MOTIONS TO SUPPRESS

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PROCEDURE:

Governed entirely by statute. N.C.G.S. 15A-971 et seq. A motion to suppress is the exclusive method of challenging evidence obtained against the defendant in an alleged unlawful manner. The conduct must violate the defendant's rights, not the rights of another. State action is required, not the act of a private party.

Suppression can be granted because of a constitutional violation, or a substantial violation of defendant's statutory rights. The latter is subject to a good faith exception. Under the 4th amendment, evidence will not necessarily be suppressed if officers rely in good faith on a warrant issued by a judicial official. Our North Carolina Supreme Court has not recognized a good faith exception the exclusionary rule under the North Carolina constitution. (Compare U.S. v. Leon 468 US 897 (1984) with State v. Carter 322 NC 709 (1988). Practice Tip: Cite both the U.S. and N.C. Constitutions if you are going to suppress the evidence. Section 20 of the North Carolina Constitution is roughly equal to the 4th amendment)

Statutory factors to consider are enumerated in N.C.G.S. 15A-974(2):

- The extent of deviation from lawful conduct;
– the willfulness of the conduct;
–the deterrent effect of suppression;
–the importance of the interest violated;

Even considering all these factors, the evidence shall not be suppressed (under the statute only) if the officer acted under an objectively reasonable, good faith belief that the actions were lawful.

REQUIREMENTS:

- Must be in writing;
- Be served on the State;
- State factual grounds, not conclusions.
- Be supported by affidavit. (can be signed by counsel) Motions made properly at trial (see timing below) need not be supported by an affidavit. S. v. Roper 328 NC 337 (1991)

Motions not meeting these requirements are subject to summary dismissal. S. v. Harris 71 NCApp 141 (1984) (no affidavit) S. v. Phillips 132 NCApp 765 (1999) (conclusions, not facts)

TIMING:

Must be made at any time before trial, unless the defendant had no reasonable opportunity to make the motion before trial, or in the trial judge's discretion.

If the State intends to introduce evidence of a statement from the defendant, or evidence from a warrantless search, or evidence from a search where the defendant was not present, the State must give at least 20 working days' notice of its intent to use the evidence at trial. This is not satisfied by merely producing the evidence in discovery. If the State does so, the defendant must file any applicable motion to suppress within 10 working days. The failure of the State to follow these rules allows the defendant to challenge the proffered evidence at any time. As a practical matter in most cases, the defendant will be able to challenge these three types of evidence though a motion to suppress made at any time. See 15A-975 and 976.

Upon a misdemeanor appeal the defendant must move to suppress prior to trial. 15A-975(c)
This is a common fact pattern. (DWI appeals- motions to suppress based on an improper stop- see below).

HEARING

The hearing is conducted in the absence of the jury or the prospective jury panel. If the motion is in proper form (see above), the burden is on the State to prove that the challenged evidence was properly obtained. S. v. Barnes 158 NCApp 606 (2003). Therefore the State should present evidence first. All evidence is taken under oath.

Both sides have the right to present evidence. If the defendant testifies on the narrow issue of the lawfulness of the search or seizure, the defendant may not be cross examined as to the other issues in the case. N.C.R. Evidence 104(d)

The Rules of Evidence as to admissibility do not apply, except for privilege. N.C.R. Evidence 104(a), 1101(b).

Even if the State concedes the motion, or says a hearing is not necessary because the evidence will not be offered, GRANT the motion. This is mandatory. 15A-977(b)(1) and (b)(2).

As noted above, summary denial is also proper if the motion is not properly served, is not supported by an affidavit, or is not in proper form. However, a judge in his or her discretion may hold an evidentiary hearing in spite of a deficient motion.

Practice Tips:

- Read the motion (and any cases) before you start the evidence
- Have Jeff Welty's summary "Motions to Suppress" open during the hearing from the Superior Court Judge's Bench book (www.sog.unc.edu) (benchbook.sog.unc.edu click on "Criminal", then "Motions to Suppress")
- Bring Arrest, Search, and Investigation in North Carolina (Farb) with you. Open it to the relevant section based on the motion.
- Subscribe to Prof. Jessica Smith's same day email service of new criminal appellate decisions and new legislation. Available at www.sog.unc.edu. Read it.
- Treat the hearing like a trial. Ask for briefs. Give each side a closing argument, and give them the same order they would have in a trial. (No evidence, right to open and close)

- Take careful notes of all the testimony. Go back over your notes with a highlighter to pick out your findings of fact.

Contents of the Ruling:

The order should contain findings of fact and must contain conclusions of law. Where there is "no material conflict in the evidence", the order need not contain findings of fact. The ruling should be reduced to a written order. Ruling may be reserved until a later time. S v. Wilson 225 NCApp 498 (2013)- written order entered the day of the jury verdict, hearing held at some earlier time- implication in opinion is that the hearing was a long time prior). You must base your FOFs on the evidence under oath, not on matters sworn to in the affidavit supporting the motion to suppress. S. v. Salinas 366 NC 119 (2012).

Practice Tips:

Don't reserve ruling. If you need to make up your mind or read briefs/cases, take a break for as long as necessary, and rule. Advantages: 1) It gives the State a chance for an appeal. 2) If a written order is never produced, maybe the Court of Appeals will deem your order in the transcript to be a sufficient ruling. i.e. there's no material conflict in the evidence, etc. At worst, the CoA will probably just remand for entry of the written findings. See S. v. Morgan 224 NCApp 784 (2013). 3) It's not going to get any better. You know more about it now than you will next week. 4) You don't have to be perfect. As long as your written order is supported by the evidence and consistent with your oral ruling, you are fine. For an example of FOFs not supported by the evidence, see S. v. Weaver 752 SE2d 240 (2013).

The written order:

- If you grant the motion, the defense attorney has every incentive to get you a written order as soon as possible. The Asst. D.A. probably has more on his/her plate. You have to make a practical decision, based on your experience in your district, as to who is going to draft the written order.
- If the parties draft the order, have them give you an order in both paper and electronic formats.
- Save your notes from the hearing until the order is signed.

The ruling on the issue becomes the law of the case. If the case is mistried all pre-trial issues are de novo. However, what happens when the case comes back from the appellate court on an unrelated issue? In S. v. Lewis 365 NC 488 (2012) the defendant unsuccessfully moved to suppress his identification. That issue was affirmed on appeal, but the case was remanded for a new trial on a different issue. Before his second trial, the defendant moved to suppress based on new evidence, and the trial judge denied the motion on the principle that the first ruling was the law of the case as it had been affirmed on appeal. The Supreme Court affirmed the Court of Appeals reversal on this issue, ruling that the subsequent motion was based on new evidence unavailable to the defense at the first trial.

DWI cases

The denial of a motion to suppress, or the failure to make a motion to suppress, or even a guilty plea without a like motion in District Court, does not preclude the making of a motion to suppress

upon appeal to the Superior Court. See NCGS 15A-953 and 15A- 979. If a District Court judge desires to grant the defendant's motion to suppress in District Court, the judge must make a "preliminary determination" of the motion, which the State can immediately appeal to the Superior Court. NCGS 20-38.6 and 38.7

SUBSTANTIVE ISSUES

Motions to suppress can be made for any alleged constitutional or statutory reason. Common issues that arise before the Superior Court include:

- Vehicle stops and investigation pursuant to the stop
- Line-ups and identifications
- Search warrants
- Confessions and statements of the defendant

VEHICLE STOPS

Reasonable suspicion under Terry v. Ohio is the standard for the stopping of a motor vehicle. S. v. Styles 362 NC 412 (2008) (Rejecting the argument that probable cause is needed if the vehicle is being stopped for a particular criminal offense that results in an arrest for that offense)

If reasonable suspicion exists for the stop, it is immaterial that the officer subjectively hopes to gather information related to an unrelated crime. A prolonged extension of the stop, so as to render the stop merely a pretext, is unconstitutional. Whren v. US 517 US 806 (1996)

If reasonable suspicion does not exist at the initiation of the attempted vehicle stop, the fact that the vehicle flees from the officer can provide the necessary reasonable suspicion. California v. Hodari 499 US 621 (1991). Turning around in obvious response to a check point, (even if the check point itself is arguably invalid), supplies objective reasonable suspicion. S. v. Griffin 366 NC 473 (2013)

A substantial body of law has developed about factors that, STANDING ALONE, do NOT provide a law enforcement with reasonable suspicion. Many of these factors are present in many cases.

SPEEDING

"Slight" speeding may not provide reasonable suspicion. US v. Edwards 690 F.3d 583 (stopping a vehicle for travelling 5 mph over the limit, motion to suppress allowed. However, officer had trouble with basic math calculations at the hearing) Compare US v. Mubdi 691 F.3d 334 (>8-10 mph stop upheld)

An officer may provide, upon a proper basis, a visual estimate of speed. S. v. Barnhill 166 NCApp 228 (2004) (visual estimate of 40 in a 25- motion to suppress denied). The fact that the visual estimate was made based on a 3 to 5 second time period does not necessarily render the estimate untrustworthy. S. v. Royster 224 NCApp 374 (2012)

Conversely, NOT speeding, or travelling below the limit, standing alone, does not provide reasonable suspicion. See GS 20-141(h) - No vehicle shall travel at such a slow speed such that the vehicle impedes the normal and reasonable movement of traffic. Therefore, if other traffic is affected, or if a minimum speed is violated (less that 45 on the interstate), reasonable suspicion for a stop may be

present. See S. v. Canty 224 NCApp 514 (2012) (59 in a 65 did not provide reasonable suspicion). The slower the speed in a high speed area, like an interstate highway, the greater may be the indicia of suspicion. Numerous cases hold that violations of minimum speed requirements on highways provide reasonable suspicion.

EXTENDED STOPS/NERVOUSNESS

Even if the initial stop is justified, prolonging the stop may render the stop unconstitutional. The nervousness of the occupants alone is not enough to prolong the stop. The Supreme Court has recognized in several cases that any citizen might be nervous during a traffic stop, as has the North Carolina Supreme Court. (e.g. S. v. McClendon 350 NC 360 (1999), stating in dicta that many people become nervous with law enforcement, even if innocent of all wrong-doing.)

A representative case on nervousness is S. v. Phifer 226 NCApp 359 (2013), where the defendant was seen walking in the middle of the street. The officer called the defendant over and warned him not to impede traffic. The defendant appeared nervous and never stopped moving. The officer's stop and frisk was held to be unconstitutional.

The fact that the defendant slowed immediately from 65 to 59, would not look towards the officer when the officer's car when the officer drove alongside, and appeared to be very nervous, did not provide reasonable suspicion. S. v. Canty 224 NCApp 514 (2012)

The United States Supreme Court case governing extensions of stops is Rodriquez v. United States, 135 S.Ct. 1609 (2015) where the Court ruled that a dog sniff that prolongs the time required to complete the initial traffic stop violates the 4th amendment. After issuing a warning ticket, the officer asked the driver for permission to have a police dog walk around the car. The driver refused permission, but a second officer arrived a few minutes later with the dog, who alerted to the presence of a large amount of drugs. The Court ruled that an officer can certainly conduct unrelated checks during the stop, but may not do so in a way that prolongs the stop absent the reasonable suspicion that justified the initial stop of the driver and vehicle.

Note that previous North Carolina cases which held that the prolonging of the stop may be de minimus probably do not survive Rodriquez. An example of such a case would be S. v. Sellars 730 SE2d 208 (CoA 2012) (holding that an almost 5 minute delay to conduct a sniff by a drug dog did not violate 4th amendment).

A representative North Carolina case which probably passes constitutional muster under Rodriquez is S. v. Heien 226 NCApp 280(2013), aff'd. 367 NC 163 (2013) where the stop occurred at 7.55. Discussion ensued about a broken tail light and other issues, driver's licenses and outstanding warrants were checked, and consent to search (asked for, in part, because one occupant would never come out from under a blanket) was requested at 8.08. The officers were polite and non-confrontational, and most of the questioning concerned the reason for the initial stop. Held: no unnecessary prolonging of the stop, valid search. The distinction is that in Rodriquez the reason for the stop had been completed, (a warning ticket had been issued, the officer asked to extend the stop for the police dog to arrive, and the driver refused consent), whereas in Heien the officers asked permission to search during the time frame when they were still investigating pursuant to the initial stop.

Recent cases analyzing stops under Rodriquez include S v, Bullock 805 SE2d 671 (NCSC 2017) (driver's evasive actions and answers while sitting in patrol car while office checked databases justified the prolonging of the initial stop) and S. v. Reed (CoA Jan. 16, 2018) (asking the driver to set in the patrol vehicle while databases checked did not extend the stop, but once the officer had decided that everything was proper about the defendant's rental of the car being driven, and once the officer had issued a warning ticket for speeding, any further detention of the driver was unjustified).

NO TURN SIGNAL

Failing to signal before turning does not, in itself, provide reasonable suspicion. 20-154(c) provides that a driver shall give a signal when the operation of another vehicle may be affected. Therefore a driver ins a right hand lane need not give a signal if the only legal movement that can be made from that lane in a right hand turn. S. v. Ivey 360 NC 562 (2006). The failure to give a turn signal may be within "the normal range of everyday driving behavior".

The "one bad brake light is not illegal" case was reversed in S. v. Heien 737 SE2d 351 (2012), where the Supreme Court stated that a mistaken but objectively reasonable and honest belief in the illegality of the defendant's actions could supply the requisite reasonable suspicion. This decision was generally upheld in Heien v. N.C. 135 SCt 530 (2014) (a "genuinely ambiguous" law may reasonably be relied on by an objective officer)

Following Heien, our CoA reversed the trial court's denial of the defendant's motion to suppress when a Watauga Co. officer stopped a car with Tennessee tags for not having an exterior mirror on the driver's side. By our statute's plain language (NCGS 20-126(b)), this requirement only applies to cars registered in North Carolina. The Court ruled that the law is plain and unambiguous and suppression was required under the Supreme Court's decision. S. v. Eldridge 790 SE2d 740 (2016)

SITTING AT A STOP LIGHT

The failure to proceed from a stoplight after it changes from red to green does not, by itself, provide reasonable suspicion. S v. Roberson 163 NCApp 129 (2004) (an 8 to 10 second delay in proceeding does not provide reasonable suspicion. Interestingly, this happened at 4.30 a.m. near several bars.) Compare with S.v Barnard 362 NC 244 (2008) (a 30 second delay at 12.15 a.m. near several bars in a high crime area provided reasonable suspicion).

LATE HOUR/BARS/HIGH CRIME

The presence of a driver in a high crime area at an unusual hour does not in itself provide reasonable suspicion. Brown v. Texas 433 US 47 (1979). In S. v. Murray 192 NCApp 684 (2008), the court found no reasonable suspicion to stop a vehicle driving in a commercial area with a high incidence of property crimes at 3.41 a.m. Evasive action or other indicia of suspicious activity may provide the necessary reasonable suspicion.

An interesting "high crime area" case is S v. Sutton 232 NCApp 667 (2014) where the Court of Appeals affirmed the denial of a motion to suppress. The officer noted a man walking in a high crime housing project in Kinston, where the officer had previously heard shots, and saw the man clutch his hand to his waist or his side, as if he was concealing an item. The Court contrasted other cases (which to

this author seem very similar) where the searches had been held to be unconstitutional. The Court gave great deference to the trial court's findings of fact.

In S. v. Jackson 368 NC 75, a stop and frisk of the defendant was supported by reasonable suspicion when two men walked away quickly from the officer at a mini-mart, which was known as a high crime area where hand to hand drug sales often occurred. The officer lost sight of the men and left the area, but when he later returned, the men repeated the earlier behavior.

In S. v. Crandell 486 SE2d 789 (CoA 2016), the same result was reached when the search was conducted in a partially burned and abandoned building notorious for drug dealing, when the defendant provided no reason to be on the premises.

WEAVING/WEAVING "PLUS"

Weaving entirely within one's lane without affecting other traffic does not constitute reasonable suspicion. GS 20-146(d)(1) states that a motorist shall drive entirely within his/her lane of travel and not move from that lane without ascertaining that such movement can be made in safety.

Even moving out of one's lane of travel may not constitute reasonable suspicion. S v. Derbyshire 745 SE2d 866 (2013)- travelling once outside of the right lane at 10.05 p.m. on a Wednesday night is not outside the bounds of normal driving behavior. Contrast this with S v. Kochuk 366 NCApp 549 (2013) where the Supreme Court, reversing the Court of Appeals, held that reasonable suspicion existed where the officer saw the defendant cross over the dotted while line with both right wheels for three to four seconds, and also saw the defendant drive on top of the line twice. In this case, however, it was 1.10 a.m.

This is often called the 'weaving plus' doctrine. The case often cited for this proposition is S. v. Fields 195 NCApp 740 (2009), which gives a good overview of this area of the law.

Crossing the center line is a violation of Chapter 20 and provides reasonable suspicion.

"Bad weaving" within one's lane can give rise to reasonable suspicion. In S. v. Fields (same name, different case) 723 SE2d 777 (2012) the defendant's weaving caused evasive action by other drivers, and was described by the office as "like a ball bouncing in a small room"

In S. v. Peele 196 NCApp 668 (2009) an anonymous tip was given to an officer, who then located the described vehicle and observed it weaving within the lane. The Court held the stop invalid. This case is probably no longer good law based on Navarette v. California 134 SCt 1683 (2014), discussed below.

ANONYMOUS TIPS

An anonymous tip must 1) contain sufficient reliable evidence of illegal activity, and 2) sufficiently particularize the defendant or his vehicle. .

See Florida v. JL 529 US 266 (2000). The Court rejected the argument that the tip was reliable because the description of the suspects visual attributes were accurate, stating that the tip must be reliable in its assertion of illegality, not just in its tendency to identify a particular person. The Court reserved the issue of whether a report of a person carrying a bomb in an urban area must bear the same indicia of reliability. The Court contrasted Alabama v. White 496 US 325 (1990), where an anonymous called stated that the defendant would be leaving a specified apartment at a specified time in a Plymouth with a broken tail light and delivering an ounce of cocaine to a specific hotel. These predictions were proven correct by the officer's observations, and the Court held that the callers ability to predict future events, combined with the officer's corroboration of the details, were sufficient to justify the stopping of the defendant's vehicle en route to the hotel. However, a tip that the future defendant would be selling marijuana at a certain location later in the day in a white vehicle was deemed insufficient by our CoA in S. v. Harwood 221 NCApp 451 (2012), when the officer did not observe any illegal activity when following the vehicle on that date. The Court of Appeals discussed White and contrasted the wealth of details supplied in White with the scarce details provided by the caller in the case before them.

The prong of reliability may be satisfied when the caller identifies themselves or places their anonymity at risk. In S. v. Maready, 362 NC 614, a driver who allowed the police to see her vehicle license plate, notwithstanding the fact that she did not identify herself, provided sufficient evidence for the court to uphold the subsequent stopping of the defendant. However, in S. v. Coleman 743 SE2d 62 (CoA 2013), a caller, who identified herself, stated that a driver had alcohol in a cup in a particular car in a parking lot. The officer stopped the car on the street and arrested the driver for DWI. Held: no reasonable suspicion, in part because the parking lot was a public vehicular area (where by statute the possession of an open container in a vehicle is not illegal) and the officer observed no bad driving by the defendant. The Court distinguished the Supreme Court decision in Heien by noting that the statutes about operable brake lights are confusing, while the plain reading of the open container law only applies the law to public streets or highways.

In S. v. Blankenship (CoA 10/15/2013) a taxi driver, who could be identified, called in to say that a particular driver was drunk. Held: no reasonable suspicion because the officer observed no bad driving.

This case is probably no longer good law based on Navarette v. California, 134 SCt 1683 (2014) where the Supreme Court's majority opinion gave weight to the fact that the caller could be easily identified through the 911 call system, and the description of the vehicle and the vehicle location was corroborated by the officer.

The importance of a particular description of the vehicle of defendant is illustrated by S. v. Walker (CoA 10/3/2017). In that case, a 911 call was placed by a driver who stated that another driver was travelling at about 100 miles per hour and had run the caller off the road. While driving to investigate, the officer was flagged down by the caller, who described the location of the car in question. However, the trial court found as a fact that the car was not particularly identified. Although the defendant's car was stopped about 1/10 of a mile away, the trial court suppressed the stop, and the

Court of Appeals affirmed. The Court distinguished Navarette, where the 911 called described both the car and the location in sufficient detail.

VEHICLE SEARCHES AFTER A STOP

Once a vehicle is stopped, the officer may either order the occupants out of the car or order the occupants to remain in the car. May the officer search the individuals also? The answer is no unless the occupants provide independent reasonable suspicion for a subsequent search, or unless the officer has reasonable suspicion that the individual is armed and dangerous. This suspicion may be supplied by belligerence or non-compliance with reasonable officer requests.

A drug dog alert on the driver's side door does not justify a pat down search of a passenger secured outside the car. S. v. Smith 221 NCApp 253 (2012). Similarly, a valid search of the driver and the car does not justify a passenger search without independent reasonable suspicion. S. v. Malunda 230 NCApp 355 (2013)

If a search of the occupants is justified, the search extends to areas of the car within reach of the occupants. Michigan v. Long 463 US 1032 (1983)

Furthermore, a search of the vehicle is justified if objects in plain sight (or plain smell, such as the odor of marijuana coming from the vehicle) provide probable cause for the search.

However, a search incident to arrest is subject to the limitations of Arizona v. Gant, 129 S.Ct. 1710 (2009), where the Court ruled that officers may search a vehicle incident to an arrest only if the arrestee is unsecured and within reaching distance of the passenger compartment or it is reasonable to belief that evidence relevant to the crime of arrest might be found in the vehicle. In this case, the driver was stopped for driving while license revoked.

Following Gant, our Court of Appeals ruled in S v. Martinez 795 SE2d 386 (2016) that a search of the defendant's vehicle, while the driver was secured in the officer's patrol vehicle, after a stop for suspected DWI, was proper. The facts were somewhat unusual, in that the driver denied driving, threw his keys under the car, and was very uncooperative. Martinez did not state that every DWI arrest would justify a search of the defendant's vehicle for evidence of impaired driving (such as empty beer cans, etc.), but the Court reasoned that previous cases involving stops for suspected narcotics and weapons violations and subsequent vehicle searches had passed constitutional muster, and a search for evidence of impaired driving was akin to those situations. A search for narcotics while the driver was in the officer's vehicle under arrest for marijuana possession was upheld in S. v. Watkins 725 SE2d 500 (2012), while searches were deemed unconstitutional in S. v. Carter 200 NCApp 47 (2009) (offense of arrest was DMV address change violation) and S. v. Johnson 204 NCApp 259 (2010) (like Gant, the offense of arrest was DWLR).

The distinction seems to be that if there is an ongoing criminal violation (weapons, drugs, guns) the search will likely be upheld, but if the arrest is for a status offense (revoked license, outstanding OFA) there is no reasonable likelihood that a vehicle search will reveal evidence of the offense.

SEIZURE?

Sometimes the threshold issue is whether a seizure of the person or vehicle has actually occurred. In S. v. Williams 201 NCApp 566 (2009) an officer walked up to an individual and engaged the future defendant in conversation. Cocaine was subsequently discovered on the defendant's person. Following a line of USSC cases, the CoA ruled that the officer's encounter did not constitute a seizure. The test was whether, under the totality of the circumstances, a reasonable person would feel free to leave the encounter with the officer. The Court identified relevant factors, including the presence or absence of 1) a number of officers 2) the display of a weapon by the officer(s) 3) physical touching by the officer(s) 4) retention of identification of the defendant 5) any language or tone implying necessary compliance 6) the blocking of a means of entrance or exit 7) the use of a flashing blue/red light.

In S. v. Wilson (CoA 12/6/16, affirmed per curium NCSC 12/22/17), the officer flagged down the defendant's vehicle to ask the driver questions about the occupant of a nearby house. Unfortunately for the defendant, the officer immediately smelled a strong odor of alcohol and arrested the defendant for DWI. The Court noted that the single officer did not display his weapon, did not block the roadway, activate his blue lights, or otherwise coerce the defendant into stopping his vehicle, and ruled that no seizure of the defendant occurred until after the officer had personally observed evidence of impaired driving.

A similar result was reached in S. v. Veal 234 NCApp 570 (2014), where the court ruled that no seizure occurred when the officer approached the defendant's car on foot, no blue lights were activated, no gun was brandished, and no show of physical force was used by the officer in questioning the defendant.

In S. v. Knudson 229 NCApp 271 (2013), the trial court did not err in finding that a seizure of the defendant occurred when the officers blocked the defendant's means to leave the scene with a car in front and a bicycle behind, even though no force was used to restrain the defendant.

COMMUNITY CARETAKING

A vehicle stop or search not otherwise supported by probable cause or reasonable suspicion may be upheld under the community caretaking exception. In S. v. Smathers, 753 SE2d 380 (CoA 2014), an officer saw the defendant's car hit a deer and stopped the defendant to see if she was injured. When the officer smelled the strong odor of alcohol, the driver was arrested for DWI. The stop was upheld under this exception to the 4th amendment. The test is whether there is an objective reasonable basis for the officer to perform a search for the care and safety of the community.

Similarly, officers may conduct protective sweeps to insure the safety of the persons on the premises when they receive information of a crime in progress, or other reliable information indicating that persons may be in immediate danger, and exigent circumstances justify such a sweep. The USSC case on exigent circumstances is Kentucky v. King 563 US 452 (2011), and S. v. Marrero 789 SE2d 560 (CoA 2016) provides a good summary of North Carolina precedent on this issue.

INTERROGATIONS

A defendant's statement must be voluntary, and a custodial confession must be accompanied by appropriate warnings under Miranda v. Arizona.

Factors relevant to the issue of whether a statement is voluntary include

- Mental or physical coercion
- Intelligence and education, or lack thereof
- Promises of leniency
- Whether the statement was actually the product of the officers (for example, pressure from relatives urging a confession

An involuntary statement may not be used for impeachment.

Miranda motions often focus on the issue of custody. A person is in custody when he is placed under arrest or his freedom is curtailed to an equivalent degree. The fact that a person is not free to immediately leave is not dispositive (i.e. a driver is not in custody just because he is detained during a routine traffic stop. Questions during a routine stop are not custodial interrogation. The fact that the defendant is an inmate does not mean he is in custody for the purposes of questioning. Furthermore, an incriminating statement must be in response to questioning. Therefore a volunteered statement is not the result of interrogation. Similarly, statements made in response to routing booking questions, even after the defendant is unquestionably in custody, are not the result of interrogation.

Offenses committed after December 1, 2011 require that all custodial interrogations conducted at a law enforcement or detention facility of adults or juveniles of Class A through C offenses, or rape, sexual offenses, or deadly assaults be video and audio recorded. NCGS 15A-211. A failure to compy with this section shall be considered by the Court in considering a motion to suppress any statement.

Statements made in violation of Miranda may be used for impeachment.

IDENTIFICATIONS

Line-ups and shows up are governed by 15A-284.52 et seq. Eyewitness identifications may also violate the Constitution. The test is whether the line up or show up is so impermissibly suggestive so as to give rise to a very substantial likelihood of a misidentification. The Court should undertake a two-step inquiry, and consider

1) Whether the totality of the circumstances reveal a pre-trial procedure unnecessarily suggestive, and
2) Whether this procedure created a substantial likelihood of irreparable misidentification.

Representative cases are S v. Hannah, 312 NC 286 (1984), and S v. Wilson 225 NCApp 498 (2013)