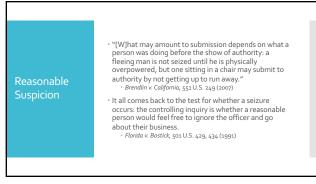
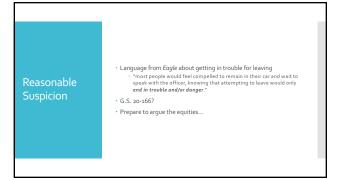




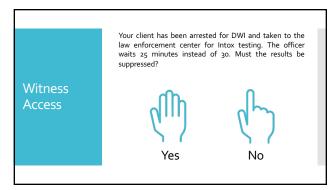
- Where the defendant's movement was impeded by a physical and "psychological barrier," they were seized since "most people would feel compelled to remain in their car and wait to speak with the officer, knowing that attempting to leave would only end in trouble and/or danger." The defendant would "have had to narrowly skirt around . . . the police cruiser while backing up in order to avoid either hitting the cruiser or running off the road."

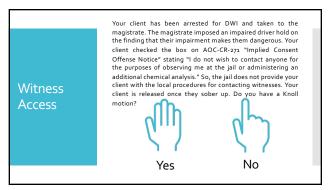
 State v. Eagle, 286 N.C.App. 80 (2022)



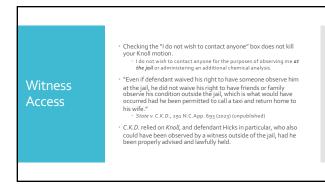


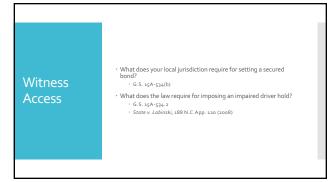


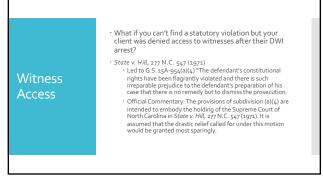




Witness Witness Access - For intox to be suppressed where law enforcement didn't wait the full thirty minutes, the defense must show that witnesses would have gotten there in time, were turned away, or were not otherwise granted access. - Waiting less than thirty minutes was permissible as there was no evidence "that a lawyer or witness would have arrived to witness the proceeding had the operator delayed the test an additional 10 minutes." - State v. Buckner, 34 N.C. App. 447 (1977) - Witnesses turned away or not granted access, leading to suppression: - State v. Hatley, 190 N.C. App. 639 (2008) - State v. Buckheit, 223 N.C. App. 269 (2012)









Sentencing

Your client has been convicted of DWI. They were stopped in a private subdivision and had a BAC of .14. They have a "safe driving record."

What sentence level is the judge likely to impose?

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Sentencing

Your client has been convicted of DWI. They were stopped in a private subdivision and had a BAC of .14. Their only prior convictions are felony serious injury by vehicle from 5 years ago and speeding last year. They obtained a substance abuse assessment and have already completed 24 hours of community service.

What sentence level is the judge likely to impose?

Sentencing 19

Your client has been convicted of DWI. They were stopped in a private subdivision and had a BAC of .14. Their license was revoked for an impaired driving revocation. They have a obtained a substance abuse assessment and completed the recommended treatment.

What sentence level is the judge likely to impose?



- Speeding to elude arrest is defined as operating "a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties."
- This offense is a felony if any two of the eight aggravating factors listed in the statute are present; one of those factors is "[d]riving when the person's drivers license is revoked."
- The defendant argued this aggravating factor required proof that the offense occurred on a street or highway, as otherwise required for DWLR.

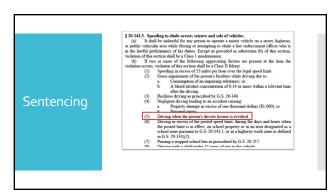
State v. Dewalt, 209 N.C.App. 187 (2011)

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- We draw his attention to another well-known canon of statutory construction, expressio unius est exclusio alterius: the expression of one thing is the exclusion of another. See Baker v. Martin, 330 N.C. 333, 337, 410 S.E. 2d 887, 890–90 (1991). The speeding to elude arrest statute cities several other criminal statutes when defining aggravating factors which support the felony level of this offense.
- However, the statute does not cite § 20–28 when listing the
 aggravating factor "[d]riving when the person's drivers license is
 revoked." Thus, the plain language of § 20–14.5 reveals that,
 while the General Assembly chose to cross-reference criminal
 statutes in defining the scope of certain aggravating factors, it
 chose not to do so in defining aggravating factor (b)(5).

State v. Dewalt, 209 N.C.App. 187 (2011)



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