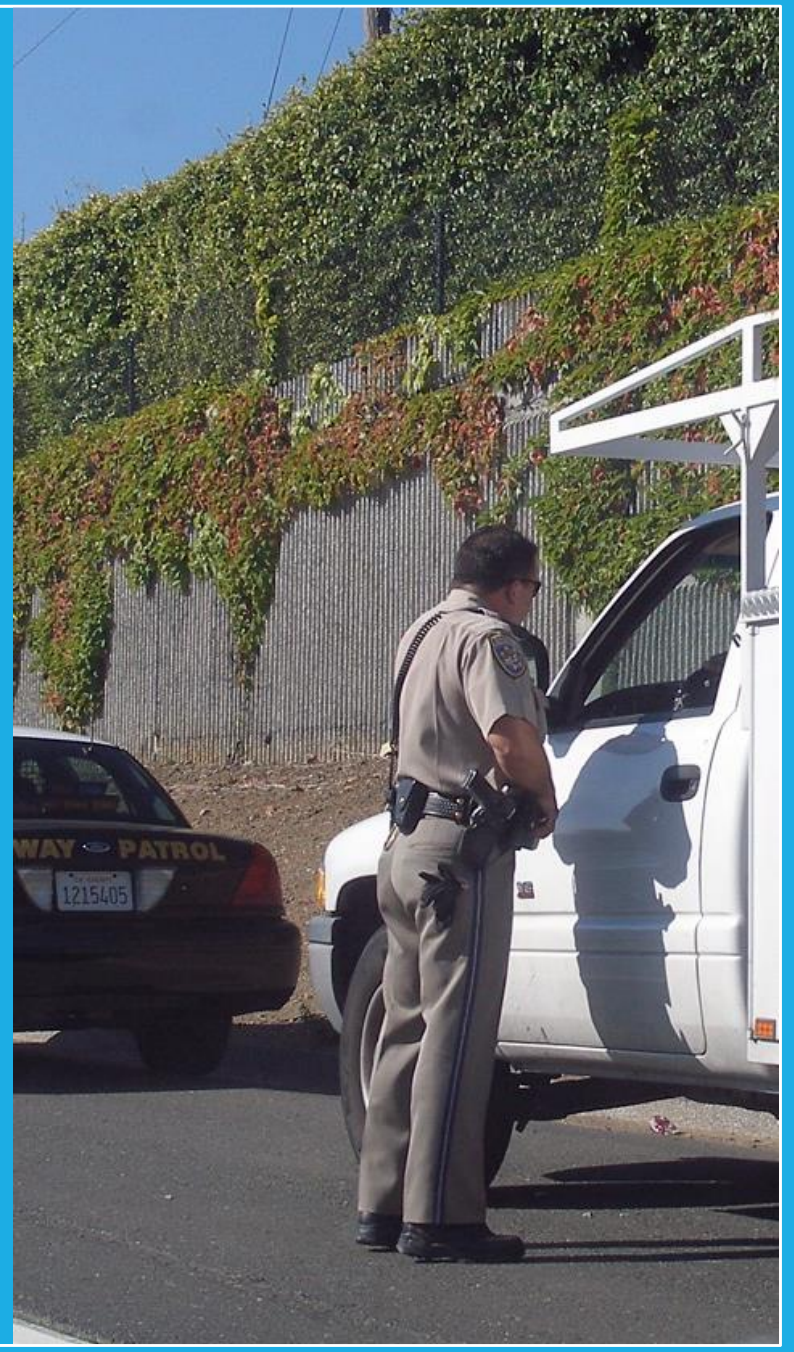
Background

- Rodriguez v. United States, 575 U.S. 348 (2015) (holding that a traffic stop may not be extended for reasons unrelated to the "mission" of the stop)
- State v. Bullock, 370 N.C. 256 (2017) (frisking a driver before ordering him to sit in a police vehicle did not "measurably" extend the stop and in any case promoted officer safety; officer was free to ask driver unrelated questions while waiting for database queries to come back)
- State v. Reed, 373 N.C. 498 (2020) (officer improperly extended traffic stop when he told driver to "sit tight" in the officer's vehicle while he asked passenger for consent to search)

1. Duration and Extension of Traffic Stops after Rodriguez

Issues for Consideration

- Any limit on officers' ability to "multi-task"?
- Brief extensions: "measurable" vs. "de minimis"
- Asking for consent to search
  - How is the extension of time calculated?
  - Is reasonable suspicion required to ask for consent?



2. Persistent surveillance and the Fourth Amendment

Background

- United States v. Jones, 565 U.S. 400 (2012) (holding that the installation of a GPS tracking device on a vehicle was a search because it amounted to a trespass against the vehicle)
- Carpenter v. United States, 585 U.S. ___, 138 S.Ct. 2206 (2018) (holding that the long-term collection of historical cell site location information is so intrusive that it is a search, even though any individual piece of such data does not belong to the phone's user and is not subject to a reasonable expectation of privacy)

2. Persistent surveillance and the Fourth Amendment

Issues for Consideration

- CSLI
  - Short-term collection
  - Prospective collection
  - Purchasing
- Pole cameras
- Aerial surveillance
- The "mosaic theory" of the Fourth Amendment

3. No knock and quick knock search warrants

Background

- Richards v. Wisconsin, 520 U.S. 385 (1997) (an officer need not knock and announce before entering to execute a search warrant if he or she has reasonable suspicion that doing so "would be dangerous or futile, or . . . would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence")
- G.S. 15A-251 (officer may forcibly enter after knocking and announcing if he or she "reasonably believes . . . that admittance is being denied or unreasonably delayed" and may enter without knocking and announcing if he or she "has probable cause to believe that the giving of notice would endanger the life or safety of any person")
- State v. White, 184 N.C. App. 519 (2007) (no suppression remedy for failure to knock and announce)

3. No knock and quick knock search warrants

Issues for Consideration

- May North Carolina judges issue no knock search warrants?
- Quick knock entries: how quick is too quick?

4. Hemp

Background

- S.L. 2022-32 (defining "hemp" as any part of the cannabis sativa plant, and any derivative, with delta-9 THC content less than 0.3%, and "marijuana" as any part of the plant, and any derivative, that isn't hemp)
- State v. Parker, 277 N.C. App. 531 (2021) (stating that prior cases approving of the visual identification of marijuana and holding that the odor of marijuana provides probable cause to search "may need to be reexamined" in light of legal hemp, but finding probable cause to search a suspect's car where an officer smelled burning marijuana and had other reasons to suspect drug activity)
- State v. Highsmith, ___ N.C. App. ___ (Aug. 16, 2022) (officers properly seized marijuana after K-9 alerted on vehicle; defendant never claimed bag of green vegetable matter was legal hemp, and the substance was found hidden under a seat, near scales and cash, which supported the inference that it was marijuana)

4. Hemp

Issues for Consideration

- Legal status of delta-9 THC that is derived or from hemp
- Delta-8 THC
- Does odor alone provide probable cause?

5. Self-defense and the felony disqualifier

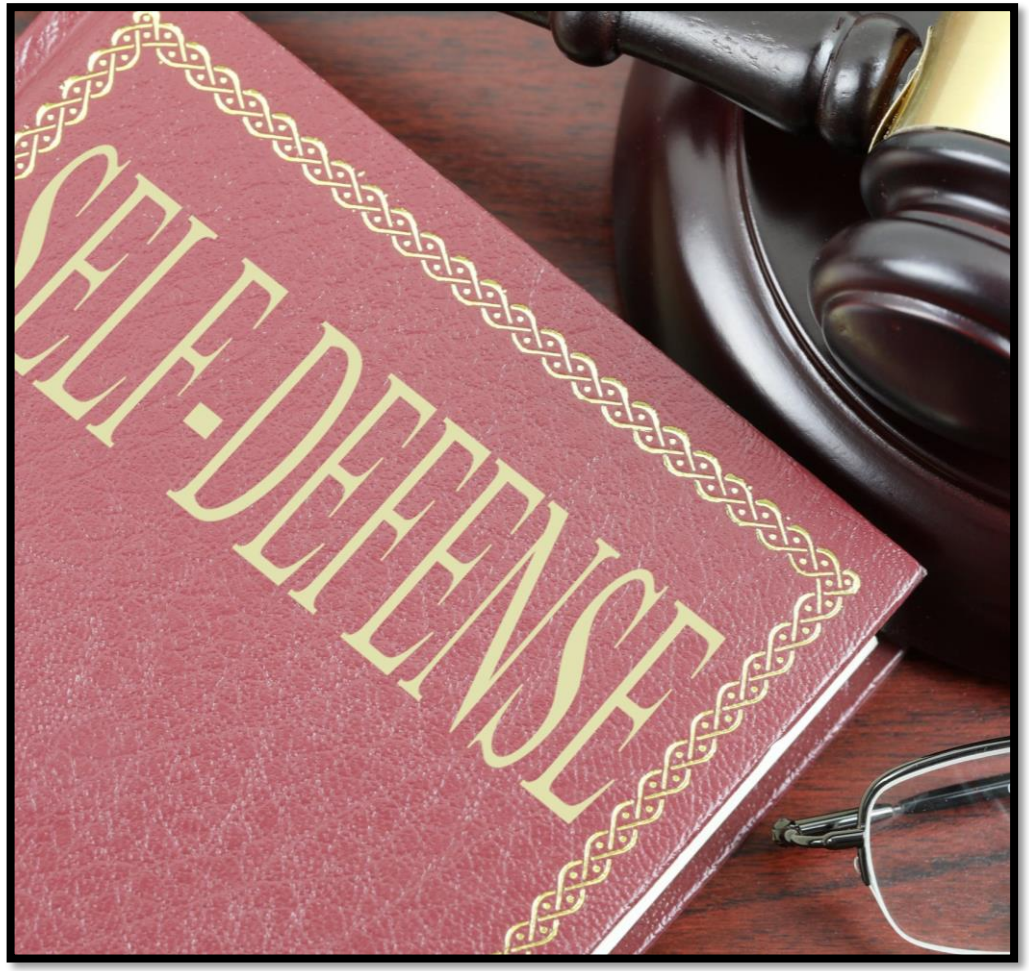
Background

- G.S. 14-51.4(1) (providing that defensive force defenses are not available to a person who "[w]as attempting to commit, committing, or escaping after the commission of a felony")
- State v. McLymore, 380 N.C. 185 (2022) (holding that the statutory disqualification applies only when there is a causal nexus between the felony and the defendant's use of force; the "State must introduce evidence that but for the defendant attempting to commit, committing, or escaping after the commission of a felony, the confrontation resulting in injury to the victim would not have occurred")

5. Self-defense and the felony disqualifier

Issues for Consideration

- Applying the "but for" test
- Is the test a good fit for the purpose behind the McLymore decision? If not, which one should lower courts follow?



6. Substitute analysts and the Confrontation Clause

Background

- Crawford v. Washington, 541 U.S. 36 (2004) ("testimonial statements of a witness who [does] not appear at trial [may not be admitted] unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination")
- Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009) (forensic analysts' reports and conclusions are "testimonial" under Crawford)
- Bullcoming v. New Mexico, 564 U.S. 647 (2011) (admission of an analyst's report through a substitute analyst who had not observed or participated in testing and who had no independent opinion about the results violated Crawford)
- Williams v. Illinois, 367 U.S. 50 (2012) (fractured Court fails to agree on whether a DNA expert can testify about a DNA profile developed by a different expert)
- State v. Ortiz-Zape, 367 N.C. 1 (2013) (no Crawford problem where a forensic analyst testified about her "independent opinion" that a substance was cocaine based on her "peer review" of another analyst's work; she was not a mere surrogate parroting the other analyst's opinion)

6. Substitute analysts and the Confrontation Clause

Issues for Consideration

- Distinguishing an "independent opinion" from mere "surrogate testimony"
- Confronting machines that conduct tests

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