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New Arson Laws



- 2d degree arson now a class E felony (class G before)
- Class D arson for arson of jails/prisons (including aiding or counseling arson)
- New offense of burning place of worship:
 - Class D if occupied
 - Class E if not

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New Arson Laws



- New offense of burning commercial structures
 - Same offense classifications as with places of worship
- Arson causing injury to first responders:
 - Class E for serious bodily injury
 - Class F for serious injury
- Burning offenses disqualify you from firefighting per G.S. 143B-943

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New Organized Retail Theft Laws

- Stolen property may be aggregated over 90 days, even from diff. counties
- B/w \$1,500-\$20,000, class H
- B/w \$20,001-\$50,000, class G
- B/w \$50,001-\$100,00, class F
- Over \$100k, class C

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New Organized Retail Theft Laws

- New G.S. 14-86.7
- New offenses of damage to property and assault during the course of org'd. retail theft (A1 misdemeanors)
- Any assault or battery during the course of a theft, or over \$1K damage to property, during theft where at least \$1K was stolen

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New Hemp Laws

- New G.S. 90-87:
 - (13a) defines hemp as all parts of cannabis plant with no more than 0.3% delta-9 THC concentration on dry weight basis
 - (13b) defines hemp products as anything made from hemp
 - (16) defines marijuana to exclude hemp and hemp products

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New Hemp Laws

- New G.S. 90-94
 - Excludes products with a delta-9 THC concentration of less than 0.3% on a dry weight basis from the prohibition on THC in Schedule VI

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New Crimes

New class I felony Resist, Obstruct, Delay Causing Serious Injury per G.S. 14-233; class F for serious bodily injury

New crimes of B/E LEO vehicle and larceny from a LEO vehicle per G.S. 14-56 and 14-72.9

New G.S. 14-164.1 renders *possession* of catalytic converters a class I felony unless certain conditions met (G.S. 14-72.8 repealed)

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Fentanyl Fix

North Carolina Criminal Law

A UNC School of Government Blog

Possession of Fentanyl (2022 Update)

Posted on Feb. 23, 2022, 10:43 am by Phil Dixon

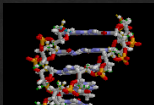


In an [earlier post](#), I wrote that simple possession of fentanyl was a

SEARCH

SUBSCRIBE

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[illegible]

New PRS Search Rules

(*McCants* fix)

- Former G.S. 15A-1368.4(e)(10) only authorized PRS searches of a supervisee's person (unless the person was a sex offender)
- Law now authorizes warrantless searches of the supervisee's person, vehicle, and premises when D. is present
- Search still must be reasonably related to purposes of supervision

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[illegible]

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State v. Amator,
p. 1

- Traffic stop based on placement of registration sticker, meth discovered
- Motion to suppress denied, defendant appealed
- COA: law was ambiguous at the time, and officer had reasonable belief -- "reasonable mistake"

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State. Jordan,
p. 1

- Following tip, controlled buys conducted at apartment where D. lived with GF
- Stopped for speeding while riding together; strong odor of MJ and furtive movements by D.
- 5-7 min. delay for stopping officers to confer with drug investigators
- GF eventually consents to search of apt., leading to discovery of guns and cocaine

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State. Jordan,
p. 1

- D. argued improper extension of stop rendered consent invalid
- COA: 1) No evidence stop was complete at time of delay
 - 2) Officers likely had PC to get a warrant or arrest D. (and at least had RS to extend stop)
 - 3) Threat to get SW for the home was not improper coercion; GF's consent was voluntary

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State v. Jordan, p. 2-3


- Police approach and enter home after seeing occupant walk towards stolen car in driveway
- Other officers arrive and see drugs in plain view through the open door, leading to consent search of home, then a SW for a safe
- D. charged with trafficking, FBF, HF



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State v. Jordan, p. 2-3

- D. had standing as an occupant with apparent authority and control of safe inside; abandonment only occurred in response to illegal entry
- Man approaching stolen car was not exigent circumstances justifying warrantless entry
- Any consent was invalid and not attenuated from illegality
- SW was based on fruit of poisonous tree




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State v. Highsmith, p. 5

- Positive canine alert plus other circumstances supported PC where D. didn't claim it was hemp
- Not plain error to deny MTS
- Different result if properly preserved?

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U.S. v. Runner, p. 5

- Stem pipe in plain view plus partially corroborated tip was PC
- Even if a "close case"

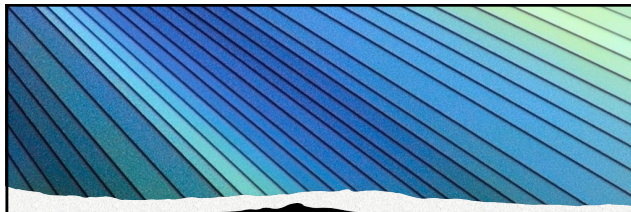
20

U.S. v. Orcozo, p. 6

- Nexus b/w memory cards in shoes and evidence of drug trafficking in car
- Attempt to ingest the cards only added to PC
- Child porn fairly discovered once cards examined



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Standing and the Fourth Amendment

U.S. v. Daniels, p. 8

Even when not the authorized driver, D. may have standing to challenge search of rental vehicle per *Byrd v. U.S.*

Where D. failed to present any evidence of lawful possession, he lacked standing

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PLEADINGS



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State v. Lancaster, p. 8

- Indictment for Going Armed to the Terror of the Public was fatally defective where it failed to allege public highway
- Private apartment complex parking lot does not qualify as a public highway



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STATE OF NORTH CAROLINA

County

STATE VERSUS

Name And Address Of Defendant

INDICTMENT

☐ This is a superseding indictment.

Offense(s)

Date Of Offense

Date Range Of Offense

G.S. No.

CL

State v. Singleton,
p. 9

- Second-Degree Rape indictment fatally defective for failure to include element that the D. knew or should have known that the V. was helpless at the time
- "Did unlawfully, willfully, feloniously engage in vaginal intercourse with V., who was at the time, physically helpless"

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
Crimes

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State v. Faucette, p. 15



Not identity theft to use fake name where no intent to represent self as another person

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Transferred Intent and *St. v. Charles*, p. 15

- Malice from Second-degree arson supplied specific intent for felony animal cruelty even though D. did not know a puppy was inside

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Crime and the First Amendment

Categories of Unprotected Speech

- Obscenity & Child Pornography
- "Fighting Words"
- Incitement to Lawlessness
- Defamation
- True Threats
- Speech that is itself a crime

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True Threats

State v. Taylor

- Threatening legislative/executive/court officer, G.S. 14-16.7(a)
- Under 1st Amendment, only if it's a "true threat"
- State must prove: "an objectively threatening statement communicated by a party which possess the subjective intent to threaten"




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True Threats

In re Z.P.

- Applied NC App's true threat analysis to a threat of mass violence on educational property, G.S. 14-277.6, and maybe communicating threats, G.S. 14-277.1
- Analysis probably applies to many other threat offenses



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St. v. Bowen,
p. 17

- Extortion is unprotected speech as speech integral to criminal conduct
- "True threats" analysis not applicable



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CRIMINAL PROCEDURE



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Confrontation Rights and Waiver

State v. Joyner, p. 18

D. had prior motive and opportunity to cross examine V. at 50C hearing when he got notice but didn't show

V.'s testimony from 50C hearing was admissible at trial despite her death

Adopts Alito's concurrence from *Hemphill v. NY*

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Confrontation Rights at Probation

- *State v. Jones*, p. 21
 - G.S. 15A-1345(e) provides defendants a statutory right to confront and cross examine witnesses at a probation violation hearing unless the court finds good cause to disallow
 - TC had no obligation to make finding of good cause absent a specific request
 - General objection to hearsay evidence insufficient to preserve appellate review

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Sentencing & Post-Conviction

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State v. Pickens and the Trial Penalty, p. 22


- TC commented to D. at sentencing that he “had a choice” about going to trial
- Imposed three consecutive 300 mo. minimum sentences
- Violation of D.’s right to a jury trial; remand for resentencing



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State v. Wright and Right of Allocation, p. 22

- Reversible error to effectively deny D. right to speak at sentencing
- New sentencing hearing required



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State v. Adams, p. 22

Probation is stayed on direct appeal per G.S. 15A-1541

Error to require D. to complete parenting class during pendency of the appeal

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State v. Campbell, p. 23

Joined convictions do not count for Prior Record Level per *State v. West*, 180 N.C. App. 664 (2006), at least if close in time . . .

Error here to deny D. conditional discharge for possession conviction based on joined sale conviction when he was otherwise 90-96 eligible

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The End

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Sex Offenders and SBM

- ◆ New SBM scheme, caps time at 10 years total and excludes misdemeanor offenses from definition of reoffender
- ◆ New requirement of risk assessment plus hearing
- ◆ Requests for early termination can be made to a judge after five years
- ◆ Very likely constitutional based on recent NCSC rulings

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Sex Offenders and Geographical Restrictions

- ◆ Amended G.S. 14-208.18 and .16:
 - Adds sexual exploitation of minors to list of offenses subject to premise restrictions
 - Adds State Fairgrounds during the fair as a prohibited area
 - Clarifies that the 1000 ft. residence rule applies broadly

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