

Criminal Law Update Winter Webinar December 11, 2015

www.indigentdefense.unc.edu

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UNC School of Government



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EDUCATION AND TRAINING

- Calendar of Live Events
- Online Training
- Orientation Manuals
- Questions About a Training Event?

REFERENCE MATERIALS

- Reference Manuals
- Materials from Past Programs
- Motions, Forms, and Briefs
- Search Our Reference Materials

OTHER RESOURCES

- Office of Indigent Defense Services
- School of Government Criminal Law Page
- Collateral Consequences Assessment Tool (C-CAT)
- Related Websites

MICROSITE

Indigent Defense Education

Overview Contributors

In August 2000, the North Carolina General Assembly enacted the Indigent Defense Services Act, which created the Office of Indigent Defense Services and charged it with overseeing and enhancing the provision of legal representation to indigent defendants and others entitled to counsel under North Carolina law. The School of Government collaborates with the Office of Indigent Defense Services to create quality, cost-effective indigent defense education, including innovative training programs, manuals, and online resources, to ensure that indigent defenders have the qualifications, training, and support they need to be effective.

<https://www.sog.unc.edu/resources/microsites/indigent-defense-education>

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MICROSITE

Criminal Law in North Carolina

Overview Contributors

The Criminal Law in North Carolina microsite is a collection of educational resources created and compiled by criminal law faculty at the School of Government to assist people who work in the North Carolina criminal courts and criminal justice system. Please feel free to contact us with questions in our areas of expertise or about any of the resources we offer.

[Criminal Law Faculty Profiles](#)

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 District Court Judges
 Indigent Defense

ROADMAP

- Seizures
- Interrogations and Searches
- Right to Counsel
- Pretrial Issues
- Pleadings
- Jury Issues
- Confrontation and Evidence
- Crimes and Defenses
- Sentencing and Other Consequences



SEIZURES



Brake Lights



S.L. 2015-31 (S 90)
Leg. p. 2, # 6



Extending Traffic Stops



A stop may not be extended beyond the time necessary to complete the "mission" of the stop, which is to address the traffic violation that warranted the stop . . . and attend to related safety concerns.



Rodriguez v. U.S.
191 L.Ed. 2d 492

Extending Seizure



Leak, p. 3
Temp. Stay

Extending Traffic Stop: New RS?



1. Was traffic stop prolonged?
NOT CLEAR
2. Was extension supported by RS?
YES

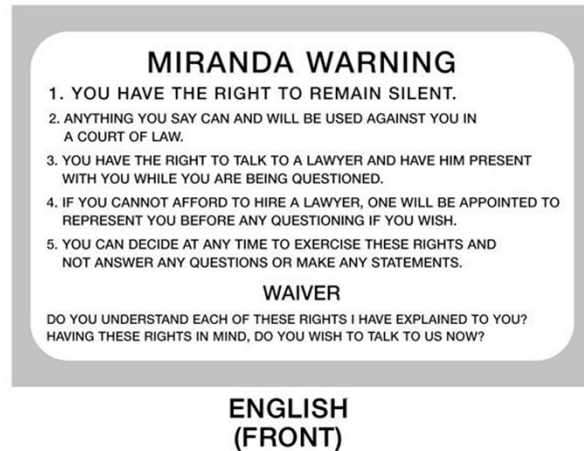
Warren, p. 2

RS for Investigatory Stop



Jackson, p. 2
(NCSC)

INTERROGATION



Miranda and Statutory Warnings

- *State v. Hammonds*, pp. 7-8
 - Questioning during involuntary commitment
 - Was defendant in custody?
 - Is it different when a person is involuntarily committed after being found incapable to proceed?
- *State v. Saldierna*, pp. 8-9
 - Statutory right of juvenile (in this context, person under age 18) to have parent present during questioning
 - Was statement “Can I call my mom?” an assertion of right to have parent present?
 - Did officer have obligation to clarify defendant’s request?

SEARCHES

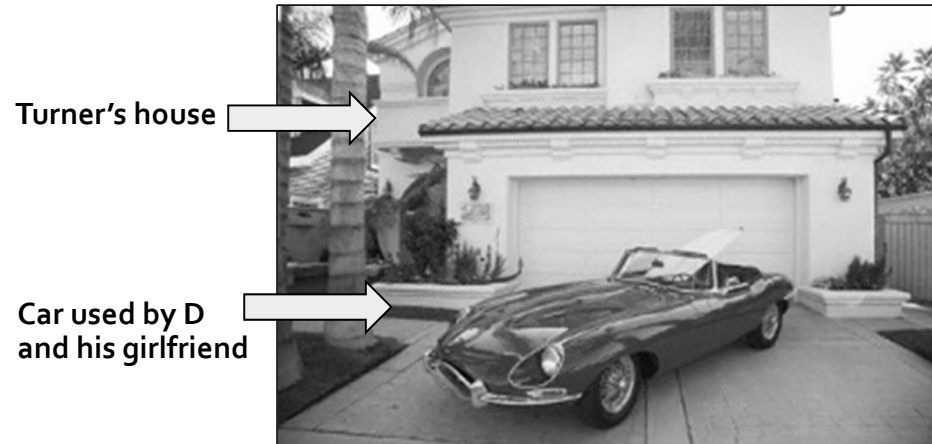


Cell Site Location



Perry, p. 3

Scope of Warrant



Turner's house

Car used by D and his girlfriend

Lowe, p. 5
Temp. Stay

Although these findings may be sufficient to give the officers a reasonable belief that an illegal entry had occurred *at some point*, they are insufficient to give the officers an objectively reasonable belief that a breaking and entering was in progress or had occurred recently.



Jordan, p. 5

DVPO ≠ Search Warrant

The plain language of section 50B-3 does not authorize courts to order law enforcement to search a defendant's person, vehicle, or residence under a DVPO... [T]he catch-all provision limits the court to ordering a party to act or refrain from acting; the provision does not authorize the court to order law enforcement, which is not a party to the civil DVPO, to proactively search defendant's person, vehicle, or residence.

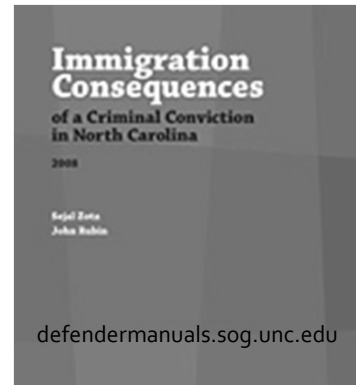
Elder, p. 7
(NCSC)

RIGHT TO COUNSEL



Advice about Immigration Consequences

- Is it sufficient to advise that adverse immigration consequences could occur when they are virtually certain to occur?
- Is it sufficient to advise in all cases that adverse immigration consequences will occur when that may not be the case?
- Is it sufficient to give no advice or tell clients to see an immigration lawyer?
- Is it sufficient to rely on the judge's general advisement about potential immigration consequences?



Nkiam, p. 9
temp. stay

Waivers of Counsel

- Previously, if designated by chief district court judge, lawyer magistrate could appoint counsel at initial appearance
- Now, if designated by chief district court judge, any magistrate may appoint counsel and take waiver of counsel at initial appearance
- What is potential impact?
 - Statements by defendant
 - Later request for counsel
 - Conviction

SL 2015-247
Leg. p. 27-28, # 72

PRETRIAL ISSUES



Outstanding Warrants

- Amended GS 15A-301.1 requires
 - custodial law enforcement agency, following arrest, to attempt to identify all outstanding warrants and notify appropriate law enforcement agencies
 - court in criminal case, before entry of any order, to attempt to identify all outstanding warrants and notify appropriate law enforcement agencies
- New GS 148-10.5 requires
 - DAC and DPS to work with law enforcement, district attorneys' offices, and courts to develop plan to identify at intake and before release all outstanding warrants and to seek to resolve them during custody

SL 2015-48
Leg. p. 4, # 15

Magistrates

- 48-hour law under GS 15A-534.1
 - Delay for judge has been required for certain offenses if victim and defendant were or are married or living together as if married
 - Violation could warrant dismissal under *State v. Thompson*, 348 N.C. 483 (1998)
 - Delay now required if victim and defendant were or are in dating relationship as defined in G.S. 50B-1(b)(6)
- "Dating relationship" means persons
 - of opposite sex [This statement is incorrect. See memo "[Correction: Pretrial Release](#)" regarding why 48-hour law covers opposite or same sex relationships.]
 - who are romantically involved
 - over time and on a continuous basis
 - See *Thomas v. Williams*, ___ N.C. App. ___, 773 S.E.2d 900 (2015)

SL 2015-62
Legis. p. 6, # 19

PLEADINGS



Recent Cases on Pleadings

- Campbell, p. 15 (NCSC)
 - Church is entity capable of owning property

- Ellis, p. 12 (NCSC)
 - IPP pleading valid: alleged at least one victim capable of owning property

- Campbell, p. 11 (Temp. Stay)
 - Fatal variance in larceny indictment: State failed to prove both alleged owners had property interest

- Williams and Sullivan, pp. 14-15
 - Identity of CS is an essential element

Please Preserve the Record!



For example, *State v. Pender*, pp. 13-14, and *State v. Holanek*, p. 14

JURY ISSUES



Waiver of Jury Trial (GS 15A-1201)

- What will the impact be on waiver requests?
 - Waiver applies to both guilt-innocence and sentencing factors
 - Early deadline to give notice
 - State schedules waiver request before judge who will preside at trial and has opportunity to be heard on request
 - Once accepted by judge, defendant may revoke within ten business days of initial notice
 - Exception if not unreasonable hardship or delay
 - Revocation is final

SL 2015-289
Leg. p. 33-34, # 86

Racial Disparity in Venire



Gettys, p. 16

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Indigent Defense Manual Series

John Rubin, Editor

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Welcome to the UNC School of Government's Indigent Defense Manual Series!

The North Carolina Indigent Defense Manual Series is a collection of reference manuals addressing law and practice in areas in which indigent defendants and respondents are entitled to representation of counsel at state expense. The series was created to address the need for comprehensive reference materials for public defenders and appointed counsel, who devote their time, skill, and effort to representing poor people. In addition to assisting indigent defenders with their responsibilities, the manuals may be useful to others who work in the court system and need a reference source on the law. In keeping with the School of Government's commitment to practical scholarship, the manuals are written by authors with subject-matter expertise in their respective fields, experience in developing effective educational materials, and knowledge of how things work in practice. The editor of the series is John Rubin, a member of the School of Government faculty who specializes in indigent defense education. Production of the series is made possible by funding from the North Carolina Office of Indigent Defense Services, which is responsible for overseeing and enhancing the provision of indigent defense representation in North Carolina.

There are several ways to find what you need:

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Indigent Defense Manuals Search

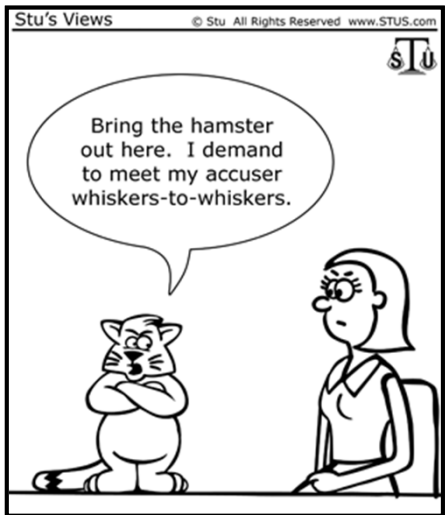
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CONFRONTATION



DMV Records

NORTH CAROLINA DIVISION OF MOTOR VEHICLES
 RLDSZ/DRIVING RECORD

REPORT TYPE: CERTIFIED REPORT PAGE NO: 1
 NAME: SWARTZ, JOHAY DATE: 06-12-08
 ADDRESS: 313 Grandviewdown Ct.
 CITY: RALEIGH STATE: NC ZIP: 276102852 TOTAL POINTS: 0
 DOB: 04-02-76 HEIGHT: 5 FT. 09 IN. SEX: M EYES: BRO HAIR: BLK RACE: B
 PRIMARY LICENSE NO: 00005594840
 SECONDARY LICENSE NO: NON-RESIDENT MILITARY: N
 ORG. ISS.DT: 04-18-94 OS DL NO: OS STATE:

*** DRIVER LICENSE STATUS: CLS C SUSPENDED ***

CLASS	GRP	TYP	ISSUE DT	EXPIR DT	CDL	DISQ	PROB	FRIV	RESTR	STATUS
I	R		01-16-03	04-02-11	N	N	N	N	N	ID CARD
ENDORSE: RESTRICT:										
LIC										LMT COND
C	O		04-18-94	04-02-98	N	N	N	N	N	SUSPENDED
ENDORSE: RESTRICT: *9 FLEET VEHICLES ONLY										

OCCUR/	CONV/	NATURE OF RECORD OR DIVISION ACTION	POINTS
BEG DATE	END DATE		
SCHBUS: NOT ELIG FOR SCHOOL BUS DRIVER CERTIFICATION			
06-10-01	INDEF	SUSP: FAILURE TO APPEAR	
01-18-01	04-10-01	CONV: (634) FAIL TO APPEAR COURT: WAKE COUNTY COURT, NC COURT: AOC #: 01CR 006064	CITATION ID: C0956563
06-10-01	INDEF	SUSP: FAILURE TO APPEAR	
01-18-01	04-10-01	CONV: (634) FAIL TO APPEAR COURT: WAKE COUNTY COURT, NC COURT: AOC #: 01CR 006064	CITATION ID: C0956563
09-21-00	09-21-01	SUSP: 1 OFFENSE OF DRIVING WHILE LICENSE SUSPENDED	
02-11-00	09-07-00	CONV: (666) DRIVING WHILE LICENSE REVOKED COURT: WAKE COUNTY COURT, NC COURT: AOC #: 00CR 009379	CITATION ID: C9822676
07-18-00	09-07-00	SUSP: FAILURE TO APPEAR	
02-11-00	09-18-00	CONV: (634) FAIL TO APPEAR COURT: WAKE COUNTY COURT, NC COURT: AOC #: 00CR 009379	CITATION ID: C9822676

Clark, p. 24-25

POLL

Which of the following agency records seem like they were created for use in a criminal trial?

1. Detention center reports documenting misconduct by inmates
2. GPS tracking reports monitoring compliance with post-release supervision conditions
3. Affidavits prepared by DMV after D is charged with DWLR saying D was revoked on date of arrest and notice of revocation had previously been mailed to D

DMV Records

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 SECONDARY LICENSE NO: NON-RESIDENT MILITARY: N
 ORG. ISS.DT: 04-18-94 OS DL NO: OS STATE:

*** DRIVER LICENSE STATUS: CLS C SUSPENDED ***

LIC INT. COND

Courts... have held that records created and maintained by state driving license agencies as part of their regular administration... are not testimonial... However, where the record is created by the agency for the purpose of proving a fact in a criminal trial, courts have held that the record is testimonial.

COURT: AOC #: 01CR 006054 CITATION ID: C0956563
 09-21-00 09-21-01 SUSP: 1 OFFENSE OF DRIVING WHILE LICENSE SUSPENDED
 02-11-00 09-07-00 CONV: (666)DRIVING WHILE LICENSE REVOKED
 COURT: WAKE COUNTY COURT, NC
 COURT: AOC #: 00CR 009379 CITATION ID: C9822676
 07-18-00 09-07-00 SUSP: FAILURE TO APPEAR
 02-11-00 09-18-00 CONV: (634)FAIL TO APPEAR
 COURT: WAKE COUNTY COURT, NC
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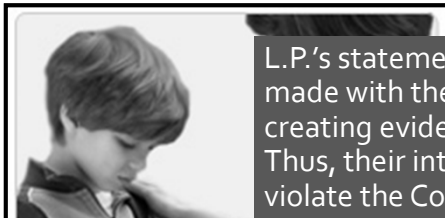
Clark, p. 24-25

Notice and Demand

If [D] fails to file a written objection ... to the use of the laboratory report and affidavit within the time allowed by this section, then the objection shall be deemed waived and the laboratory report and affidavit shall be admitted in evidence in any proceeding without the testimony of the analyst subject to the presiding judge ruling otherwise...

S.L. 2015-173 (H 59)
Leg. pp. 13-14, # 46

Child Abuse Victim's Statement to Teacher



L.P.'s statements clearly were not made with the primary purpose of creating evidence for prosecution. Thus, their introduction at trial did not violate the Confrontation Clause.

Because at least some statements to individuals who are not law enforcement officers could conceivably raise confrontation concerns, we decline to adopt a categorical rule excluding them from the Sixth Amendment's reach. Nevertheless, such statements are much less likely to be testimonial than statements to law enforcement officers.

Ohio v. Clark, p. 25
(USSC)

EVIDENCE

§ 8C-1. Rules of Evidence.
The North Carolina Rules of Evidence are as follows:

Business Records

- Amended Evidence Rule 803(6) allows introduction of business record without live witness (SL 2015-247, Leg. p. 27-29, # 72)
- Foundation for third party records
 - *State v. Hicks*, p. 31

Chemical Analysis of Drugs



Hooks, p. 37

POLL

A person who makes purchases of pseudoephedrine for a meth. cook is known as a:

1. Scooby
2. Smurf
3. Snoopy



Eyewitness Identification



S.L. 2015-212
Leg. p. 21, # 63

CRIMES



New and Revised Offenses

- Assault inflicting serious bodily injury on officer may now require serious bodily injury (SL 2015-74, Leg. pp. 7-8, #24)
 - Previously, courts held that statute required only serious injury based on caption of statute
- Assault, with physical injury, on hospital personnel now a felony (SL 2015-97, Leg. p. 9, # 29)
 - Previously, statute applied to emergency department personnel only

Sex Offenses

- Sex with student now always a felony (SL 2015-44, Leg. p. 3-4, # 13)
 - GS 14-27.7(b) (intercourse, sex offense) and GS 14-202.4(b) (indecent liberties)
 - But, violation of GS 14-202.4(b) not subject to sex offender registration
- Statutory rape and sex offense against victim who is 13, 14, or 15 years old now applies to victim 15 years old or younger (SL 2015-62, Leg. p. 6, # 19)
 - Age differences remain the same
 - Punishments remain the same
 - Registration requirements remain the same
- Rape and sex offenses renamed and renumbered (SL 2015-181, Leg. p. 14-15, # 49)
 - No substantive change intended

Indecent Exposure

Sorry, no clip art.

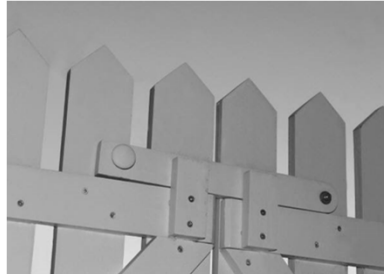
Pugh, p. 36
S.L. 2015-250 (H 792)
p. 30, # 73

Burglary

The intelligent mind will take cognizance of the fact that people do not usually enter the dwellings of others in the night-time, when the inmates are asleep, with innocent intent. The most usual intent is to steal, and when there is no explanation or evidence of a different intent, the ordinary mind will infer this also. The fact of the entry alone, in the night-time, accompanied by flight when discovered, is some evidence of guilt, and, in the absence of any other proof, or evidence of other intent, and with no explanatory facts or circumstances, may warrant a reasonable inference of guilty intent.

State v. McBryde, 97 N.C. 393, 396-97 (1887)

Mims, p. 41

DE**ES**

Self-Defense

- *State v. Juarez*, p. 17 (temp. stay)
 - Self-defense is available against some felonies underlying felony murder
 - If evidence about underlying felony conflicts, instruction is proper on lesser offenses of first-degree murder
 - Aggressor instruction not permissible if defendant is not initial aggressor or has withdrawn

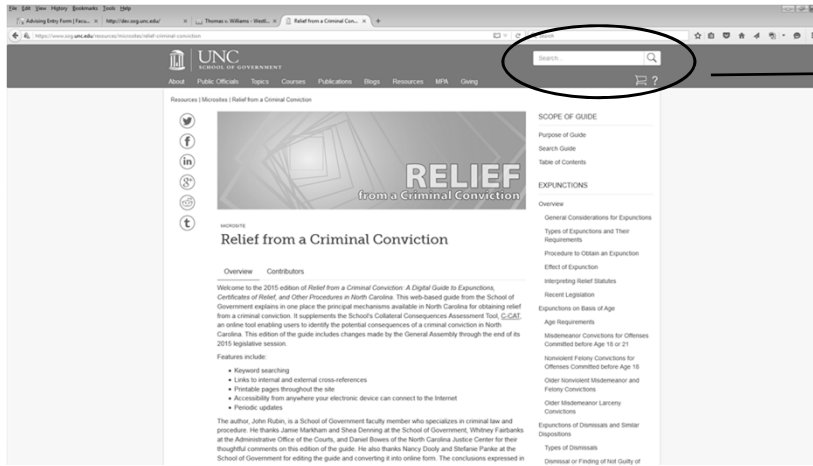
SENTENCING AND OTHER CONSEQUENCES



Sex Offender Consequences

- *State v. Fryou*, p. 44-45
 - Premises restrictions
- *State v. Packingham*, p. 45
 - Internet restrictions

Relief from Conviction



Type in "relief"