Criminal Case Update for Magistrates' Conference (October 2020)

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Perspective/ Context

- Most of these cases don't contain direct rulings affecting magistrates' work.
- They offer relevant lessons about facts that substantiate or prove elements of crimes.
- No cases about criminal procedure of your work.
- Thanks to my colleagues for creating case summaries!

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Middle finger by itself is not disorderly conduct (Ellis, p. 2)

- Trooper saw passenger waving from a car, then "flipping the bird," perhaps vigorously. Trooper didn't know for whom gesture was intended and saw no other traffic violations or suspect activities.
- Facts didn't establish reasonable suspicion of a crime, or basis for a stop.
- Flipping the bird plus some other action may be treated differently. See Welty blog post.

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Evidence of operating a vehicle and resisting officer (Hoque, p. 3)

- Operating vehicle element, in DWI, supported where D found asleep behind wheel with car running in the middle of road and a bottle of vodka between his legs. No passenger. D asked officer if he could move the car, revving the engine. D left car by driver's door.

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Resisting in Hoque (p. 3)

- Resisting supported by multiple acts: not rolling down window when asked, repeated attempts to start car after commanded to stop, refusing to follow directions about sobriety test, & more

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More Hoque (p. 3)

- D argued there was insufficient evidence of possession of open container where bottle found by officer "was not missing much alcohol" and officer emptied bottle on side of road.
- Court said: amount of alcohol missing was irrelevant for purposes of this offense. The key was that the container was open. Officer's action goes to weight and credibility of evidence, not sufficiency.

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Consent not a defense to assault (Russell, p. 4)

- Defendant asked victim to step outside to talk. Victim said "If you want to hit me, hit me, but this is not the way we need to solve this issue." Defendant hit victim and broke his jaw.
- D wanted trial judge to instruct jury that victim consented to assault and that was a defense to prosecution.
- Court said no. Consent is not a defense to assault in NC.

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"True threats" (Taylor, pp. 4-5)

- Supreme Court will hear appeal of this Ct. of Appeals decision so stay tuned.
- Ruling potentially changes elements required to prove threats in this offense and others.
- Facts involved Facebook statements by defendant about an elected district attorney
- Charged with threatening a court officer under GS 14-16.7(a) (NC Crimes p. 169, plus supp pp. 55-56)

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More Taylor (p. 5-7)

- Court held that threats must be "true threats." That is, "the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."
- Opinion based on consideration of First Amendment right to speech.

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Even more Taylor (pp. 5-7)

- Court deems true threat an essential element of the offense.
- Threat must be made with the general intent to make the threatening statement (from objective perspective) and a specific intent (a subjective intent to "truly threaten").

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Changed elements, per Taylor

- (1) defendant (2) knowingly and willfully (3) made a threat
- (4) constituting a "true threat," that an ordinary, reasonable person would interpret as a serious expression of intent to do harm
- (5) to a court official (6) knowing the person was a court official
- (7) when communicated, D specifically intended statement to be understood by victim as a real threat expressing D's intention to carry it out

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Taylor

- On facts, court concluded that statements were vague and unspecific. Also considered evidence like: d's access to firearms, reporting detective's concern, evidence that neither victim or investigating officers viewed threats as "true."
- Defendant's conviction reversed.

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Neglect of an elder (Stubbs, p. 8)

- Stay granted on decision. Supreme Ct may hear.
- Evidence supported defendant's caretaker status [GS 14-32.3(d)(1)]: D helped mother bathe, purchased food and supplies for mother, assisted in paying her bills, helped with "general normal care, daily things," and purchased life insurance for mother on mother's request.
- D argued that they were "more like roommates" and not close.

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Defining "school personnel" in sex offense statutes (Smith, p. 9)

- D argued he was not a "teacher" under GS 14-27.7(b)(2013).
- Court of Appeals said General Assembly "intended to cast a wide net" in prohibiting sexual conduct and a person's categorization should be based on common-sense evaluation of all the facts, not a hyper-technical interpretation based on a person's title.

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More Smith (p. 9)

- D had a long-term assignment, was an employee, held to same standards as a certified teacher, though he did not have a teaching certification.
- Court found D properly convicted of engaging in sexual activity with a student.

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Kidnapping evidence (English, p. 10)

- Sufficient evidence of "purpose to terrorize victim" of First Degree Kidnapping (Element 4, NC Crimes, p 304).
- D hid in backseat of victim's car holding a knife while waiting for her, choked and threatened her with knife while she drove, and struck victim when she attempted to scream for help.

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Evidence of misdemeanor assault (English, p 10)

- Sufficient evidence of "show of violence" form of assault (NC Crimes, p. 113) as well as more typical "act or attempt to do injury to another" form of assault (NC Crimes, p. 113).
- Evidence showed two bystanders scuffled w D in attempt to aid victim. D brandished knife and attempted to run over bystanders with victim's car; bystanders had to take steps to avoid being hit by car.

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Insufficient evidence of larceny (Campbell, p. 10)

- Audio equipment was taken from a church and never recovered. Doors were left unlocked after an evening service. Loss was discovered several days after equipment was last seen.
- D's wallet was found near equipment storage area. D admitted to investigator he was in the church the night doors were left unlocked but said he didn't remember what he did while there. EMT who interacted with D after he left church said he was not carrying anything.

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More Campbell (pp. 10-11)

- D testified at trial that he did soul searching in church and drank a bottle of water, but didn't take anything.
- Court said these facts showed a "mere opportunity" to commit a crime, and that wasn't sufficient to send the charge to a jury or for conviction.
- Query: Was there probable cause for larceny charge?

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Larceny elements review (NC Crimes, p. 330)

- (1) Takes (2) personal property (3) in the possession of another and
- (4) carries it away
- (5) wo consent of possessor and
- (6) with intent to deprive the possessor of its use permanently
- (7) knowing he or she was not entitled to it, and
- (8) (a)-(g) $1000 value, from the person, committed pursuant to a burglary, BorE, etc.

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No "self-help" permitted in illegal transaction (Cox, pp. 11-12)

- Defendant paid individual for controlled substance. Failed to get drugs or return of purchase money at individual's home. D fired shot at home.
- Convicted of conspiracy to commit robbery with a dangerous weapon and felonious breaking and entering.

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More Cox (pp. 11-12)

- Ct of Appeals reversed those convictions, on theory that D had bona fide claim of right to purchase money.
- So no felonious intent was established. See Element 7 of Misdemeanor Larceny (NC Crimes, pp. 324-326).
- Supreme Court reversed Ct of Appeals, saying money was subject of an illegal transaction, so D had no bona fide claim to it or a reason to exercise self help to regain the money.

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Evidence of robbery (Young-Patrick, p. 12)

- Court found evidence sufficient for "from the person or from the person's presence" and "by violence and intimidation" elements when
- D and victim fought, D assaulted victim in her driveway, victim fled, and within 20 minutes D took her car from the driveway.
- Court called the action, even over 20 minutes, a "continuous transaction" (see NC Crimes discussion of timing of elements at p. 384).

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Insufficient evidence of keeping or maintaining a vehicle (Weldy, p. 13)

- Defendant was driving vehicle registered to his wife and mother-in-law. State presented no evidence that he had title to or owned vehicle, or paid for its purchase or upkeep.
- Court found D's possession of vehicle for 20-25 minutes, without more, insufficient to prove he "kept" the vehicle. See NC Crimes at pp. 744-45.

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Insufficient evidence of purpose to keep or sell (Weldy, p. 13)

- Police found drugs on the defendant's person, but no evidence linking the drugs to the vehicle. I.e. no cell phones, cash, scales, baggies, or paraphernalia. No evidence that drugs were found in vehicle or that vehicle was modified to hide drugs.
- As a result, court said there was no evidence of the element "being used for unlawfully keeping or selling controlled substances."

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Insufficient evidence of knowingly possessing drugs (Campbell, p. 14)

- Court found no evidence of possession where charge was trafficking of methamphetamine.
- Substantial evidence showed D believed substance handed to him for inspection during controlled buy was fake.
- Substance was in fact illegal meth mixture.
- As D was inspecting substance, LEOs entered room and arrested him.
- Dissents mean possible Supreme Ct review.

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"Unlawful possession" not an element (Palmer, p 15)

- Charge was Possession of a Controlled Substance at a Prison or Local Confinement Facility. GS 90-95(e)(9) and NC Crimes pp. 707-708.
- Evidence of "possessed unlawfully" need not be shown because it is not an element of the crime.
- Elements are: (1) knowingly (2) possesses (3) a controlled substance (4) on the premises of a penal institution or local confinement facility.

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Insufficient evidence of impairment in DWI (Nazzal, p. 15)

- Case arose from fatal auto collision and involved conviction of 2nd degree murder, DWI, felony death by vehicle, and failure to maintain lane control.
- Insufficient evidence of impairment where officer who formed that opinion did so 5 hrs after incident with only passive observation, no field tests, and not questioning D about ingestion of impairing substances.

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