

Drug Offenses

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Offense Keys

- Conduct
 - Possess, sell, deliver, manufacture, traffic?
- Substance
 - Class of drug?
- Amount
 - Weight? "Dosage Units"?
- Enhanced Offenses / Punishments
 - Possession in jail or prison; 1000 ft. of school; minors
 - Prior record aggravates some misdemeanor possession charges (90-95(e))
- Reduced Offenses / Punishments
 - First offender options

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Drug Schedules

- I Heroin, LSD, mushrooms, MDMA
- II Methamphetamine, cocaine, fentanyl
- III Steroids
- IV Valium
- V Codeine, other random prescription drugs
- VI Marijuana, THC (but not hemp*)

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Be Prepared to Google Chemical Name of Drug

- Search function of NC Crimes Online
 - Upper right corner of screen
 - Beware of relying on 2012 printed edition
- Control + F search of the NC General Statutes online
- Google search of NC General statutes and substance chemical name
- Lots of complicated chemistry

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Offense Types

- Controlled Substances Act (CSA)
 - Possession
 - Mfg., sale or delivery, possession with intent
 - Counterfeit drugs
 - Precursor chemicals
 - Trafficking
 - Regulatory offenses under 90-108
- Toxic Vapors Act
- Drug Paraphernalia Article

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CSA: 90-95(a)(3)

- Conduct
 - Possession
- Substance/Amount
 - Various
- Enhancements
 - In prison or jail
 - Prior record if current offense is misdemeanor
- Reductions
 - First offenders

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OK, you got me...



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Constructive Possession

- Does NOT have actual possession but is aware of its presence;
- And has (either alone or together with others), both the power and intent to control its disposition or use.
- May be shown by direct or circumstantial evidence

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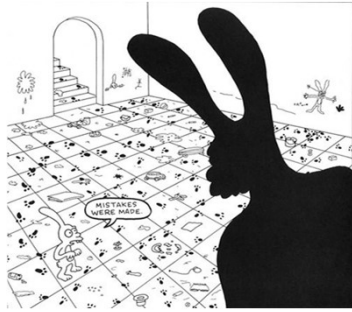
Close proximity is only part of the analysis

- Close physical proximity is a circumstance from which, together with other circumstances, which may create an inference:
- that the defendant was aware of the presence of the substance
- and had the power and intent to control its disposition or use.

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Incriminating Circumstances

-Where D. does not have exclusive control over the place where drugs are found, must have other incriminating facts to support constructive possession



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Possession on Prison / Jail Premises

- Knowingly possesses a controlled substance on the premises of a prison or jail
 - General intent crime: knowledge of possession is enough.
- Defendant's presence on premises does not need to be voluntary
- Applies to any person on premises
- Includes detention areas where arrestees wait to see magistrates, search rooms, secured lobbies and the magistrate's courtroom in a local jail

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CSA: 90-95(a)(1)

- Conduct
 - Manufacturing
 - Sale or delivery
 - Possession with intent to manufacture, sell, or deliver
- Substance/Amount
 - Various
- Enhancements
 - Offenses concerning certain populations
- Reductions
 - Small transfer is not delivery

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Proving Intent

- The packaging of the controlled substance
 - Multiple small retail size packages
- The labeling of the controlled substance
 - E.g., stamps on small bindles of heroin showing what “brand” it is
- The storage of the controlled substance
 - Stored to facilitate hand to hand sales (20 small baggies of crack cocaine in a brown paper bag)
- The defendant’s activities
 - Hand to hand transactions, lots of traffic at an address, written or phone records
- The presence of cash near drugs, and
- The presence of drug paraphernalia
 - Scales, baggies, other packaging materials, cutting agents

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PWIMSD School Enhancement: Over 21 Only!

- “Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for a child care center, or for an elementary or secondary school or within 1,000 feet of the boundary of real property used for a child care center, or for an elementary or secondary school” shall be punished as a Class E felon.”

N.C. Gen. Stat. § 90-95 (e)(8)

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CSA: Counterfeit Drugs

- Conduct
 - Creation, sale/delivery, possession with intent
 - No possession offense
- Substance
 - Always Class I felony

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CSA: Precursor Chemicals

- Conduct
 - Possession with intent to manufacture
 - Possession or distribution with knowledge that it will be used to manufacture
 - Possession of pseudoephedrine after conviction of possession or manufacture of methamphetamine
- Substance
 - Methamphetamine precursors distinguished
- Separate article in Ch. 90 on retail sale of pseudoephedrine

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CSA: Trafficking, 90-95(h)

- Conduct
 - Sale, delivery, mfg., transportation, possession
- Substance/Amount
 - Listed substances differ from drug schedules
 - Each substance has own threshold amounts
- Enhancements
 - Mandatory minimums automatic
- Reductions
 - Substantial assistance; First Step Act, Attempts

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CSA: Regulatory Offenses, 90-108

- Common Conduct
 - Maintaining building/vehicle
 - Obtaining controlled substance by fraud or forgery
- Enhancements
 - Intentional violations

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90-108: Maintaining Dwelling/Car

- 90-108(7): Maintaining a dwelling/vehicle/etc.
- (1) knowingly
- (2) keeps or maintains
- (3) a store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or other place
- (4)(a) being resorted to by persons unlawfully using controlled substances *or*
- (4)(b) being used for unlawfully keeping or selling controlled substances.

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Other Offenses

- Toxic Vapors Act
- Drug Paraphernalia Article
 - Marijuana Paraphernalia is now its own, less serious offense
 - Drug test kits exempted from paraphernalia
 - New immunity provisions

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New Immunity Provisions

- Needle exchange programs – G.S. 90-113.27
- Needle disclosure immunity – G.S. 90-113.22(c)
- Drug testing kits exemption – G.S. 90-113.22 (d)
- Good Samaritan immunity – G.S. 90-96.2

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Hemp, Wax, and Extracts

- <https://nccriminallaw.sog.unc.edu/hemp-or-marijuana/>
- <https://nccriminallaw.sog.unc.edu/carts-wax-and-oh-my-the-new-world-of-marijuana-extracts/>

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Hemp, Wax, and Extracts



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Cartridge/Wax Issue

G.S. 90-95(d)(4) – “If the quantity . . . exceeds . . . 1/20 oz. of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a class 1 misdemeanor. . . if the controlled substance consists of more than 3/20 oz. of extracted resin any quantity of . . . tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

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Cartridge/Wax Issue

1/20 ounce = 1.41 grams

3/20 ounce = 4.25 grams

1000 milligrams = 1.0 gram, or 7/200 of an ounce (or 0.035 oz.)

-Under 1.41 grams of wax/resin = Class 3 misdemeanor

-More than 1.41 grams but less than 4.25 grams = Class 1 misdemeanor

-Over 4.25 grams = Class I felony
