

## Elements of Crimes: Drunk, Weapons, Resisting

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## NC Crimes Chapter 22

- Possession of a Firearm by a Felon
- Carrying a Concealed Weapon

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G.S. 14-  
415.1:  
Possession  
of a  
firearm by  
a felon

Class G felony for any person

- who has been convicted of a felony
- to purchase, own, possess, or have in his custody, care, or control
- any firearm or any weapon of mass death and destruction

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## The Element of Possession

Possession is a common element in many criminal offenses

Possession of a Firearm by a Felon

Possession of a Weapon of Mass Death & Destruction

Possession of a Weapon on School Grounds

Possession of a Controlled Substance

Possession With Intent to Sell or Distribute

And Many Others

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## Actual & Constructive Possession

**NC Crimes Notes on Possession:**  
Possession may be actual or constructive



### Actual Possession:

Actual possession is when a person has physical or personal custody of an item

- Gun in a waistband
- Drugs in a pocket
- Gun being carried in a backpack

### Circumstantial Evidence of Actual Possession:

- A warm gun is found near a suspect after a chase on a cold night
- Drugs are found in an abandoned backpack the suspect had been seen carrying

**Actual Possession Cases Tend to Be Easier Than Constructive Possession Cases**

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## Actual & Constructive Possession

**NC Crimes Notes on Possession:**  
Possession may be actual or constructive



### Constructive Possession:

Constructive possession is when the person does not have physical custody of the item but does have the power and intent to control its disposition

- Sawed off shotgun in a gun safe
- Drugs in a house where the defendant is the sole occupant

**Shared Spaces and Multiple Occupants are the Tricky Cases**



### NC Crimes Notes on Shared Spaces:

When the defendant does not have exclusive control of the location where an illegal item is found, constructive possession requires **other incriminating circumstances**

Constructive possession depends on the totality of the circumstances – highly fact specific

Defendant's presence standing alone is not sufficient to establish constructive possession

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Other Incriminating Circumstances

Facts to Consider:

Multi-occupant Houses

- Who sleeps in the room where the item is found?
- Does the defendant store other items in the room?
- Does the defendant stay at the house regularly?

Multi-occupant Vehicles

- Who owns the car or is the authorized renter?
- Where is the item found?
  - Glovebox in front of the defendant passenger?
  - Under the driver's seat of the defendant driver?
  - In the back near the defendant back-seat passenger?
- Among the other belongings of a particular occupant?

Bottom Line:

A case-by-case evaluation of the totality of the circumstances

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G.S. 14-269(a1):  
Carrying a concealed pistol or gun

Class 2 misdemeanor (first offense) for any person to

- willfully and intentionally
- carry
- concealed about his or her person
- any pistol or gun

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G.S. 14-269(a1):  
Carrying a concealed pistol or gun

Exceptions:

- The person is on the person's own premises.
- If the deadly weapon is a handgun, the person has a valid concealed handgun permit, and the person is carrying the concealed handgun in accordance with the scope of the concealed handgun permit.
- If the deadly weapon is a handgun and the person is a military permittee who provides to the law enforcement officer proof of deployment.

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G.S. 14-269(a):  
Carrying a  
concealed  
weapon  
other than  
a pistol or  
gun

Class 2 misdemeanor for any person to

- willfully and intentionally
- carry
- concealed about his or her person
- any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shuriken, stun gun, or other deadly weapon of like kind,
- except when the person is on the person's own premises.

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### Question 1

To celebrate his release from prison after being incarcerated for armed robbery, Max Mandell goes deer hunting, in season. He is carrying a shotgun when he is stopped by a Wildlife Officer.

What charge, if any, is appropriate?

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### Question 1

To celebrate his release from prison after being incarcerated for armed robbery, Max Mandell goes deer hunting, in season. He is carrying a shotgun when he is stopped by a Wildlife Officer.

What charge, if any, is appropriate?

Answer: Possession of a firearm by a felon

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### Question 1 cont.

Suppose that instead of going hunting, Max celebrates his release from prison by going to a concert with his neighbor Mike. Mike offers to drive, but on the way, they are stopped for speeding. An officer discovers Mike's handgun in the glove compartment in front of the passenger seat where Max is sitting.

What charge, if any, is appropriate in this situation?

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### Question 1 cont.

Suppose that instead of going hunting, Max celebrates his release from prison by going to a concert with his neighbor Mike. Mike offers to drive, but on the way they are stopped for speeding. An officer discovers Mike's handgun in the glove compartment in front of the passenger seat where Max is sitting.

What charge, if any, is appropriate in this situation?

Answer: Probably no charge – there are no other incriminating circumstances on these facts

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### NC Crimes Chapter 21

- Obstruction of Justice
- Resisting, Delaying, or Obstructing an Officer
- Intimidating a Witness

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## Obstruction of Justice

- Common law offense
- Class 1 misdemeanor to
  - Unlawfully and willfully
  - Obstruct justice
- If done with intent to defraud, the offense is a Class H felony

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**Element (2).** Obstructing justice consists of any act that prevents, obstructs, impedes, or hinders public or legal justice. The crime may take many forms. *Kivett*, 309 N.C. at 670. The following conduct has been implicitly or explicitly recognized as constituting this offense:

- attempting to prevent the convening of a grand jury, *id.*;
- supplying money to pay a fine and costs to a person who pled guilty to a criminal offense, knowing that the person pleading guilty was not the one actually charged with the offense, *State v. Preston*, 73 N.C. App. 174, 176 (1985);
- offering to pay money to a prosecuting witness in exchange for the witness requesting dismissal of a criminal charge, *Clemmons*, 100 N.C. App. at 290;
- interfering with police processing duties in connection with an impaired driving charge against a third person, *State v. Taylor*, \_\_\_ N.C. App. \_\_\_, 713 S.E.2d 82 (2011); and
- filing false campaign finance reports, *State v. Wright*, \_\_\_ N.C. App. \_\_\_, 696 S.E.2d 832, 835–36 (2010).

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## G.S. 14- 226(a) Intimidating a Witness

- Class G felony to
  - Threaten, menace, or in any other manner
    - Intimidate or attempt to intimidate any person who is summoned or acting as a witness in any North Carolina state court OR
  - Prevent or deter or attempt to prevent or deter any person summoned or acting as such witness from attendance in any North Carolina state court.

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G.S. 14-223:  
Resisting  
officers

Class 2 misdemeanor to

- willfully and unlawfully
- resist, delay, or obstruct
- a public officer
- knowing or having reasonable grounds to believe that the victim is a public officer and
- while the officer is discharging or attempting to discharge a duty of office

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S.L. 2021-138 (S 300)

- Effective for offenses committed on or after December 1, 2021
- New G.S. 14-223(b) makes it a Class I felony to willfully and unlawfully resist, delay, or obstruct a public officer in discharging or attempting to discharge an official duty if the resistance, delay, or obstruction proximately causes an officer's serious injury.
- New G.S. 14-223(c) makes this behavior a Class F felony if it is the proximate cause of an officer's serious bodily injury.

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RDO  
Notes

- A defendant lawfully may flee a "consensual encounter" with an officer
- Raises important issue of understanding the types of encounters citizens may have with officers
- Type of encounter often influences whether RDO charge (or conviction) is appropriate

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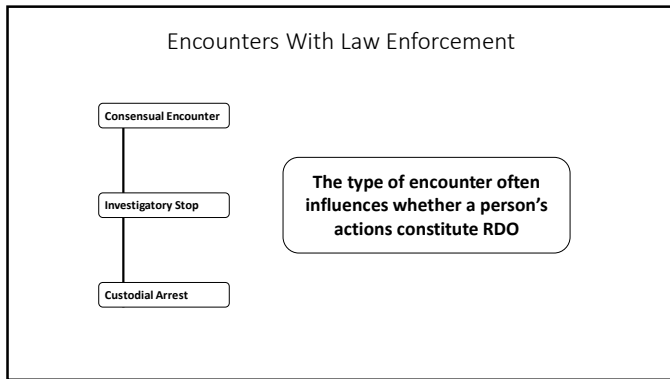
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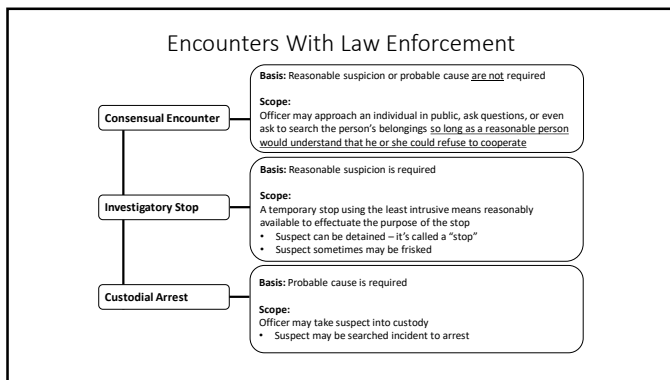
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## RDO Notes

**Critical Points:**

- The defendant's conduct must interfere with, hinder, or delay the officer's performance of an official duty
- Force or violence is not required
- Merely questioning or criticizing is not enough to be RDO
- RDO can occur even if the officer is mistaken
- Right to resist an illegal arrest

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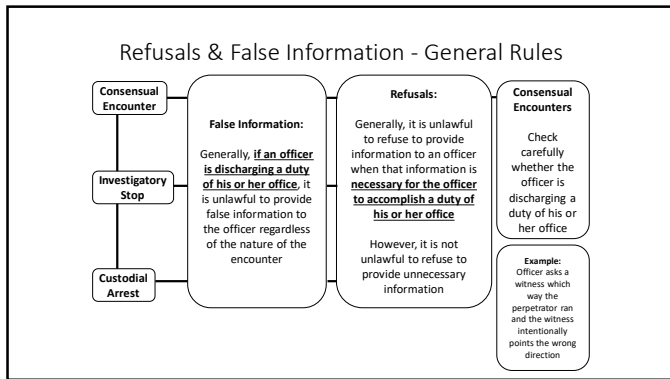
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RDO  
Charging  
Issues

Charging instruments for this offense must:

- Identify the officer by name
- Indicate the duty he or she was discharging
- Indicate generally how the defendant resisted the officer

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Question 2

Suppose Officer Jones has a hunch that Jack Barker is involved in selling illicit drugs. One day Jones sees Barker walking casually down the sidewalk. Jones says "Hey Jack, have you got a minute to talk?" Barker responds "nope" and continues walking.

What charge, if any, is appropriate?

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## Question 2

Suppose Officer Jones has a hunch that Jack Barker is involved in selling illicit drugs. One day Jones sees Barker walking casually down the sidewalk. Jones says, "Hey Jack, have you got a minute to talk?" Barker responds "nope" and continues walking.

What charge, if any, is appropriate?

Answer: No charge, Officer Jones doesn't have reasonable suspicion, so the encounter is consensual, and Jack may disregard him

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## Question 2 cont.

Suppose Officer Jones witnesses a person he knows by the nickname "Action Jack" make a hand-to-hand drug transaction. While Jones tries to write a citation, Action Jack refuses to provide Jones with his real name.

What charge, if any, is appropriate?

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## Question 2 cont.

Suppose Officer Jones witnesses a person he knows by the nickname "Action Jack" make a hand-to-hand drug transaction. While Jones tries to write a citation, Action Jack refuses to provide Jones with his real name.

What charge, if any, is appropriate?

Answer: Possibly RDO – Officer Jones needs Jack's name to complete his duty of issuing the citation

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## NC Crimes Chapter 20

- Threats of Mass Violence (\*Supplement)
- Weapons of Mass Destruction
- Going Armed to the Terror of the People\*

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## G.S. 14-277.5: False report of mass violence

Class H felony for a person to,

- by any means of communication to any person or groups of people,
- make a report,
- knowing or having reason to know the report is false,
- that an act of mass violence
- is going to occur
- on educational property or at a curricular or extracurricular activity sponsored by a school

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## G.S. 14-288.8: Weapons of mass destruction

Class F felony to

- manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire
- any weapon of mass death and destruction.

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“Weapons  
of mass  
destruction”

- Explosives
- Large bore weapons
- Automatic weapons
- Short barreled rifles and shotguns
- Silencers
- Parts that can convert a legal weapon into a weapon of mass death and destruction

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Going armed to the terror of the public/people

- Common law offense
- Class 1 misdemeanor to
  - (1) arm oneself with an unusual and dangerous weapon
  - (2) for the purpose of terrifying others and
  - (3) go about on public highways
  - (4) in a manner to cause terror to the people.

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Lawful open carry

- Right to open carry in NC
- That right is not unlimited
- May be done without crossing the line of “going armed to the terror of the people”

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### Question 3

Nervous about taking the test on criminal law at the end of Magistrate's Basic School, Morgan Smith, though she knows it is not true, tweets that everyone should stay away from the School of Government on Friday because the place is going to be "blown to bits."

What charge, if any, is appropriate?

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### Question 3

Nervous about taking the test on criminal law at the end of Magistrate's Basic School, Morgan Smith, though she knows it is not true, tweets that everyone should stay away from the School of Government on Friday because the place is going to be "blown to bits."

What charge, if any, is appropriate?

Answer: False bomb report to a public building or possibly false report of mass violence on educational property

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### Question 4

Thinking it will be better suited for home defense, Kat Bogan cuts the barrel of her shotgun down to 14 inches and then stores the shotgun in her gun safe.

What charge, if any, is appropriate?

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### Question 4

Thinking it will be better suited for home defense, Kat Bogan cuts the barrel of her shotgun down to 14 inches and then stores the shotgun in her gun safe.

What charge, if any, is appropriate?

Answer: Possession of a weapon of mass death and destruction

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### NC Crimes Chapter 19

- Intoxicated and Disruptive
- Disorderly Conduct

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### G.S. 14-444: Intoxicated and disruptive in public

Class 3 misdemeanor for any person

- in a public place
- to be intoxicated and
- disruptive in any of the following ways:
  - interfering with traffic on a highway or public vehicular area, or
  - interfering with access to or passage across a sidewalk
  - interfering with an entrance to any building, or
  - grabbing, shoving, or pushing others
  - fighting or challenging others to fight, or
  - cursing, shouting at, or rudely insulting others, or
  - begging for money or other property

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## G.S. 14-288.4: Disorderly Conduct

- Disorderly conduct by fighting
- Disorderly conduct by abusive language provoking retaliation
- Disorderly conduct by seizing or blocking a school building
- Disorderly conduct by disrupting students
- Disorderly conduct on a school bus
- Disorderly conduct by disrupting a religious service or assembly
- Disorderly conduct by disrupting a funeral
- \*\*Disorderly conduct in a public building

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## G.S. 14-288.4(a)(1): Disorderly conduct by fighting

Class 2 misdemeanor for a person to

- intentionally
- cause a public disturbance
- by engaging in
  - fighting or
  - other violent conduct or
  - in conduct creating the threat of imminent fighting or other violence.

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## G.S. 14-288.4(a)(1): Disorderly conduct by fighting

Causing a public disturbance:

Element (2). G.S. 14-288.1(8) defines a "public disturbance" as "any annoying, disturbing, or alarming act . . . exceeding the bounds of social toleration normal for the time and place in question." The disturbance must take place in a "public place," a phrase that includes but is not limited to "highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood." G.S. 14-288.1(8).

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G.S. 14-288.4(a)(2): Disorderly conduct by abusive language provoking retaliation

Class 2 misdemeanor for a person to

- intentionally
- cause a public disturbance
- by making or using any
  - utterance,
  - gesture,
  - display, or
  - abusive language
- that is intended to, and is plainly likely to, provoke violent retaliation and thereby cause a breach of the peace

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G.S. 14-132: Disorderly conduct in a public building

Class 2 misdemeanor to

- make any rude or riotous noise,
- engage in disorderly conduct, or
- commit a nuisance
- in or near any public building or facility

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Simple Affray

• Class 2 misdemeanor to:

- Engage in a fight with at least one other person
- In a public place
- To the terror of the public

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### Question 5

A man walks up to someone standing on a public street, raises his fist, and tells him that he is a cowardly bastard who better get ready to defend himself.

What charge, if any, is appropriate?

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### Question 5

A man walks up to someone standing on a public street, raises his fist, and tells him that he is a cowardly bastard who better get ready to defend himself.

What charge, if any, is appropriate?

Answer:

Disorderly Conduct by Fighting or

Disorderly Conduct by Abusive Language Provoking Retaliation

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### Question 6

Howard Keller, who is drunk, stands in front of Roses Store for an hour looking in the window at a toy train running around a circular track.

What charge, if any, is appropriate?

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### Question 6

Howard Keller, who is drunk, stands in front of Roses Store for an hour looking in the window at a toy train running around a circular track.

What charge, if any, is appropriate?

Answer: No charge – he's drunk but not disruptive

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### Questions?

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